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Terms and Conditions

Version 1 - 01/10/2021

Emutel Pty Ltd ACN 652 579 023 (**EmuTel, we or us**) will supply **you** (or **your**) with telecommunications services (**Services**) and may supply You with equipment on the terms and conditions set out below.

1. Our Agreement with You

1.1. Our agreement with you includes this document and any application form which you complete and provide to us (**Application**). We may accept and rely on a facsimile or scanned email copy of the original Application as if it was an original.

1.2. Our agreement with you also includes our currently applicable price list. That price list may change from time to time, but we will notify you of any changes when they happen. Copies of the price lists are available from us on request.

2. Term of agreement, rollover

2.1. This agreement shall commence upon execution by both parties (or another date if indicated on the Application) and shall remain in force until the termination or expiry of the **Term**, as provided in this **clause 2**.

2.2. In respect of each Service set out in the Application (or any new Services added to your account), the Term shall commence on the date on which such Services are activated by our provisioning team, and will continue in relation to that Service:

2.2.1. in the case of Services, you initially order, for the agreed term selected for the Service on the Application; or

2.2.2. in the case of new Services added to your account, for 36 months; and

2.2.3. in all cases, at the end of the initial Term, for unlimited further consecutive periods of 12 months, unless terminated by written notice not less than one month prior to the expiry of any such period.

3. Service descriptions

3.1. We will provide the Services as indicated in the Application to you in Australia through such carrier or supplier network or networks as we nominate from time to time. Where carriage is supplied, the quality of the carriage of the Services will be the same as that of the carrier or supplier.

3.2. Where we are providing mobile Services, we will connect your mobile phone to the network as soon as it is reasonably practicable after our acceptance of the Application and its attachments, and we will use all reasonable efforts to maintain the connection while you comply with this agreement.

3.3. Where we are providing mobile Services, we will provide you with a Emutel SIM card to use in relation to the Services. The SIM card remains the property of Emutel.

3.4. Where we are transferring mobile Services under mobile number portability arrangements, the SIM card provided in relation to the services will be activated upon your request for activation. If no such activation request is received within 15 business days of dispatch, we will activate the SIM card on your behalf.

3.5. Where we are providing data Services, the nbn®, ADSL and or SHDSL access component of the relevant data Service and, optionally, a rented CPE router, are supplied to us by a third party(s) as a wholesale supplier.

3.6. The Service shall be personal to you and the persons authorized on the Application Form. You must not permit any other person to use the Service and must not re-sell or purport to re-sell the Service.

4. Use of services

4.1. You are responsible for the use of the Services at Your premises and from the Service Delivery Point (which means the point and/or location at the customer premises at which the equipment and/or the Customer's equipment and/or communications network connects to the Services), even unauthorized use. This means that if someone uses the Services without Your knowledge or consent, You are liable for all costs arising from that use.

4.2. You must not use the Services and must use your reasonable endeavours to prevent any other person from using the Services:

4.2.1. to commit, cause or allow any breach (or do anything which might put us in breach) of any law, regulation, government direction or industry standard or code;

4.2.2. to breach a person's rights (including committing defamation or infringing a person's intellectual property rights);

4.2.3. to transmit, publish or communicate material that is defamatory, offensive, abusive, indecent, menacing or unwanted; or

4.2.4. in any way that damages or interferes with or interrupts the Services or the systems that Emutel uses to supply the Services;

4.2.5. to enable unauthorized access to our computer system or network or those of our suppliers;

4.2.6. by giving an unauthorized person your account and password details;

4.2.7. to use the Service to menace or harass others;

4.2.8. as otherwise reasonably determined by us.

4.3. You must notify us immediately of any security breach (suspected or otherwise) of the Service, or your confidential password or your login.

4.4. You indemnify us and our suppliers from all loss, damage, liability, costs or expenses relating to a breach of this **clause 4**.

5. Fault Reporting

5.1. You may report a fault with the Services to Emutel at any time in accordance with **clause 5**.

5.2. Prior to reporting a fault, you must investigate and ascertain for yourself the cause of the fault and, if required by Emutel, provide any further information in relation to the fault, including what you have done to satisfy this clause.

5.3. Upon being notified of a fault, Emutel will promptly assign a reference number to the fault and will issue that reference number to you. You must use and quote that reference number in relation to any dealings with Emutel in respect of that fault.

5.4. Emutel will use all reasonable endeavours to rectify the fault within the time lines set out in any applicable Service Levels.

5.5. You acknowledge that if a fault has been caused by the services or network of any other supplier (meaning a carrier, a telecommunications carriage service provider or an equipment supplier other than Emutel), Emutel shall not be liable for any failure by that other supplier to remedy the fault within the time lines set out in any applicable Service Levels.

5.6. When Emutel has remedied the fault, it will notify you that the fault ticket is “closed”.

5.7. If Emutel determines that:

5.7.1. a fault arises out of or in connection with any equipment, facilities, networks or systems of yours; or

5.7.2. there is or was no fault,

then Emutel may require you to pay Emutels’ reasonable costs and expenses (based on Emutels’ standard rates) in dealing with or resolving a fault, and such cost and expense shall be a debt due and payable by you on demand to Emutel.

6. Service levels

6.1. The service levels (if any) applicable to a Service (as set out in the Service Schedule relating to that Service) (**Service Levels**) shall apply to the Services, subject to the provisions of this agreement. For the avoidance of doubt, failure by us to meet any Service Levels shall not give you any right or claim against us, including without limitation a right to damages, specific performance or a right of termination of this agreement, provided that any credit or rebate provided pursuant to the Service Levels shall be the sole remedy available to you.

