

EVOIP GENERAL TERMS AND CONDITIONS

This Agreement sets out the terms on which EVOIP (we/us) will provide the Services to you, the Customer.

1. Terms used in this Agreement

In this Agreement the following terms have the meanings set opposite them:

"Accept" or "Acceptance" — means (i) clicking on the "I accept" or "Register Now" button during the registration process, where you sign up online; (ii) orally confirming your acceptance of this Agreement where you sign up by telephone; and (iii) your signature of the Customer Application Form and provision of such executed Customer Application Form to us, where you sign up by means of a printed copy of the Customer Application Form;

"Agreement" or "Customer Agreement" — means these Customer General Terms and Conditions, any relevant Special Conditions and any Customer Application Form you may have signed;

"Charges" — means the charges to be paid by you for the Services calculated according to the prices and rates set out in our price lists (available on our website at www.evoip.com.au or upon request) or otherwise notified to you; "Commencement Date" — has the meaning set out in Clause 4.1;

"Competent Authority" — means the Australian Communications Authority ("ACA") or any other competent Government department or any regulatory body; "Customer Application Form" — means the customer application form completed by you when placing your order for the Services;

"General Terms" — means these General Terms and Conditions;

"Network" — means the electronic communications systems run or procured by us for the purpose of providing the Services;

"Service" or "Services" — means the EVOIP services provided by us to you under this Agreement; and

"Special Conditions" — means the special conditions regarding the Services being provided set out below.

2. Our obligations to you

2.1 We will provide the Services to you in accordance with this Agreement and subject to availability, provided that nothing herein shall require us to accept your request for Services if we determine that you are not eligible. We shall provide the Services in the manner of a reasonably skilled electronic communications service provider.

2.2 We shall endeavour to deliver the Services to you in a professional manner although we cannot promise that the Services will be without interruption. Our Services may be dependent on the provision to us of services by third-party operators. We are not responsible to you for any faults or interruptions caused by them.

2.3 All information relating to you collected by us in the course of providing the Services shall remain confidential subject only to the permitted uses of that information under the Agreement or as may be required by any Competent Authority or any other regulations relating to the Services.

3. Your use of the Service

3.1 You will not use or allow use of the Services for any improper, immoral, offensive, fraudulent, illegal or unlawful purpose.

3.2 If you or any other person whom you allow to use the Service does not comply with any provision of this clause 3: (a) you shall indemnify and hold us harmless against all liabilities, claims, losses, damages or expenses arising directly or indirectly

or in any way associated or suffered as a result of such non—compliance and (b) we may suspend the Services immediately without notice and without incurring any liability on our part.

3.3 We may provide you with a password, security code or secret word to access your account or the Services. You must at all time keep such password, secret word or security code confidential and secure, and you must tell us immediately if such is disclosed to any unauthorised person. Until one hour after you so inform us, you agree that you shall be held liable for any Charges associated with the Services. We may disclose any information in connection with your account to anyone who correctly quotes your password, security code or secret word.

3.4 You acknowledge that the Services are for your residential use only and you will not resupply or resell or otherwise make the Services available to any person on a commercial or any other basis. You are responsible for ensuring that only those persons you authorise use the Services and you agree to pay all charges relating to use of the Services.

4. Commencement of this Agreement and your right to cancel ("Cooling Off Period") and our right to cancel prior to provision of Services

4.1 This Agreement commences on the date of Acceptance ("Commencement Date") and will continue for each applicable Service selected by you for the term specified in the Special Condition(s) applicable to such Service(s) provided that prior to the first provision of Services we may terminate this Agreement with no liability if you fail a credit check or if for any other reason we are unable to provide the Services.

4.2 You may cancel this Agreement (whether in whole or part) within any cooling off period specified in the relevant Special Conditions ("Cooling Off Period") by calling our Customer Services department at the number provided to you.

5. Payments and Charges

5.1 If paying by credit card or debit card, we only accept payment by such cards as indicated in the EVOIP Customer Application Form signed by you or as otherwise informed to you by our Customer Services department.

5.2 If you are a postpaid customer, how frequently we bill you for Services and your payment responsibilities are set out in the Special Conditions applicable to the Services you use. Prepaid customers will be charged in advance and billing details will be shown on a web interface.

5.3 If you are a postpaid customer, we may charge interest on any overdue amount payable from the due date until payment (whether before or after judgment) at the rate of 4 percent per annum, above the base rate of Barclays Bank Plc from time to time. If a direct debit or cheque or credit card or debit card payment is dishonoured or cancelled we will re—charge you for any charges we incur as a result. We reserve the right to charge you a fee of \$20 for late payments to cover our administration costs.

