

# Business Phone

## Terms and conditions



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## 1. Definitions and interpretation

### 1.1 Definitions

In these terms and conditions the following words have the meaning set out below unless the contrary intention clearly appears:

**Acceptable Use Policy** means Exetel's acceptable use policy (as modified from time to time) which may be found on <http://www.exetel.com.au/files/ExetelAcceptableUsePolicy.pdf>

**Accrued Charges** means all charges and fees (including usage charges and access fees) incurred by the Customer to the date on which the Customer notifies Exetel of the cancellation of a Service and any outstanding amounts that to cover installation costs or Equipment Charges where Exetel owned equipment can be used by the Customer in connection with services provided by any third party.

**Agreement** means the agreement between Exetel and the Customer for provision of the Service which agreement is comprised in the Application and these terms and conditions.

**Business Application** means the Customer's online application to Exetel for provision of the Service which sets out the Minimum Term, Service Description, pricing plan and details of any charge such as Equipment Charge, any fees such as access fees, administration fees, suspension fees, cancellation fees, late payment fees, payment dishonour fees, reconnection fees or reactivation fees payable by the Customer and any refund or rebate to which a Customer may be entitled.

**Business Customer** means any Customer who is a business or non-profit organisation (including a body corporate, sole trader or partnership) that acquires and uses the Service for business purposes other than resale, and for who complete an application for a Business Grade Service.

**Business End User** means any person:

- a. to whom a Business Customer asks Exetel to supply the Service directly;
- b. to whom a Business Customer (with Exetel's prior permission) re-supplies the Service or allows to distribute the Service;
- c. who a Business Customer allows to use the Service; or
- d. to whom a Business Customer supplies any goods or services which use or rely on the Service.

**Business Grade Service** means a service that does carry a service level agreement, and/or that does have a guarantee of uptime (Exetel imply and express no warranties as to its suitability or availability for any purpose).

**Cancellation Date** means:

- a. the date thirty (30) days after the Customer notifies Exetel that the Customer wishes to cancel the Service, unless Exetel agrees otherwise;
- b. the date at least thirty (30) days after Exetel notifies the Customer that Exetel will be cancelling the Service; or
- c. as otherwise set out in the Agreement.

**Churn** means to change from having a service supplied by one carrier or carriage service provider to having the service supplied by another carrier or carriage service provider in the context of ADSL1 for which the losing service provider or carrier and gaining service provider or carrier are participants of the Rapid Transfer Facility. In the context of Long Distance pre-selection for which the losing service provider or carrier and gaining service provider or carrier are participants.

**Competition and Consumer Act** means Competition and Consumer Act (2010).

**Consumer Application** means the Customer's online application to Exetel for provision of the Service which sets out the Minimum Term, Service Description, Pricing Plan and details of any charge such as Equipment Charge, any fees such as access fees, administration fees, suspension fees, cancellation fees, late payment fees, payment dishonour fees, reconnection fees or reactivation fees payable by the Customer and any refund or rebate to which a Customer may be entitled.

**Consumer Customer** means any Customer who is a person who acquires and uses the Service for personal, domestic or household use only and who complete an application for a Residential Grade Service.

**Customer** means the person who submits an Application to Exetel and who acquires and uses the Service from Exetel.

**Equipment Charge** means any payment to Exetel for use of equipment.

**Exetel** means Exetel Pty Ltd ABN 350 979 865 46.

**Exetel Group Company** means Exetel and each of its related corporations.

**Fixed-Term Agreement** means an Agreement (other than a month-to-month Agreement) that has a Minimum Term.

**Industry Participant** means the Communications Alliance Limited, and the Telecommunications Industry Ombudsman

**Insolvency Event** means:

- a. bankruptcy proceedings are commenced against the Customer, or the Customer is declared bankrupt;
- b. any step that is taken to enter into any scheme of arrangement between the Customer and the Customer's creditors;
- c. any step that is taken by a mortgagee to enter into possession or dispose of the whole or any part of the Customer's assets or business;
- d. any step that is taken to appoint a receiver, a receiver and manager, a trustee in bankruptcy, a liquidator, a provisional liquidator, an administrator or other like person to the Customer or to the whole or any part of the Customer's assets or business;
- e. the Customer suspends payment of the Customer's debts generally; or
- f. the Customer is, or becomes, unable to pay the Customer's debts when they are due, or the Customer is, or is presumed to be, insolvent for the purposes of any provision of the Corporations Act 2001 (Cth).

**Intellectual Property Rights** means any intellectual or industrial property rights (including any registered or unregistered trademarks, patents, designs, or copyright).

**Intervening Event** is an event outside a party's reasonable control which interferes with the operation of the network Exetel uses to supply the Service and results in ongoing disruption to the Service. Such an event includes failure of any electrical power supply, failure of air-conditioning or humidity control, electromagnetic interference, fire, storm, flood, earthquake, accident, war, the change or introduction of any law or regulation (including the Telecommunications Legislation) or an act or omission of any third party or any failure of any equipment owned or operated by any third party (including any regulator, any supplier or any of their personnel).