6.2. You will not be entitled to a Service Level credit or rebate where our failure to achieve the relevant Service Levels is caused directly or indirectly by, or arises from or in connection with:

6.2.1. an event of force majeure;

6.2.2. a planned outage; or

6.2.3. the exercise of our right to suspend a Service.

7. Software Licence

7.1. Emutel warrants to you that it owns or has the right to grant sublicences of the software required to support the Services described in a Service Schedule.

7.2. Emutel grants to you, for use in your own business and on the equipment, a non-exclusive, personal and non-transferable licence, without right to sub-licence, to use the software required to support the Services described in a Service Schedule, whilst we are providing the Service to you.

7.3. You must:

7.3.1. treat the software as confidential information;

7.3.2. use the software or any portions or aspects thereof (including any methods or concepts utilized therein) solely on the equipment;

7.3.3. return to Emutel all media, documentation and/or other material that contains the software (including where it has been modified, updated or replaced);

7.3.4. not modify, disassemble or decompile the software, or reverse engineer any part of the software or permit others to do so; and

7.3.5. not reproduce or copy the software in whole or in part except for backup and archive purposes.

8. Charges & Payment

8.1. Charges for goods and Services are determined in accordance with the Rate Plan or such other manner specified in the Application. We may change these charges or add new charges from time to time in accordance with **clause 12**.

8.2. You will be invoiced for all calls, Services, usage or other charges on a monthly basis with 7 days trading terms for payment of accounts. You must pay all invoiced amounts by the date specified on the relevant invoice. Charges that do not appear on your monthly invoice may appear on future accounts due to processing procedures.

8.3. We may charge you in advance for any equipment or other goods supplied to you.

8.4. Subject to any law to the contrary, all charges are non-refundable. You shall pay all charges in full without any deduction or set-off whatsoever (including whether or not the Service is used by you or any other person).

8.5. Where we are providing mobile Services monthly, you must also pay us:

8.5.1. charges for calls you have made to the extent those charges exceed the minimum monthly spend as set out in the Application; and

8.5.2. charges for value added services you have used.

8.6. Any charges billed to you after the cancellation date from your previous service provider will be due and payable by you to that provider.

8.7. Our charges to you may involve fees for connection, initiation or cancellation of any services.

8.8. In relation to mobile Services, you accept that you are responsible for all calls made from your handset, including any calls made in error. Most mobile phone handsets have a keypad lock function to prevent accidental use. It is your responsibility to take adequate precautions to avoid accidental use.

8.9. Accounts overdue may incur interest on the overdue amounts at 3% above the per annum National Australia Bank Overdraft Reference rate applicable at the date of the bill calculated daily. An initial \$25 (ex GST) late payment will be applied to your account.

8.10. We may, upon reasonable notice, deactivate or cancel all or part of your Service if any amount is not paid by its due date. We reserve the right to restrict any Service at any time if the account has gone over its credit limit or if we consider use of the Service appears fraudulent. Discounts may also be revoked during the overdue period. Pricing may revert to the Emutel Standard rates. If any amount has not been paid by the due date we reserve the right to deduct any unpaid amount (or part thereof) from your credit card or charge card nominated on the Application. If you have nominated automatic direct debit, your bank account or credit card will be charged 7 days from the invoice date.

8.11. Delivery of archived invoices is available upon request in PDF format.

8.12. If you default under this agreement, we may use or disclose any personal information collected and recorded in relation to you to assist us in the process of debt recovery. Personal information includes personal identifying details such as your name, address, date of birth, employers and driver's license details and status of any of your accounts or related bodies corporate, your credit history, and information about your credit worthiness or capacity.

8.13. All payments made using either American Express or Diners Club credit cards will be subject to a 5% surcharge (which we may change from time to time to cover financial institution charges).

8.14. All payments made using a Visa, MasterCard or Bankcard will be subject to a 2.5% surcharge (which we may change from time to time to cover financial institution charges).

8.15. In consideration of us having agreed to supply the Services to you, the person signing this agreement on your behalf (the **signatories**) hereby jointly and severally personally guarantee the payment on demand of all monies which are or shall hereafter become due to us by you. This guarantee shall be a continuing guarantee and shall not be affected by us giving time or any other indulgence to you, nor shall any of our rights to sue or report your details to a credit reporting agency be affected.

8.16. If you do not pay the account by the due date we reserve the right to place the outstanding amount due in the hands of a collection agency for debt recovery. At this time, they will assume the responsibility for collection of the outstanding amount and such amount owing will be liable to a minimum 20% surcharge or actual legal costs to cover recovery charges (whichever is greater).

8.17. If we have reason to believe that you may be or become unable to pay for any goods or services in full, we will discuss the matter with you in order to find a means to ensure that full and prompt payment of invoices is not jeopardized. Such means might include, for example, shorter invoicing periods.

8.18. After we have had such discussions with you, if we reasonably consider that full and prompt payment of invoices might be jeopardized, we may require as a precondition to the supply of any further goods or services that you provide security to us for an amount, in a form and within a timeframe reasonably required by us. Such security may take the form, at our discretion, of a security bond, bank guarantee, parent company guarantee, director's guarantee, or other security. Please also refer to our Financial Hardship Policy on our website.

8.19. Unless expressly stated otherwise, the charges payable for the Services under this agreement are exclusive of GST. You must pay to Emutel in addition to the charges for the Services, an amount equal to any GST payable on the supply of all goods and services. That additional amount is payable at the same time any part of the charges for the good or services is payable. Emutel will issue a tax invoice to you for the supply of those goods and/or services at or before that time.