5.4 If you are at any time in violation of your obligations to make payments to us and remain in violation after 72 hours' written notification by us, then we may suspend immediately the provision of the Service to which any outstanding payments relate and the performance of its associated obligations forthwith without prejudice to our rights under this Agreement, including our right to payment. Notwithstanding any other provisions of this Agreement, we shall have no liability to you for any loss or damages you suffer as a consequence of such suspension.

5.5 Unless you make payments to us by direct debit or by recurring credit card transaction we will charge an administration fee in such amount as may be communicated to you from time to time. If you elect to receive a paper copy of your EVOIP bill (which may in our discretion be sent as an email bill) in lieu or in addition

to our standard on-line billing, we shall charge you an administrative fee in such amount as may be communicated to you from time to time.

5.6 Where periodic charges are incurred for a period less than the relevant charging period then they will be pro rated. This does not apply to any administrative or similar charges.

5.7 We shall be entitled to charge you for our reasonable expenses in recovering late payments from you.

6. Deposits and account limits

6.1 We may, at our sole discretion and at any time, impose a credit limit on your account and/or require payment of a security deposit or interim payment by you.

6.2 Any credit limit imposed by us can be reviewed and amended at any time if:

6.2.1 in our reasonable opinion we believe that your financial circumstances have substantially changed and/or there has been a significant material increase in the Charges you are incurring since you entered into this Agreement;

6.2.2 you are persistently late in your payments; or

6.2.3 we have used all or part of the deposit to make payment or settle any outstanding or unpaid Charges as invoiced.

7. Suspension of Service

7.1 Without limiting the provisions of clause 5.4, we may suspend immediately the provision of the Services (or a part of them) to you until further notice without compensation such notice to be either oral (and later confirmed in writing) or in writing:

7.1.1 for repairs, maintenance or improvement;

7.1.2 in the event that we have reason to suspect fraudulent activity or misuse of the Services or any breach by you of this Agreement;

7.1.3 in the event where you have exceeded the credit limit which we had imposed upon you pursuant to clause 6.1 above; or

7.1.4 in the event that we are required to comply with an order, instruction or request of any Competent Authority.

7.2 Any exercise of our right to suspend the Services shall not exclude our right subsequently to terminate this Agreement. We may refuse to restore the Services to you until the provisions in clauses 7.1.1 to 7.1.3 are cured and we receive an acceptable assurance from you that there will be no further breach.

8. Provision of information

8.1 You are required promptly and accurately to give us all the information we may reasonably need so that we can perform our obligations under this Agreement. You must also inform us immediately of any change to the details you have provided to us. You hereby agree and confirm that the information that you provide to us under this Agreement shall be true, accurate and complete in all respects.

8.2 We may contact you before, during and after the term of this Agreement in order to administer, evaluate, develop and maintain the Services. Please note that we may monitor and/or record your telephone calls and emails for quality assurance, legal, regulatory and training purposes. We will keep a record of personal information you provide to us in connection with the Services.

8.3 We will comply with our obligations under relevant Data Protection legislation and any other applicable data protection legislation. You are also required to comply with all data protection legislation. In addition, you must maintain all required registrations, including those reasonably requested by us to enable us to process your

personal data in connection with our performance of our obligations under this Agreement.

8.4 All information relating to you collected by us in the course of providing the Services shall remain confidential subject only to the permitted uses of that information under the Agreement or as may be permitted or required by any Competent Authority or any other relevant laws or regulations.

8.5 In connection with this Agreement we, and any other companies or agencies authorised by us, may carry out credit and fraud prevention checks with one or more licensed credit reference and fraud prevention agencies and we may retain a record of the search. Information held about you by such companies or agencies may be linked to records relating to other persons living at the same address and such records will be taken into account in credit and fraud prevention checks. Information from your application and payment details of your account will be recorded with one or more of these companies or agencies and may be shared with other organisations to help make credit and insurance decisions about you and members of your household and for debt collection and fraud prevention.

8.6 We may also share the information which you provide with other EVOIP affiliates or third parties for administration, data storage or processing purposes.

8.7 By registering for the Services you also consent to our using and/or disclosing your personal information for the following purposes:

8.7.1 providing or arranging for third parties to provide Customer Care/Help Desk facilities and billing you for the Services (which may involve disclosing your information to third parties solely for those purposes); and

8.7.2 to selected third parties for the purposes of providing and operating the Services and installing Equipment.