**Minimum Term** means the period of time for which the Customer has agreed to receive the Service under a Fixed-Term Agreement. The Minimum Term begins on the Service Start Date and runs for the period of time stated on the Application, unless otherwise set out in the Agreement.

**Loss** means any loss, cost, liability or damage, including reasonable legal costs.

**Network** means any interconnected telecommunications equipment, facilities, or cabling.

**Party** means a party to the Agreement.

**Personal Information** means information about the Customer from which the Customer's identity is apparent or can reasonably be ascertained. Personal information includes the Customer's name, address and other details (including, for example, numbers called, time of call and location of call) and the Customer's personal or commercial credit rating.

**Personnel** of a person means that person's employees, agents, contractors or other representatives and, in the case of

Exetel, includes the employees, agents, contractors or other representatives of any Exetel Group Company.

**Premises** means locations:

- a. at which Exetel supply the Service, and/or
- b. to which Exetel needs to have access to supply the Service.

**Pricing Plan** means the terms and conditions and prices of the plan for the Service the Customer has selected in the Application.

**Regulator** means the Australian Communications and Media Authority, the Australian Competition and Consumer Commission, or any other relevant government or statutory body or authority.

**Residential Grade Service** means a service that does not carry a service level agreement, or a guarantee of uptime. (Exetel imply and express no warranties as to its suitability or availability for any purpose. Exetel not recommend residential grade services for business needs, or mission critical purposes.)

**Related Corporation** of a company means another company that is related to that entity in any of the ways specified in section 50 of the Corporations Act 2001 (Cth).

**Roaming** means the ability to use the network of overseas mobile carriers when traveling overseas.

**Service** means the service, with the features requested in the Application as described in the Service Description, and any related goods (including equipment) and ancillary services provided or to be provided by Exetel to the Customer in connection with that service.

**Service Description** means the part of the Application which describes the Service provided or to be provided by Exetel to the Customer.

**Service Start Date** for the Service means the date on which Exetel starts supplying that Service to the Customer as will be notified by Exetel to the Customer after acceptance of an Application.

**Special Offer** means a special promotion or offer made by Exetel in connection with the Service, including in relation to a particular pricing plan.

**Supplier** means any supplier of goods or services (including interconnection services) which are used directly or indirectly by Exetel to supply the Service to the Customer.

**Tax** means any value-added or goods and services tax, withholding tax, charge (and associated penalty or interest), rate, duty or impost imposed by any authority at any time but does not include any taxes on income or capital gains.

**Competition and Consumer Act** means Competition and Consumer Act (2010).

**Unusually High Use** means high usage of the Service on a short term basis that is not consistent with a Customer's normal pattern of use, or a sustained high usage which exceeds the general average usage of customers on a similar pricing plan or who have accepted a similar Special Offer.

## 1.2 Interpretation

- a. The following words have the same meaning in the Agreement as they have in the Telecommunications Legislation:
  - i. Carriage service;
  - ii. Carriage service provider;
  - iii. Carrier; and
  - iv. Content service.

- b. A term which is defined in any part of the Agreement has the same meaning in every other part of the Agreement.
  - c. The singular includes the plural and vice versa.
  - d. Different grammatical forms of the same word(s) have the same meaning.
  - e. A reference to a statute, ordinance, code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them.
  - f. A reference to A\$, \$A, dollar or \$ is to Australian currency, unless otherwise stated.
- c. if the variation relates to the characteristics of the Service (including price) and the Customer does not agree that the change is likely to benefit the Customer or have only a neutral or minor detrimental effect on the Customer, the Customer may (if the change is not of a type described in clause 3.3), cancel the Service without incurring fees or charges other than Accrued Charges.

3.3 Exetel may vary a Fixed-Term Agreement even if the variation affects the Customer so long as it complies with the provisions of the Telecommunications Legislation, if the change is:

- a. required by law;
- b. in relation to the cost of international services or roaming;
- c. in relation to a fee or charge to account for a tax imposed by law;
- d. in relation to a fee or charge for a service ancillary to the supply of the Service provided that if the change affects the Customer, Exetel offers the Customer:
  - i. a right to cancel the Service without incurring fees or charges other than Accrued Charges;
- e. to increase the price of a content or premium service (where the supplier who supplies the content service or premium service to Exetel to allow supply of the Service increases the price they charge Exetel for the content service or premium service) provided that if the change affects the Customer, Exetel:
  - i. gives the Customer reasonable notice of the increase in price if the Customer has used the content or premium service within the previous six (6) months; and
  - ii. allows the Customer to elect to not use the content or premium service without attracting any additional charges;
- f. as a result of another carrier or service provider varying the agreement Exetel has with it in relation to a carriage service and as a result Exetel needs to make changes to the Agreement, provided that if the change affects the Customer, Exetel gives the Customer:
  - i. notice in writing of the change; and
  - ii. forty-two (42) days from the date of the notice in which the Customer may cancel the Service without incurring fees or charges other than Accrued Charges.