9. Disputed Amounts

9.1. In the event that a bill is disputed by you, you agree to pay to us the entire total amount as indicated on the disputed bill without deduction or set-off and we agree to refund any monies found to be charged incorrectly after reasonable and proper investigation.

9.2. Subject to any law to the contrary, if a billing dispute is not raised within 30 days of the bill issue date, charges will be deemed correct and payable by you and any backdate/credit of these charges if required will not exceed a 30-day period.

10. Transfers to Us

10.1. In providing the Services, we need to change your arrangements with your current supplier and we will do so in accordance with this clause.

10.2. By signing this agreement or any other agreement for the provision of telecommunication services by us:

10.2.1. You authorise us to sign on your behalf and in your name, forms of authority to your current supplier of telecommunications services to transfer the services into our name;

10.2.2. You will on request yourself give written instructions to your current supplier to transfer the services from your name to Emutels' name;

10.2.3. You will immediately pay to your current supplier all amounts owing to it for the services being transferred up to the time of transfer to our name; and

11. Transfers from Us/Relocation

11.1. If in the future you ask us to transfer any of the Services to another supplier, then you remain responsible to us for the amount payable for the Services up to the time when we transfer those accounts to another supplier, and you will immediately pay us that amount on receipt of our invoice.

11.2. The provision of Services ceases when we transfer those accounts to another supplier.

11.3. We will endeavour to bill you for those Services within the next normal billing period.

11.4. If after we become aware of any other proper charges (including fees payable to any other supplier) for those services up to the date of transfer, then you will immediately pay us all such amounts on receipt of our invoice.

11.5. If Emutel has programmed an override codes into your phone system or PABX, then calls may continue to be billed by Emutel. In this situation you are liable to Emutel for all related call costs and it is your sole responsibility to remove or change the override code at your cost to allow calls to go through to your new supplier.

12. Amendments to the Agreement

12.1. This agreement including without limitation the charges and the Services is subject to change by us. We shall give not less than 30 days' written notice to you of any changes. In the event that the Services are substantially limited by such changes, you shall be entitled to terminate this agreement by written notice to us, provided you must pay us for any goods supplied or services performed up to the time of termination.

12.2. Without notice, we may at any time, change the carrier or supplier, or the carrier's or supplier's products as supplied to you.

13. Information

13.1. You consent to us and our carriers or suppliers exchanging your information and/or details and the carriers or suppliers, ourselves and our respective related bodies corporate may all use your details for our own purposes.

13.2. You authorise the carriers or suppliers to disclose to us all records, and in particular exchange line details, telephone accounts information, call charge records and call event records.

14. Credit Check

14.1. You will supply without delay all the necessary information to check your creditworthiness.

14.2. If we consider it relevant to assess this application, you agree to us obtaining from a credit reporting agency a credit report containing personal information about you.

14.3. If your organisation is a trust or member of a trust you may be required to complete a trust compliance form.

14.4. You agree that we may give to any credit provider and/or credit reporting agency any information contained in the Application. You also agree that we may seek from any credit provider and/or credit reporting agency any credit report on all parties named in the Application. You acknowledge and understand that such information can include any information regarding your commercial or consumer creditworthiness, credit history or credit capacity that credit providers and/or credit reporting agencies are allowed to give or receive under the *Privacy Act 1988* (Cth).

14.5. You authorise and permit us to make independent enquiries of third parties concerning your financial standing and for this purpose, authorise and permit third parties to supply such information regardless of any confidentiality or privilege which applies to the information sought.

14.6. If the ownership of you or your business changes involving change of directors or owners then Emutel reserves the right to request that a new Application is signed and the new owners be subjected to a credit check. Emutel reserves the right to withhold Services to the new owner if they fail to meet our credit terms.

15. Limitation of Liability

15.1. All Implied Terms are expressly included in this agreement. All other terms which might otherwise be implied into this agreement, are excluded. **Implied Term** means a term implied into this agreement by consumer protection legislation and which such

legislation prohibits from being excluded, restricted or modified, including for example guarantees provided under the Australian Consumer Law;

15.2. Our liability in respect of a breach of an Implied Term relating to the supply of any goods or services is to the full extent permitted by law limited to, at our option:

15.2.1. in the case of goods, any one or more of the following: the replacement of the goods or the supply of equivalent goods; the repair of the goods; the payment of the cost of replacing the goods or of acquiring equivalent goods; and the payment of the cost of having the goods repaired; and

15.2.2. in the case of services: the supply of the services again; or the payment of the cost of having the services supplied again.

15.3. Subject to the Australian Consumer Law, you agree that our (and any supplier's) maximum aggregate liability in relation to any claim, loss or damage, whether arising under or in relation to this agreement, any tortious act or omission (including negligence) or under common law or statute, is limited to the charges actually paid by you in the six months immediately prior to the relevant event occurring.

15.4. Subject to the Australian Consumer Law in relation to an Implied Term, in no event will we or our supplier be liable to you or to any other person for any indirect, special, incidental, consequential, punitive or other like loss or damage whatsoever, loss of profit or loss of data, whether or not such person was advised of the possibility of such loss or damage, in relation to this agreement.

15.5. Subject to any law to the contrary and any agreed Service Levels, you:

15.5.1. acknowledge and agree that all products and services supplied under or in relation to this agreement are not suitable for (and are not supplied for the purpose of) supporting any application which needs continuous or fault free service;

15.5.2. are responsible for making your own assessment of whether you need continuous and fault free services and obtaining and implementing advice about alternative services suitable for such purposes.