8.8 You acknowledge that the companies receiving your information pursuant to clauses 8.5, 8.6 and 8.7 above may be located outside the your country in countries which do not have the same standards of protection for personal data as the UK. By entering into this Agreement you agree to such transfer and use of your personal data.

9. Termination of Services

9.1 Subject to the Special Conditions, we may end this Agreement (or any Services provided hereunder) by giving you:

9.1.1 at least 30 calendar days' notice; or

9.1.2 immediately if:

(a) you do not make payments to us when they are due and have not rectified that within 72 hours of written notification from us;

(b) you do not perform or observe any material obligation under this Agreement, whether such obligation is specified in this Agreement as material or not (a "material breach")

(c) you do not perform or observe any other obligations under this Agreement (a "breach") and where such breach can be remedied, you fail to remedy the breach within any reasonable time specified by us in a written notice requiring you to do so;

(d) a voluntary arrangement is proposed, or a bankruptcy petition is presented or a bankruptcy order is made against you or a receiver or trustee is appointed on your estate;

(e) we have reason to believe that you have provided us with false, inaccurate or misleading information either for the purpose of obtaining the Services from us or during the provision of the Services;

- (f) you or any other person at your premises use the Services or are suspected, in our reasonable opinion, of using the Services for illegal activities, fraud or attempted fraud; or
- (g) we are required to comply with an order, instruction or request of any Competent Authority.

9.2 Your right to terminate any of the Services shall be pursuant to the relevant Special Conditions. This Agreement shall be deemed automatically terminated in the event that you have terminated all EVOIP Services and have not ordered additional Services from EVOIP pursuant hereto.

10. Limitation of liability

10.1 Our liability:

- (a) for death or personal injury caused by our negligence or the negligence of our employees or agents;
- (b) under Part 1 of the Consumer Protection Act 1987;
- (c) for breach of any condition as to title or quiet enjoyment implied by section 12 Sale of Goods Act 1979 or section 2 Supply of Goods and Services Act 1982;
- (d) for fraudulent misrepresentation; and
- (e) for misuse of confidential information,

is not excluded or limited by this Agreement, even if any other terms of this Agreement would otherwise suggest that this might be the case.

10.2 Subject to clause 10.1 we do not accept any liability under or in relation to this Agreement or its subject matter (whether such liability arises due to negligence, breach of contract, misrepresentation or for any other reason) for any:

- (a) loss of profits;
- (b) loss of sales;
- (c) loss of turnover;
- (d) loss of or damage to business;
- (e) loss of or damage to reputation;
- (f) loss of contracts;
- (g) loss of customers;
- (h) loss of, or loss of use of, any:
 - (i) software or
 - (ii) data
- (i) loss of use of any computer or other equipment or plant;
- (j) wasted management or other staff time; or
- (k) indirect, special or consequential loss or damage and for the purposes of this clause the term "loss" includes a partial loss or reduction in value as well as a complete or total loss.

10.3 Subject to clauses 10.1 and 10.2 our total liability arising from or in connection with this Agreement and in relation to anything which we may have done in connection with this Agreement (and whether the liability arises because of breach of contract, negligence or for any other reason) shall be limited to the lesser of:

- (a) the amount of loss suffered by you in respect of the relevant liability assessed; or
- (b) an amount equal to 125 percent of the total amount paid or payable by you under this Agreement.

10.4 We will not be liable under this Agreement for breach of any of its terms to the extent that the breach concerned arises from:

- (a) use of any Services other than in accordance with normal operating procedures as notified to you;
- (b) any alterations to any Services made by anyone other than us;
- (c) any abnormal or incorrect operating conditions; or
- (d) any other hardware or software being used with or in relation to any Services, unless this has been approved by us or the relevant statutory process of the connection of apparatus to a public communications network.

10.5 We exclude all conditions and warranties, other than those expressly set out in this Agreement, including any warranties implied by law if and to the extent such warranties and conditions implied by law can be lawfully excluded.

11. Assignments

This Agreement is personal to you and therefore it may not be assigned or transferred by you to any other person without our prior written consent. We have the right to assign both the benefit and burden of this Agreement as part of a business reorganisation together with any associated rights of access and installation at any time to any company or person and you hereby consent to such assignment

12. Changing of Terms and Conditions and pricing

12.1 We reserve the right to change the terms and conditions of this Agreement and/or the Services which we provide to you in the event that:

12.1.1 The ACA or any other Competent Authority makes any direction or order recommending or requiring any technical modifications or changes in our trading, operating or business practices or policy; or

12.1.2 We reasonably determine that any technical modifications to the Network or change in our trading, operating or business practices or policy is necessary to maintain the Services which we provide to you.