3.4 Unless expressly allowed in the Agreement, the Customer may not make any changes to the Agreement without Exetel's prior consent.

3.5 The Customer must ensure that any person the Customer allows to use the Service complies with the Agreement as if they were the Customer.

3.6 Exetel may give the Customer notice in writing of a changes to the Agreement by:

- a. delivering notice of the change to the Customer by mail; or
- b. sending the notice to the Customer's email address (if the Customer has agreed to communication by email); or
- c. by including a message or insert in an invoice sent to the Customer; or

## 2. Terms

2.1 The Agreement commences when Exetel accepts the Application.

2.2 Exetel will commence providing Service to the Customer under the Agreement from the Service Start Date.

2.3 If the Agreement is not a Fixed-Term Agreement, Exetel will provide the Service to the Customer in accordance with the Agreement until the Service is cancelled in accordance with the Agreement.

2.4 If the Agreement is a Fixed-Term Agreement, Exetel will provide the Service to the Customer in accordance with the Agreement for the minimum term or until the Service is cancelled in accordance with the Agreement, as the case may be. If neither party cancels the Service at the end of the minimum term Exetel will continue to supply the Service to the Customer on a month-to-month basis in accordance with the Agreement until the Service is cancelled in accordance with the Agreement.

## 3. Variation to Agreement

3.1 Exetel may vary any part of the Agreement:

- a. with the Customer's consent; or
- b. without the Customer's consent provided Exetel complies with the Telecommunications Legislation.

3.2 If Exetel varies a Fixed-Term Agreement under clause 3.1:

- a. Exetel must if the variation affects the Customer and it is not a change of a type listed in clause 3.3:
  - i. comply with the provisions of the Telecommunications Legislation;
  - ii. giving the Customer twenty-one (21) days' notice in writing of the change before the change occurs; and
  - iii. offer the Customer the right to cancel the Service (within forty-two (42) days from the date of the notice) without incurring fees or charges other than Accrued Charges.
- b. Exetel must if the variation affects the Customer and is a change of the type listed in clause 3.3, comply with any additional notice provisions in clause 3.3; and

- d. (in the case of a pre-paid Service) by posting the information on Exetel's website or in Exetel's retail outlets and informing the Customer through a recorded message, text message or in writing) of how to obtain the information.

## 4. Application for the supply of the Service

Exetel may refuse the Customer's Application at its sole discretion.

## 5. Privacy

- 5.1 Exetel may collect, use and disclose personal information about the Customer to decide whether to start, stop or limit supply to the Customer of personal credit, the Service or the products and services of other Exetel Group Companies.
- 5.2 Exetel may collect, use and disclose personal information about the Customer for purposes related to the supply of the Service (or for purposes which would be reasonably expected) including invoicing and account management, business planning and product development, and to provide the Customer with information about promotions, as well as the products and services of Exetel Group Companies and other organisations.
- 5.3 Exetel may collect, use and disclose personal information about the Customer for the purposes in clauses 5.1 and 5.2 above to or from:
  - a. a credit reporting agency or credit provider;
  - b. another Exetel Group Company;
  - c. Third parties who are not related to Exetel, including Exetel's agents, dealers, contractors, franchisees and debt recovery or mercantile agents;
  - d. Suppliers who need access to the Customer's personal information to provide Exetel with services to allow supply of the Service; and
  - e. Joint venture partners of Exetel Group Companies
- 5.4 Exetel may be permitted or required by applicable laws to collect, use or disclose personal information about the Customer, including to:
  - a. The operator of the Integrated Public Number Database, which is an industry wide database of all listed and unlisted public numbers in Australia;
  - b. Emergency services organisations; and
  - c. To law enforcement agencies and government agencies for purposes relating to the enforcement of criminal and other laws.
- 5.5 Where Exetel will be or will under the Privacy Act 1988 (Cth) be considered to be a credit provider to the Customer in relation to the Agreement, the following provisions will apply:
  - a. Exetel may give information about the Customer to a credit reporting agency for the following purposes:
    - i. To obtain a consumer credit report about the Customer; and/or
    - ii. To allow the credit reporting agency to create or maintain a credit information file containing information about the Customer
  - b. Such information is limited to:

- i. Identity particulars such as the Customer's name, sex, address (and the previous two addresses), date of birth, name of employer and driver's licence number;
  - ii. The Customer's application for credit or commercial credit and the fact that the Customer has applied for credit and the amount;
  - iii. The fact that Exetel is a current credit provider to the Customer;
  - iv. Loan repayments which are overdue by more than sixty (60) days and for which debt collection action has started;
  - v. Advice that the Customer's loan repayments are no longer overdue in respect of any default that has been listed;
  - vi. Information that, in the opinion of Exetel, the Customer has committed a serious credit infringement (that is, acted fraudulently or shown an intention not to comply with the Customer's credit obligations); and
  - vii. Dishonoured cheques - cheques drawn by the Customer for \$100 or more which have been dishonoured more than once.
- c. The Customer agrees that:
    - i. Exetel may obtain information about the Customer from a business which provides information about the commercial credit worthiness of persons for the purpose of assessing the Customer's application for consumer credit;
    - ii. Exetel may obtain a consumer credit report containing information about the Customer from a credit reporting agency for the purpose of assessing the Customer's application for commercial credit;
    - iii. Exetel may exchange information about the Customer with those credit providers named in a consumer credit report issued by a credit reporting agency for the following purposes:
      - a. To assess an application by the Customer for credit;
      - b. To notify other credit providers of a default by the Customer;
      - c. To exchange information with other credit providers as to the status of the loan where the Customer is in default with other credit providers; and/or
      - d. To assess the Customer's credit worthiness.
    - iv. Such the information exchanged may include anything about the Customer's credit worthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988 (Cth).

- 5.6 If the Customer wishes to only receive communications that are account-related or legally required, the Customer may request not to receive other communications by submitting a written request to Exetel.

- 5.7 If the Customer is an individual, the Customer is entitled to:
- Gain access to the Customer's personal information held by Exetel, unless Exetel is permitted or required by any applicable law to refuse such access; and
  - Correct any personal information held by Exetel.
- 5.8 If the Customer does not provide part or all of the personal information requested by Exetel then Exetel may refuse to supply, or limit the supply to the Customer of, personal credit or the Service.
- 5.9 By providing the Customer's personal information to Exetel and obtaining the Service, the Customer acknowledges and consent to the collection, use and disclosure of the Customer's personal information as set out in this clause 5 and in accordance with Exetel's privacy policy a copy of which will be made available by Exetel on request or may be viewed on Exetel's website [www.exetel.com.au/privacy.php](http://www.exetel.com.au/privacy.php)
- 5.10 If the Customer has authorised Exetel to give or accept verbal instructions or other communication to or from the Customer in connection with the Service and the Customer has informed Exetel of a password to be used for Exetel's verification purposes when such verbal instructions or other communication is given or received, the Customer agrees:
- to keep confidential such password;
  - that Exetel may assume that any person who quotes the password is authorised by the Customer to accept or give verbal instructions or other communication from or to Exetel in connection with the Service on behalf of the Customer;
  - that the Customer will not hold Exetel liable in any way if any information relating to the Customer's account or any of the Customer's personal information is inadvertently disclosed to any person not authorised by the Customer to receive such information who quotes such password to Exetel; and
  - that all calls made to or from Exetel's customer service centre(s) may be recorded for customer training, improvement programs and verification purposes.
- 5.11 The reference to "Customer" in this clause 5 includes a reference to and is applicable to Exetel's collection, use and disclosure of the personal information of the director or other officer of the Customer who completes or signs an Application on the Customer's behalf as he/she hereby acknowledges.

## 6. Using the Service

- 6.1 The Customer must reasonably co-operate with Exetel to allow Exetel, or a supplier, to establish and supply the Service to the Customer safely and efficiently.
- 6.2 Exetel will provide the Service to the Customer with reasonable care and skill. In the event of unexpected faults Exetel will use reasonable endeavours to ensure the Service is restored as soon as possible.
- 6.3 When using the Service, the Customer must comply with:
- all laws;
  - all directions by a regulator;
  - all notices issued by authorisation of or under law;
  - the Acceptable Use Policy (unless it is stated in clause 17 to be not applicable to the Service); and
  - reasonable directions by Exetel.

- 6.4 The Customer must not use, or attempt to use, the Service:
- to break any law or to infringe another person's rights;
  - to transmit, publish or communicate material which is defamatory, offensive, abusive, indecent, menacing, unwanted or otherwise unlawful or unauthorised;
  - in any way that may expose Exetel to liability; or
  - in any way which or which may damage, interfere with or interrupt the Service, the Exetel network or a supplier's network used to supply the Service.
- 6.5 Exetel may require the Customer to stop doing something which Exetel reasonably believes is in breach of clauses 6.3 or 6.4. The Customer must immediately comply with any such request failing which Exetel may take any steps reasonably necessary to ensure compliance with clauses 6.3 and 6.4.
- 6.6 The Customer acknowledges that, where the Service is a carriage service, Exetel, or any supplier whose network is used to supply the Service, may be required to intercept communications over the Service and may also monitor the Customer's usage of the Service and communications sent over it.
- 6.7 Exetel may (but is not obliged to) contact the Customer if Exetel becomes aware of an unusually high use of the Service by the Customer (including to verify any costs or charges which the Customer may have incurred). In such event, Exetel may ask the Customer to make a pre-payment usage charge under clause 9.5. Exetel is also entitled to suspend the Service under clause 13.1(a) for an unusually high use of the Service.
- 6.8 The Customer must comply with any rules imposed by any third party whose content or services the Customer access using the Service or whose network the Customer's data traverses.