15.6. You acknowledge and agree that:

15.6.1. we shall not be obliged to supply any goods or services on any terms more favourable to you than the terms on which such goods or services are supplied to us;

15.6.2. we may at any time impose on you any term, condition, warranty, limitation or exclusion which our supplier imposes on us

15.6.3. if our supplier increases the price at which it supplies any necessary or relevant goods or services to us, we may immediately alter any applicable charges to reflect such increase; and

15.6.4. we may immediately suspend or terminate this agreement without any liability to you if for any reason we no longer acquire any necessary or relevant goods or services from a supplier (including if a supplier suspends or terminates its arrangements with us for any reason).

15.7. You acknowledge, agree and covenant that the limitations of liability provided in this agreement shall apply for the benefit of us and our upstream providers.

15.8. You agree to indemnify us and our suppliers and keep us and our suppliers indemnified from and against liability and all loss and damages caused directly or indirectly by any breach of this agreement by you or any claim or action arising directly or indirectly out of any negligence or wilful act of yours or any of your servants, offices, agents, contractors or subcontractors.

15.9. To the extent permitted by law, you agree that each indemnity given by you shall survive the termination of this agreement, and shall apply in respect of any and all actions, claims, expenses, demands, costs, damages, proceedings or any other liability whatsoever in connection with the use of the Services or CPE including, without limitation, use or incorporating the Services or CPE in other products used by you or supplied to you.

16. Service Equipment

16.1. In respect of any **Service Equipment** (being any equipment, facility or associated software used by us or any of our suppliers in relation to a Service):

16.1.1. the Service Equipment remains the property of us or our supplier;

16.1.2. to the extent possible under the terms of your occupation of the premises where the Service Equipment is located, you will allow us to and, where applicable, will ensure that the landlord allows us to, access such premises for the purposes of this clause;

16.1.3. we may remove the Service Equipment upon reasonable notice to you;

16.1.4. you will not part with possession of the Service Equipment, except to us;

16.1.5. you must provide us and our nominees with access to your premises upon reasonable notice to install, inspect, test, modify, maintain, repair, change or recover the Service Equipment;

16.1.6. you must ensure that the Service Equipment is not handled, used, maintained, tampered or interfered with by any person, except us or our nominee;

16.1.7. if requested by us, you must insure the Service Equipment for an amount and on terms reasonably required by us; and

16.1.8. you must return the Service Equipment to us within 14 days of the expiry or termination of this agreement and, if you do not do so, you shall immediately pay to us the full retail price of the Service Equipment (including the cost of acquiring or renewing any necessary software licences).

16.2. This clause shall survive termination of this agreement.

17. Installation & Programming of Equipment

17.1. Where we are providing fixed wire Services, you will assist us in ensuring that any equipment necessary for you to receive the Services and access our network is installed and programmed so that calls to destinations nominated by us from time to time are, as far as possible, carried by our preferred switched services network.

17.2. Where we are providing data and or nbn®/DSL Services, you will assist us in ensuring that any equipment necessary for you to receive the Services and access our network is installed and maintained. Emutel supplies all modems pre-configured to work on the relevant Emutel nbn®/DSL Service. Any alterations of these settings will incur charges at \$180 (ex GST) per hour for resetting or reconfiguring of the modem by Emutel.

18. Customer Premise Equipment

18.1. **Customer Premise Equipment**, or **CPE** includes: PABX, Telephone, IP Handsets/Switch/Router or Key System, Software, Block-up converter, and other cables or mountings.

18.2. Subject to the payment of the contracted monthly service fee for the CPE, we will provide you with CPE as reasonably necessary for installation and which we provide to you to use with the relevant access (using data, PSTN or other telecommunication access medium) service(s), and any associated documentation to your premises specified in the relevant Application. We may substitute any component of the CPE or part of any component of the CPE prior to delivery without consultation with you and may in any respect modify the CPE if, in our reasonable opinion, the substitution or modification:

18.2.1. will not adversely affect the performance or capacity of the CPE in any material respect;

18.2.2. will not alter the configuration of the CPE in any material respect; and

18.2.3. will not otherwise materially affect the obligations of us or prejudice the rights of you under this agreement.

18.3. We will use our best endeavours to deliver the CPE to you on the agreed delivery date at the agreed site (the **Site**) during your normal business hours.

18.4. If you wish the CPE to be delivered to a location other than the Site, you shall make a request in writing to us not later than 7 days (or such other period as is agreed between us and you) prior to the delivery date. We may at our sole discretion determine whether to agree to such a request and what conditions, if any, shall apply in the event of us agreeing to such a request.

18.5. If you request delivery of the CPE to be made in advance of the delivery date or postponed beyond the delivery date, we shall use reasonable endeavours to re-schedule delivery accordingly but shall otherwise be under no obligation to comply with your request.

18.6. In the event that we accede to a request made by you pursuant to **clauses 18.4 and 18.5**, we may make such additional charge as we reasonably considers to be appropriate to reflect the direct impact upon our resources in complying with such request.

18.7. If we request permission to deliver the CPE prior to the delivery date, you shall use your best endeavours to prepare the Site and to do all other things necessary to accept early delivery.

18.8. You shall return the CPE to us on demand at any time if any payment in respect of the CPE is outstanding and immediately following the making of a demand we shall be entitled to enter your premises for the purpose of retaking the CPE and may resell the CPE to another person in order to recoup our loss and damage (including costs incurred on an indemnity basis).