12.2 We may, at our sole discretion, change or vary any Charges or rates affecting the Service by amending the rates or charges on our website at www.evoip.com.au. You may check the website or contact our Customer Services department at the number provided to you for up-to-date rate information for all our Services.

13. Service Bundles

We reserve the right to offer bundles of two or more Services at special discounted rates dependent upon the purchase of all of the relevant bundled Services for a stated minimum term. If you wish to cancel or terminate one or more of the Services purchased as part of such a bundle prior to the end of the stipulated minimum term you will lose the benefit of any such discounted rate for the remainder of the Services that you continue to purchase and we will charge you for those remaining Services at our usual rates and prices in force from time to time.

14. Paying by direct debit

All the normal Direct Debit safeguards and guarantees apply. No changes in the date, frequency or amount to be debited can be made without notifying you at least 7 working days in advance of your account being debited. In the event of any error, you are entitled to an immediate refund from your Bank or Building society. You have the right to cancel a direct debit instruction at any time simply by writing to your bank or building society, with a copy to us.

15. Unforeseeable events

Neither party is liable for any breach of this Agreement (except as regard to your nonpayment of charges) which is caused by something beyond their reasonable control including Acts of God, fire, lightning, extremely severe weather, flood, a national or local emergency, acts of terrorism, explosion, war, military operations, civil disorder, damage to the Network, vandalism, sabotage, industrial disputes or acts

of any Competent Authority. If such failure to deliver continues for more than 3 months after the commencement of such failure, then either party may terminate this Agreement on notice in writing to the other party.

16. Entire Agreement and no representations

16.1 This Agreement represents the entire understanding between the parties in relation to its subject matter and supersedes all agreements and representations made by either party, whether oral or written.

16.2 The parties acknowledge and agree that:

(a) the parties have not been induced to enter into this Agreement by any representation, warranty or other assurance not expressly incorporated into it; and

(b) in connection with this Agreement the parties' only rights and remedies in relation to any representation, warranty or other assurance are for breach of this Agreement and that all other rights and remedies are excluded, except in the case of fraud.

17. Severability

If any provision (or part of a provision) is held invalid, illegal or unenforceable for any reason, it shall be severed and the rest of the provisions in this Agreement shall continue as if the Agreement had commenced without that provision (or such part of that provision).

18. Waiver

The failure by either you or us to exercise or enforce any right under this Agreement shall not be deemed to be a waiver of such right or to bar the exercise or enforcement of it or any other right.

19. Notices

19.1 Notices given under this Agreement should be delivered by hand or by prepaid first class post or electronic mail either:

(a) to us: at the address on this Agreement or on the last invoice or to an alternative address notified to you; or

(b) to you: at the address in this Agreement or to an alternative address notified to us.

20. Rights of Third Parties

This Agreement does not create any rights under the Contracts (Rights of Third Parties) Act 1999 that are enforceable by any person who is not a party to it but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

21. Law

This Agreement is subject to the laws of New South Wales, Australia and any disputes will be settled in the Courts of New South Wales. You may bring unresolved disputes with us to the Telecommunications Industry Ombudsman for purposes of dispute resolution.

SPECIAL CONDITIONS FOR EVOIP PREPAID

These Special Conditions are incorporated by reference into the Customer Agreement for those customers purchasing EVOIP PREPAID Services. To the extent that there is any inconsistency between these Special Conditions and the General Terms, the applicable provision of these Special Conditions shall prevail.

1. Provision of Service

Any Prepaid credit will be valid for up to 3 months. Any unused balance thereafter will be cancelled and not refunded. If additional credit is added at any time, then all credit is deemed to be valid for 3 months from that date.

2. Conveyance of calls

Not all calls are routed solely through EVOIP. EVOIP takes no responsibility for failure of any calls not routed by it, or for any non-EVOIP ancillary services provided by other service providers. For such calls and services, you will be charged by the relevant service provider. If you have any questions regarding whether certain calls or services will be billed by EVOIP or by another service provider please contact our Customer Services department.

5. Termination

Unless you specifically ask EVOIP to terminate the service, the service will automatically stop when credit had run out or three months after the last payment was made to EVOIP.

Contact EVOIP

Sales:

Tel: 02 9901 3137

Fax: 02 9901 4707

Email: sales@evoip.com.au

Postal address

EVOIP.com.au

PO Box 387

St Leonards NSW 2065

Web: www.evoip.com.au

Customer Services:

Tel: 02 9901 3137

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