## 7. Equipment

- 7.1 The Customer must ensure that all equipment used in connection with the Service and the way the Customer uses that equipment complies with:
- all laws;
  - all directions by a regulator;
  - all notices issued by authorisation of or under law; and
  - reasonable directions by Exetel.
- failing which Exetel may disconnect the equipment from the Service upon giving the Customer reasonable notice or with no notice in the event of an emergency.
- 7.2 In relation to equipment:
- any Exetel owned equipment remains Exetel's property;
  - the Customer is responsible for any Exetel owned equipment from the time when the Customer receives it;
  - the Customer must not mortgage or grant a charge, line or encumbrance over any Exetel owned equipment; and
  - the Customer may purchase equipment from Exetel to use in connection with the Service. In such event, the Customer will own the equipment and be responsible for the equipment from when the Customer receives it.
- 7.3 The Customer must provide an adequate and suitable space, power supply and environment for all equipment used in connection with the Service and located on the Premises.

- 7.4 Unless otherwise agreed between the parties, the Customer must allow Exetel's personnel (and no other person) to service, modify, repair or replace any Exetel owned equipment.
- 7.5 The Customer is responsible for any lost, stolen or damaged Exetel owned equipment, except where caused by Exetel or Exetel's personnel.
- 7.6 The Customer will be responsible for any outstanding payments for equipment that the Customer has purchased from Exetel, even when that equipment is lost, stolen or damaged.

## 8. Network maintenance, fault reporting and rectifications

- 8.1 Exetel may conduct maintenance on the Exetel network and maintenance may be conducted on a supplier's network used to supply the Service. Exetel will endeavour to conduct scheduled maintenance on the Exetel network outside normal business hours.
- 8.2 Exetel will provide a 24 hour fault reporting service for the Customer to report faults. Before the Customer reports a fault to Exetel, the Customer must take all reasonable steps to ensure that the fault is not caused by any equipment that is not Exetel owned equipment.
- 8.3 The Customer must provide all reasonable assistance to enable Exetel or Exetel personnel, or where necessary a supplier or supplier's personnel, to investigate and where applicable repair a fault including providing them with adequate and timely access to the Premises. For residential and business customers this is up to the Network Boundary Point (NBP) or Main Distribution Frame (MDF) whichever is relevant of the premises.
- 8.4 Exetel will repair faults within the Exetel network used to supply the Service [this means, Exetel will repair faults within the core network and any Exetel supplied equipment only]. Unless the Service Description expressly provides otherwise, Exetel is not responsible for repairing any fault in the Service where the fault arises in or is caused by:
- a supplier's network; [this means the network and components that exist between the point of interconnect with the Exetel core network and the suppliers network and the point of service delivery or demarcation as defined by the ACMA at the customers premise. This is typically the MDF A-Side in an MDU or the first Phone Socket in an SDU].
  - equipment that is not Exetel owned equipment; or [this means any equipment required to use the service that is not owned by Exetel].
  - facilities outside the Exetel network. [this means any facility in a network not owned or operated by Exetel, including customer premise network equipment or facilities on the customer side of the services delivery or demarcation as defined by the ACMA at the customers premise. This is typically the MDF B-Side (including all on-premise cabling) in an MDU or socket and cabling beyond the first Phone Socket in an SDU].
- 8.5 Where:
- a fault arises in or is caused by a supplier's network;
  - Exetel becomes aware of the fault; and
  - Exetel is not responsible for the repair of that fault.

Exetel will notify the supplier of the fault and request that the fault be corrected promptly, but Exetel will not bear any further liability or responsibility.

- 8.6 Where a fault arises in or is caused by equipment that is not Exetel owned equipment, Exetel is not responsible for the repair of that fault. Nevertheless:
- if the Customer asks Exetel to investigate a fault or asks Exetel to request a supplier to investigate a fault, Exetel will give the Customer an estimate of the probable cost of such investigation and obtain the Customer's agreement to bear those costs before undertaking or arranging an investigation and using reasonable endeavours to identify and inform the Customer of the probable cause of the fault; and
  - if the Customer requests Exetel to repair the fault and Exetel agrees, Exetel will give the Customer an estimate of the probable cost of repairing the fault and obtain the Customer's agreement to bear those costs before carrying out the repair.
- 8.7 If Exetel investigates a fault and determines that the fault is attributable to a breach of the Agreement by the Customer, a negligent or fraudulent act or omission by the Customer or any of the Customer's personnel or a failure of any of the Customer's equipment and/or premises, the Customer must pay the costs incurred by Exetel in investigating.