18.9. Title in and over the CPE remains with us until payment in full is received.

18.10. Risk of loss or damage to the CPE shall pass to you upon delivery.

18.11. Where we are providing mobiles Services, you must notify us immediately if there is any problem with the Service or SIM card or if your mobile phone or SIM card is lost or stolen.

18.12. If you request to transfer IP Phones or other EmuTel-managed devices to a third-party provider you must follow the formal deprovisioning process; You must submit a

written request to EmuTel indicating their intention to transfer devices to another provider. You must complete and sign a formal agreement acknowledging that you are voluntarily relinquishing any remaining warranty or support obligations provided by EmuTel on the transferred devices. EmuTel will no longer be responsible for device functionality, support, or claims once the transfer is complete

18.12.1. A one-time deprovisioning fee of \$99ex GST per device will apply. This fee covers administrative, technical, and risk mitigation costs associated with the transfer. This fee is consistent with EmuTel's standard activation and cancellation charges.

18.12.2 Upon completion of the above steps, EmuTel will provide you with available dates and times for the deprovisioning process. Scheduling will be mutually agreed upon and not dictated solely by EmuTel.

18.12.3 Failure to follow this process may result in delays, continued billing, or forfeiture of device functionality.

19. Installation (general)

19.1. We or an approved contractor shall install the equipment at the Site on the agreed installation date. In the absence of agreement to the contrary, the installation shall be effected during our normal business hours.

19.2. You shall at your own expense prepare the Site, and access to the Site, prior to delivery. In doing so, you shall comply with any directions or specifications issued by us.

19.3. Without limiting the foregoing, you shall ensure the supply at the Site of:

19.3.1. adequate electric current for the continuous use of the CPE;

19.3.2. adequate electrical and mechanical fittings;

19.3.3. appropriate environmental conditions;

19.3.4. provide all relevant facilities for the location of the CPE at the Site; and

19.3.5. provide us with access to all relevant personnel including your technical and other personnel.

19.4. If you do not own the Site, you shall notify the relevant owner and/or lessor and obtain the owner's and/or lessor's permission for us and our representatives and agents to enter the Site and install the CPE, including making any minor physical modifications contemplated for the purposes of providing the Service(s). You warrant to us that at the date of installation you will have notified the relevant person and obtained all relevant

consents and you indemnify us against any claim made against us, or loss incurred (including legal costs on a full indemnity basis), by any person in connection with such entry and installation.

19.5. We shall, upon request from you, supply such information and assistance as we consider reasonable and necessary to enable you to prepare the Site.

19.6. Notwithstanding the foregoing, we shall, if requested by you and at your expense inspect the Site prior to delivery for the purpose of providing an opinion as to whether the Site is suitable for delivery and installation of the equipment

19.7. Where we reasonably determine the requirements for installation exceeds reasonable expectations for any installation fee quoted or agreed with you, we will not be bound to provide the installation at the installation fee previously quoted or agreed and we agree to discuss and use our respective reasonable endeavours to agree a new installation fee. Subject to our completing the assessment in **clause 19.6** to our satisfaction, you are responsible for all other things not included within the installation.

19.8. You agree to obtain and maintain, at your expense, any and all permits, licences, approvals, authorisations, including local council planning approval required for the installation and operation of the CPE.

19.9. In the event that you are relocating your premises and as a result, your CPE, we may, upon your request, allow you to move the CPE to new premises during the term of this agreement so that you can continue using the Service(s) at the new premises, subject to:

19.9.1. our being able to provide the service(s) at the new premises;

19.9.2. you agreeing that this agreement applies to the provision of the Service(s) at the new premises; and

19.9.3. you paying all costs incurred by us as a result of you having the CPE moved.

20. Exclusions and Maintenance Services

20.1. You acknowledge that the CPE does not include the goods and services specified as excluded or not included in our quotation to you.

20.2. You may in writing to us, request that we supply additional services including without limitation, inspection, repairs, adjustment and replacement of unserviceable or defective parts not subject to the limited warranty given in respect of the CPE.

20.3. If agreed to by us, additional services will be provided on a time and materials basis charged at our standard rates in effect from time to time and on terms agreed to between

us and you.

20.4. Unless agreed in writing, any subsequent agreement to provide additional services between you and us will not modify or vary the terms of this agreement.

21. Limited Warranty

21.1. We warrant that the CPE is new.

21.2. We warrant that at the date of this agreement we believe the CPE to be free from defects in materials and workmanship.

21.3. You may during the period of 60 days after purchasing the CPE, notify us in writing of any defect or suspected defect in the CPE. We shall, to the extent necessary, inspect, replace or repair the CPE at no additional charge and as soon as practicable after receiving written notice from you.

21.4. We may (acting reasonably) refuse to replace or repair the CPE if the defect is the result of:

21.4.1.1. improper use or mismanagement of the CPE;

21.4.1.2. operation of the CPE other than in accordance with the instructions given by us;

21.4.1.3. use of the CPE in a manner not reasonably contemplated by us;

21.4.1.4. modification of the CPE not authorised by us;

21.4.1.5. of the CPE in a manner contrary to law;

21.4.1.6. Subjecting the CPE to unusual or not recommended physical, environmental or electrical stress;

21.4.1.7. reinstallation or moving of the CPE by a person other than us;

21.4.1.8. use of the CPE by a person other than you;

21.4.1.9. our failure to comply with any terms of this agreement; or

21.4.1.10. your failure or refusal to install engineering changes or enhancements recommended by us.

21.5. If you provide a notice of a defect or suspected defect pursuant to **clause 21** and any subsequent inspection of the CPE by us reveals no defect, the direct and indirect costs and expenses associated with such inspection shall be borne by you as an additional charge.