## 9. Fees and charges

- 9.1 The Customer must pay:
- the fees and charges for the Service, which are set out in the Agreement or in any applicable Special Offer; and
  - any additional fees and charges noted in the Agreement (including in the Application) or notified by Exetel in accordance with the Agreement from time to time.
- 9.2 The Customer must pay all fees and charges which are incurred for the Service even if the Customer did not authorise its use.
- 9.3 The Customer must pay the fees and charges for the Service even if the Service is unavailable or the Customer is unable to access the Service. However, the Customer may be entitled to a refund or a rebate as stated in the Agreement or under the law.
- 9.4 In addition to the fees and charges the Customer incurs in the normal use of the Service (including an access fee, where applicable), Exetel may charge the Customer administration fees and other similar charges including suspension fees, cancellation fees, late payment fees, payment dishonour fees or reconnection or reactivation fees as set out in the Agreement.
- 9.5 Exetel may also ask the Customer to make a pre-payment usage charge or request that the Customer make an interim good-faith payment (including, for example, if there has been an unusually high use of the Service or if the Customer wishes to activate roaming).
- 9.6 Exetel will calculate fees based on billing information generated or received by Exetel which will be prima facie evidence of the Customer's use of the Service and the fees and charges incurred.

- 9.7 If the Customer uses the services of a third party, the Customer will be billed at the third party's applicable rates and charges. Where Exetel invoices the Customer for the Customer's use of the services of a third party, it will be in Exetel's capacity as that third party's billing agent only.
- 9.8 Exetel may offer the Customer a Special Offer from time to time. In such event, Exetel will notify the Customer of the Special Offer and the terms of the Special Offer either through general advertising or by specifically advising the Customer. A Special Offer may be an offer to vary the pricing plan or the terms of supply (including the minimum term) for the Service and it may be subject to certain conditions. If the Customer validly accepts a Special Offer, the terms of the Special Offer will prevail only to the extent they are inconsistent with the terms of the Agreement. Upon the expiry or termination of the Special Offer, the full terms and conditions of the Agreement will apply.
- 9.9 Some fees and charges for the Service are subject to variation such as charges relating to:
- international services or roaming; and
  - content or premium services.
- The Customer should inform Exetel before using the Service from outside Australia.

## 10. Payments

- 10.1 Exetel will invoice the Customer on a regular basis (either in advance or in arrears), unless otherwise set out in the Service Description. The Customer can retrieve their invoice from their Secure Users Facility and/or the Customer can request Exetel to send a copy of the invoice electronically.
- 10.2 Service usage records are obtained by Exetel from a wholesale supplier. Exetel will make reasonable efforts to supply these records in a timely manner to the Customer via the online Secure Users Facility or where otherwise agreed to by Exetel and the Customer, by post or facsimile.
- 10.3 If Exetel receive usage records in time from the wholesale supplier, Exetel will make all reasonable efforts to notify the Customer of the applicable usage records within the relevant billing period. In circumstances where this may not be possible, and for reasons outside the direct control of Exetel, Exetel will make all reasonable efforts to include these applicable usage charges as soon as it is able to after the relevant billing period.
- 10.4 Where usage records are provided by the wholesale supplier to Exetel outside the relevant billing period, Exetel will incorporate these and associated charges on a subsequent or later invoice. This is called back billing. Exetel will not backbill for usage that has occurred 160 days or more previously, if Exetel has not already advised the Customer of the charges.
- 10.5 Where usage records are delayed and back billing occurs, if any plan allowances or inclusions are exceeded in the previous billing periods, any applicable excess or additional charges will be applied to and payable by the Customer on the subsequent invoices.
- 10.6 If the Customer's payment is not honoured for any reason, Exetel may charge the Customer a fee.
- 10.7 Subject to clause 11.4, the Customer must pay the entire amount invoiced by the due date specified in the payment notification, invoice or as otherwise notified by Exetel.
- 10.8 If the Customer does not pay the invoice by the date the payment is due, Exetel may:
- charge the Customer a \$10 fee.
  - require the Customer to provide reasonable security to Exetel to secure the payment of future amounts due under the Agreement;
  - suspend or cancel the Service, in accordance with clauses 12 or 13 as relevant or the relevant Service Description. If Exetel suspends or cancels the Service, Exetel may charge the Customer a suspension fee, cancellation fee and/or reconnection or reactivation fee as set out in the Agreement. Reconnection or reactivation of the Service is subject to payment of the reconnection or reactivation fee;
  - engage a mercantile agent to recover the money the Customer owes Exetel and charge the Customer a recovery fee;
  - institute legal proceedings against the Customer to recover the money the Customer owes Exetel and recover from the Customer its legal costs; and/or
  - on-sell any unpaid amounts to a third party.
- 10.9 If the Customer has overpaid as a result of a invoicing error, the Customer's account will be credited with the amount overpaid or Exetel will use reasonable endeavours to notify the Customer and refund the over payment.
- 10.10 Unless otherwise indicated, the fees and charges set out in the Agreement include any amount on account of tax. Where the fees and charges do not include an amount on account of tax and tax is payable by Exetel in relation to, or on any supply under or in connection with the Agreement, Exetel will increase the tax exclusive fees and charges by an additional amount on account of the tax. The Customer must pay the additional amount at the same time the Customer pays the fees and charges.
- 10.11 If the Customer requires a copy of any invoice sent by Exetel in relation to the Service after cancellation of the Service or termination of the Agreement and a copy of such invoice remains retrievable from Exetel's records, the Customer must pay Exetel's reasonable administration fee for such retrieval.

## 11. Complaints and disputes

- 11.1 If the Customer has any complaints in connection with the Service the Customer may complain in writing or by calling Exetel.
- 11.2 Exetel will handle all complaints in accordance with its complaints procedure which is available from Exetel on request or on Exetel's website: <http://www.exetel.com.au>
- 11.3 Exetel will use its best endeavours to resolve all complaints, however if Exetel is not able to resolve a complaint to the Customer's satisfaction, the Customer may take other action, such as informing the Telecommunications Industry Ombudsman, the Department of Fair Trading or Department of Consumer Affairs in the relevant state or territory.
- 11.4 Where a Customer's complaint is about a fee or charge for the use of the Service, Exetel may suspend payment obligations, for that fee or charge only, until the complaint has been investigated and resolved. All other fees and charges that are not in dispute remain due and payable.

11.5 Where a Customer's complaint is about a significant and sustained loss of access to, or use of, the Service which is not reasonably attributable to the Customer or non Exetel owned equipment, the Customer may be entitled on request to a refund or a rebate of any access fees for the period in which the Customer's access or use was interrupted (including when an Intervening Event occurs) as stated in the Agreement or under the law.

## 12. Cancelling the Service

12.1 The Customer may cancel the Service at any time by:

- a. giving Exetel thirty (30) days notice (including if the Customer does not wish to continue to use the Service after the end of the minimum term of a Fixed-Term Agreement); or
- b. giving Exetel notice, if Exetel breaches a material term of the Agreement and Exetel either:
  - i. cannot remedy that breach; or
  - ii. fails to remedy that breach within thirty (30) days after the Customer gives Exetel notice requiring Exetel to do so.

12.2 If a Consumer Customer acquires the Service from Exetel through a sales method regulated by door-to-door sales legislation in the Customer's state or territory, the Consumer Customer may cancel the Service before the end of the cooling-off period set out in the relevant legislation.

12.3 If the Agreement is a Fixed-Term Agreement, a Customer may also cancel the Service pursuant to clause 3.

12.4 If the Agreement is a non Fixed-Term Agreement, Exetel may cancel the Service at any time by giving the Customer at least thirty (30) days' notice.

12.5 Exetel may cancel the Service at any time including prior to the service start date, without liability, if:

- a. there is an emergency;
- b. Exetel reasonably suspects fraud or other illegal activity by the Customer or any other person in connection with the Service;
- c. any amount owing to Exetel in respect of the Service is not paid by its due date and the Customer fails to pay that amount in full within ten (10) business days after Exetel gives the Customer a notice requiring payment of that amount, unless otherwise set out in the Agreement;
- d. Exetel reasonably consider the Customer a credit risk because the Customer has not paid amounts owing to Exetel or any Exetel Group Company in respect of any service by its due date and the Customer fails to pay that amount in full within the period stated in any notice given to the Customer requiring payment of that amount;
- e. the Customer breaches a material term of the Agreement (other than a breach which separately gives rise to rights under this clause) and the Customer either cannot remedy that breach or fails to remedy that breach within thirty (30) days after Exetel gives the Customer notice requiring the Customer to do so;
- f. Exetel is required to do so to comply with an order, instruction, request or notice of a regulator, an emergency services organisation, any other competent authority or by authorisation of or under law;

g. the Customer suffers an insolvency event and Exetel reasonably believes Exetel is unlikely to receive payment for amounts due;

h. the Customer dies or if the Customer is a partnership and the partnership is dissolved or an application is made to dissolve the partnership, and Exetel reasonably believes Exetel is unlikely to receive payment for amounts due;

i. the Service is suspended for more than fourteen (14) days, unless otherwise set out in the Agreement;

j. if Exetel reasonably determines that it is not technically or operationally feasible or commercially viable to supply the Service to the Customer;

k. any Intervening Event prevents the supply of the Service in accordance with the Agreement for more than fourteen (14) days; or

l. Exetel is otherwise entitled to do so under the Agreement or Acceptable Use Policy.