21.6. You agree that the warranty in this **clause 21** may, at our option, be varied or replaced by specific warranty conditions issued in respect of the CPE.

21.7. This **clause 21** is subject to and does not limit your rights under the Australian Consumer Law.

22. Termination and Suspension

22.1. We may terminate this agreement if you breach any term of this agreement or if a receiver or receiver and manager is appointed over any of your property or assets, or if a liquidator or provisional liquidator is appointed to you or if you enter into any arrangement with your creditors or you assign or otherwise deal with your rights under this agreement without our prior written consent or, in the case of an individual, you die.

22.2. Without prejudice to our other rights under this agreement, we may suspend the Services or any of them at any time without notice if any of following occur:

22.2.1. we are not satisfied with our credit assessment of you;

22.2.2. if you breach this agreement. If you have failed to remedy the breach within 10 days of us providing written notice to you of the breach, we may terminate your Service;

22.2.3. you fail to pay amounts owing to us by the due date;

22.2.4. we are unable, for any reason including the default of a carrier, to provide the whole or part of the Service; or

22.2.5. we have a right to terminate the agreement.

22.3. If you request reactivation of Services that have been suspended due to lack of payment we reserve the right to request a bond up to \$1,000.00 which is to be applied to the first account issued following reactivation and payable by the due date of that invoice. This will be held until the conclusion of the agreement period or 12 months, whichever is the greater.

22.4. If you churn your Services to another carrier all bond monies owing will be refunded by cheque within 14 days of the account being finalised.

22.5. If we suspend the Services, you will still remain liable for all monies due to us under the agreement, during the period of such suspension.

22.6. If your Service has been suspended by us due to non-compliance with this agreement, a fee of \$75 (ex GST) is payable to reactivate each Service.

22.7. If this agreement is cancelled by you, or terminated by us:

22.7.1 any right which we have in respect of your obligations under the agreement that are not fulfilled when the agreement is ended, will continue to exist;

22.7.2. you must pay us all reasonable costs and expenses incurred by us in relation to the agreement ending;

22.7.3. where we are providing mobile Services:

22.7.3.1. all of your rights to receive the Services from us will end and you must return to us the SIM card that we provided to you;

22.7.3.2. you must pay amounts due at the time the agreement ends, including the balance of the minimum monthly spend amounts for all months up to the end of the Term;

22.7.3.3. we are supplying a SIM only Service and you terminate the Service before the agreement ends an early termination fee of \$500.00 per Service is payable to us.

22.8. Where we are providing data, IP Telephony and/or DSL Services, you must pay amounts due at the time the agreement ends, including the balance of the monthly service fees as set out on the application, for all months up to the end of the Term.

22.9. In addition to any liabilities arising under this clause and where we are providing fixed wire Services, if you terminate the Services before the expiry of the Term or such lesser time as is agreed in writing by you and us, then you will pay us an early termination fee based on a genuine estimate of the loss (**Early Termination Fee**) we will incur from the early termination of this agreement. The amount of the Early Termination Fee will be the amount of Services and equipment charges billed per month for all the months up to the end of the applicable Term.

22.10. Where you have entered into an agreement to purchase two or more of the following products from us: Mobile GSM, Fixed Wire (Inbound, Long Distance and Local), Video and Voice Conferencing, nbn® or ADSL, and during the Term you cancel the supply of one of the aforementioned products, the pricing of the remaining product(s) or service(s) will revert to the non-bundled (or non-discounted), and thus adjusted rate for the Service that we continue to supply to you for the remainder of the agreement.

23. Removable Discount

Without limiting the above, if we provide a Service at a discount on payment over a set term and you cancel the Service or terminate the agreement before the applicable Term ends, then you will be liable to pay the for Service billed at Emutels' standard rates for the period prior to cancellation and termination.

24. Use of Mobile Phone Overseas (Roaming)

24.1. Where we are providing mobile Services, you acknowledge and agree that:

24.1.1. if you use a roaming service overseas in connection with your mobile phone, you agree to pay all call charges in connection with the provision and use of the roaming services, including local taxes and surcharges. We may require you to pay a \$500 security deposit prior to making roaming facilities available;

24.1.2. if you fail to comply with this agreement, Emutel may use the security deposit or any part thereof, to meet any costs, loss or liability incurred as a result. Where appropriate, providing you are not in breach of this agreement, we will return the outstanding balance of the security deposit, without interest to you;

24.1.3. while roaming an overseas network it may not provide some of the services. There may be limitations to the overseas networks, which may have not been advised to you or us; and

24.1.4. roaming charges are governed by the carrier you use at the time. We advise the roaming rates will alter without notice and roaming rates for the country you're going to should be checked on www.emutel.com.au prior to your departure.

25. Voice and Video Conferencing Service

25.1. You are responsible for maintaining the confidentiality of your owner number and any personal identification numbers and passwords (**Account**) and for restricting access to your account.

25.2. You agree to accept responsibility and liability for all activities that occur under your Account whether lawful or unlawful. You are also solely responsible for all uses of your Account, whether or not actually or expressly authorised by you.

26. Data and/or DSL Service

26.1. If we do not supply a standard telephone service with the nbn®/ADSL/SHDSL access component it may be necessary to terminate the Service if you request another carrier to provide a standard telephone service after the date of this agreement.

26.2. We may, at our discretion, provide the Service by using either: (a) an existing or new Unconditioned Local Loop Service (**ULLS**); or (b) an existing or new access line that supplies a standard telephone service; provided by Telstra Corporation Limited (**Telstra**) or a reseller of Telstra, depending on the technical & operational requirements of the particular Service.

26.3. Where a telephone exchange area is shown as being nbn®/DSL enabled, there is no guarantee that individual telephone services provided from that exchange will qualify for nbn®/DSL service provision.

26.4. The performance of the end-to-end service offered over nbn®/DSL is determined by the quality of the copper line and the distance from the nbn® node and Point of interconnect or DSL exchange. As such the performance of the end-to-end service can only be estimated until we have qualified the line performance. We will accept a customer order upon appropriate qualification where the line performance meets our service objectives and the availability of the said service.

26.5. For the purpose of measurement of data usage 1,000MB = 1GB.

27. Data Backup and Security

27.1. The level and degree of data backup and security measures that we take in relation to any single customer depend upon the service options chosen by that customer; each customer must play an active role in determining and maintaining its own data backup and security. You must ensure that appropriate data backup and security measures are taken in relation to your data, having regard to the criticality of the data, including using appropriate firewall and encryption technologies, applying latest security patches, disabling any unnecessary ports, routine backup, having multiple backups and/or redundant backups, archiving your data, and conducting regular security audits.

27.2. Subject to the service options that you have selected, we aim to meet peer industry practice in relation to data backup and security, including in relation to: regular rotating backups; firewalls; encryption; redundancy; access control; and intrusion detection and prevention. Notwithstanding these efforts, however, no data is entirely secure and safe from a breach or failure of data backup and security. Accordingly, whilst we take reasonable steps in relation to data backup and security, we exclude all warranties and disclaim to the full extent permitted by law all liability in relation to data backup and security.

28. Inaccessibility due to Interference

28.1. Any Service Levels for a data Service do not apply:

28.1.1. to the extent of any interference with the applicable CPE; or

28.1.2. to the extent of any service degradation a result of any changes to the surrounding environment subsequent to the installation of the CPE; and

28.1.3. in the above circumstances, you must either:

28.1.4. take all steps reasonably necessary and within your control to ensure that the cause of the interference or degradation is removed; or

28.1.5. where it is not possible to remove the cause of the interference or degradation, you must engage us to relocate the CPE at your cost.

29. Mobile Number Porting

29.1. Switching (**Porting**) your mobile Service Number (**MSN**) from your current mobile service provider to Emutel is covered by the Communications Alliance Mobile Number Portability Code as amended from time to time (**MNP Code**) and bilateral telecommunications industry arrangements. Provided that your MSN is capable of being Ported, you may Port your MSN from your current Mobile Service Provider to Emutel if that MSN is declared Portable under the ACA Numbering Plan 1997 and no exemption has been granted by the ACA. The terms of this agreement will apply to your use of the Service.

29.2. You acknowledge and agree with the following:

29.2.1. if your MSN is ported, only your MSN switches to Emutel. No existing value added services with your current Mobile Service Provider will be transferred, which may result in the loss of (or the loss of access to) these services from your current Mobile Service Provider, including voice mail, SMS, paging or facsimile services. However, such services may instead be provided by Emutel upon application and payment of any relevant fees.

29.2.2. You may have outstanding contractual obligations and costs to your current Mobile Service Provider.

29.2.3. You may have outstanding contractual obligations and costs to your current Mobile Service Provider.

29.2.4. Your current Mobile Service Provider may or may not disconnect your existing mobile service and value added services, and Porting your MSN may result in finalisation of your existing account for that service.

29.2.5. If you currently have a prepaid handset, you may need to have any SIM security or network locking removed by your current Mobile Service Provider and/or have the handset reprogrammed prior to Porting, or acquire a new handset.

29.3. You can only withdraw your authority to Port to the Port Cutover Notification being received by Emutel from your current Mobile Service Provider.

29.4. Emutel does not warrant that it can switch your number from your current Mobile Service Provider. Your current Mobile Service Provider may reject the request to Port, if the

information you provide is incorrect or does not match the data held by them. In this case, we reserve the right to correct the information and resubmit the request to switch or dispute the rejection by your current Mobile Service Provider. Additionally, in accordance with the MSN Code, a request to Port may be rejected if:

29.4.1. the request is for a non-Portable MSN, e.g. a cancelled MSN;

29.4.2. the MSN Code requires the request to be rejected; or

29.4.3. Emutel cannot otherwise provide Porting for that MSN in the circumstances.

29.5. If your MSN cannot be Ported then you may accept a new donor number from Emutel on such terms and conditions as imposed by Emutel.

29.6. Emutel does not warrant that your MSN will be switched to Emutel within any specified timeframe. The Standard Hours of Operation under the MSN Code are AEST 8am to 8pm Monday to Friday and 10 am to 6pm on Saturday, excluding national public holidays. Emutel may be able to provide you with the facility to implement the Porting to your MSN(s) outside the Standard Hours under any Bilateral agreement that may exist from time to time.

29.7. Acting in accordance with the MNP Code and any other bilateral arrangements, in the event of a Port to Emutel, or Port Withdrawal or Port Reversal to your previous Mobile Service Provider, Emutel is not responsible for any period of outage of your Mobile Service and or any related or ancillary services.

29.8. If you wish to Port your MSN from Emutel to another Mobile Service Provider, then you must contact the other provider. If you do so and your agreement has not expired, you will be liable for any termination fees provided under **clause 22**.

29.9. Emutel reserves the right to charge to Port your MSN to or from Emutel.

29.10. You expressly authorise Emutel to provide information regarding your MSN, Emutel and the network type to be disclosed to other telecommunication service providers to enable the transfer of your mobile service from one mobile Service Provider to another, to allow call routing, for customer network fault management, for preventing of fraud, and for routing of SMS messages to your MSN after porting activity. For further information on the Porting process please refer to the MNP Code.

30. Emutel Direct Services and Local Number Portability

30.1. Emutel Direct Services: Emutel Direct Services are internet based VoIP services. Emutel Direct Services are marketed by Emutel. These Services are not connected via

Telstra's local phone lines. Customers can migrate from Telstra phone lines (or from a Telstra Service Provider) to Emutel Direct Services and keep their existing local numbers via Local Number Portability.

30.2. Local Number Portability (**LNP**) refers to the transfer of a standard telephone service number (for example, a Business Line service or an ISDN 10) between service providers. LNP includes transfers between Telstra and its service providers and between Telstra and other carriers.

30.3. Porting local numbers to, or from, Emutel takes between 30 and 120 working days.

30.4. Pricing: customers waiting for their services to port to Emutel Direct Network will be charged at Emutel's standard rates until the port is completed.

30.5. Transferring Numbers from a Emutel Direct Service: if the service is still under agreement with Emutel then the customer will be liable to pay the applicable early termination fee, along with all outstanding usage charges. Any costs associated with the move away from Emutel to another carrier are the sole responsibility of the customer and may include connection fees charged by the new carrier and PABX programming.

31. Confidentiality

31.1. Each party must treat as confidential, keep secret and not use or disclose any information relating to the trade secrets, know-how, business practices, network or service configuration, operational or procedural information, charges, discounts or clientele, of the other party.

31.2. Any such disclosure may only be made with the prior written consent of the other party.

31.3. Any confidential information must be returned to the other party upon demand and/or at the termination or expiry of this agreement. This clause shall survive termination of this agreement.

32. General

32.1. An up-to-date version of these terms may be found at our website, www.emutel.com.au.

32.2. This agreement incorporates our privacy policy, which can be found at www.emutel.com.au.

32.3. To the extent required by law, the telecommunications customer service guarantee applies to the Services. Further information may be found at www.acma.gov.au.

32.4. In the event of a dispute arising under this agreement, please see our Complaints Handling Policy on our website. You may also have rights under the Telecommunications Industry Ombudsman scheme. Further information may be found at www.tio.com.au.

32.5. We do not sell products or services to children. If you are under 18, you may use our services only under the supervision of a parent or guardian.

32.6. You do not own or have any legal interest or goodwill in any telephone number, IP address, domain name, PIN or other locator or identifier issued to you (**Public Addressing Identifier**). You acknowledge and agree that the terms of use of any Public Addressing Identifier may be subject to regulatory requirements (including requirements relating to changes to or termination of a Public Addressing Identifier) and we shall not be liable or responsible for the operation or consequences of any such requirement.

32.7. We are not obliged to review or monitor any of your data, although we may do so if permitted or required by law.

32.8. Any provision which by its nature would survive termination or expiry of this agreement (including without limitation any exclusion or limitation of liability or indemnity in this agreement) shall survive termination or expiry of this agreement.

32.9. The forbearance on the part of a party from exercising any right under this agreement (including without limitation any right to suspend or terminate all or any part of this agreement) on the first date it is entitled to do so shall not constitute any waiver of its rights under this agreement.

32.10. We will not be responsible for any delay or failure to perform our obligations under this agreement caused by any act beyond our control including without limitation acts of God, wars, strikes, natural disasters, failures of any other supplier or network operator's services and interruptions to power supply.

32.11. This agreement contains the entire understanding and agreement between the parties as to its subject matter. All previous negotiations, understandings, representations warranties (other than warranties set out in this agreement), or commitments in relation to the subject matter of this agreement are superseded by this agreement and shall be of no force or effect whatever and no party shall be liable to any other party in respect to those matters. No oral explanation or information provided by any party to another shall affect the meaning or interpretation of this agreement or constitute a collateral agreement, warranty or understanding between the parties.

32.12. We may assign or novate the parties' rights and obligations under this agreement if such assignment is made as part of a sale or reorganization of all or part of our business

and you shall be deemed to consent to such assignment or novation.

32.13. In the event of any inconsistency between the documents comprising this agreement, the order of precedence shall be as follows:

32.13.1. any applicable the Service schedule(s);

32.13.2. any applicable Service Level agreement;

32.13.3. the terms contained in this document;

32.13.4. The Application (or order for new Services); and

32.13.5. any other attachment to this agreement.

32.14. If any clause or part of this agreement is held to be void, illegal or unenforceable for any reason, it shall be deemed to be severed from this agreement without affecting any other clause or part of this agreement.

32.15. We may sub-contract our obligations under this agreement.

32.16. Each party must do all things necessary to give effect to this agreement and any thing contemplated by this agreement.

32.17. The person purporting to enter into this agreement on behalf of a party warrants to the other party that he/she is duly authorized to enter into this agreement in that capacity.

32.18. Each party agrees that the laws of New South Wales shall govern this agreement and each party irrevocably submits to the jurisdiction of courts and tribunals in that State.



Emutel Pty Ltd | ABN 68 652 579 023
Unit 4/2 Riedell St, Wagga Wagga NSW 2650
Business telco and IT for the Riverina

1800 368 835 · sales@emutel.com.au

POLICIES

[Terms and Conditions](#)

[Complaints](#)

[Complaint Handling Policy](#)

[Financial Hardship Policy](#)

[Customer Service Guarantee](#)

[Acceptable Use Policy](#)

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