12.6 Exetel may cancel the Service under clause 12.5 as soon as Exetel gives the Customer notice, unless otherwise set out in the Agreement. However, Exetel may cancel the Service immediately if there is an emergency.

12.7 If the Customer elects to have an equivalent service to the Service supplied by another carrier, carriage service provider or service provider (including, by churning) and that carrier, carriage service provider or service provider informs Exetel that the Customer has elected to have the Service supplied by them or have churned to them, the Service will be deemed to have been cancelled by the Customer immediately. This will be without prejudice to Exetel's rights under the Agreement with respect to the Service.

12.8 If the Service is cancelled:

- a. the Customer is liable for any charges incurred (including the cancellation fee and outstanding Equipment Charges, if any as set out in the Agreement) up to, and including, the Cancellation Date;
- b. the Customer authorises Exetel to apply any over payment on the Customer's account and/or money that the Customer has paid in advance for the Service which is being cancelled to pay for any undisputed outstanding charges (including the cancellation fee and outstanding Equipment Charges, if any as set out in the Agreement);
- c. subject to clause 12.8(b) and unless otherwise set out in the Service Description, Exetel will refund any over payment on the Customer's account;
- d. if the Customer is required under the Service Description to pay for the Service by direct debit payment (either from the Customer's nominated bank or credit card account), the Customer authorises Exetel to debit any undisputed outstanding charges (including any cancellation fee and outstanding Equipment Charges, if any as set out in the Agreement) from the Customer's nominated bank or credit card account;

12.9. No cancellation fee shall be payable by the Customer:

- i. if the Agreement is not a Fixed-Term Agreement; or
- ii. if the Agreement is a Fixed-Term Agreement that is cancelled after the expiry of the minimum term.

12.10 If the Service is cancelled as a result of circumstances reasonably attributable to the Customer (including if the



Customer changes the location of the Premises, or elects to churn their service to another carriage service provider),

- a. before the Service Start Date, the Customer must pay Exetel all infrastructure and installation costs incurred by Exetel in connection with preparations for supplying the Service to the Customer;
- b. during the minimum term, the Customer must pay Exetel a cancellation fee or such higher amount as may be provided in clause 17; and
- c. the Customer must pay Exetel all costs incurred to rectify the Customer's breach of the Agreement.

12.11 If the Customer wishes to reinstate the Service at any time after cancellation the Customer may make a request to Exetel provided that if the Service is cancelled as a result of circumstances attributable to the Customer and Exetel reinstates the Service, then the Customer may have to pay Exetel a reconnection or reactivation fee or such higher amount as may be provided in clause 17.

12.12 If the Customer is able to use the Service after the Cancellation Date, the Customer is liable for any charges incurred by the Customer for that use, in addition to any other charges under this clause 12.

### 13. Suspending the Service

- 13.1 Exetel may suspend the Service at any time, without liability:
- a. in any of the circumstances described in clause 12.5(a) to (h) and (l);
  - b. if it is necessary to allow Exetel or a supplier to repair, maintain or service any part of the Exetel network or a supplier's network used to supply the Service;
  - c. if Exetel reasonably believes there has been an unusually high use of the Service; or
  - d. problems are experienced interconnecting the Exetel network with any supplier's network used to supply the Service.
- 13.2 Exetel may suspend the Service under clause 13.1 as soon as Exetel gives the Customer notice, unless otherwise set out in the Agreement. However, Exetel may suspend the Service immediately if there is an emergency.
- 13.3 Exetel may suspend the Service if any amount owing to Exetel is not paid by its due date, Exetel gives you notice requiring payment of that amount (which Exetel may not give in respect of any amount which is validly disputed in accordance with clause 11 (Complaints and disputes) until after Exetel has completed investigations referred to in clause 11.4) and you fail to pay the amount in full within five Business Days after Exetel gives you that notice.
- 13.4 If Exetel suspends the Service, Exetel may later cancel the Service for the same or a different reason.
- 13.5 If the Service is suspended, the Customer will have to pay access fees for the Service while it is suspended.
- 13.6 If the Service is suspended and the suspension was not as a result of circumstances attributable to the Customer or non Exetel owned equipment, the Customer may be entitled on request to a refund or a rebate of any access fees for the period of suspension as stated in the Agreement or under the law.
- 13.7 If the Service is suspended as a result of circumstances attributable to the Customer, the Customer may have to pay Exetel a suspension fee.

13.8 If the Customer wishes to reactivate the Service at any time after suspension the Customer may make a request to Exetel provided that if the Service is suspended as a result of circumstances attributable to the Customer and Exetel reactivates the Service, the Customer may have to pay Exetel a reconnection or reactivation fee or such higher amount as may be set out in clause 17.

### 14. Liability

- 14.1 The Customer is liable to Exetel for any breach of the Agreement that causes foreseeable loss to Exetel.
- 14.2 Except as in the Agreement otherwise expressly provided (including under clause 14.3), the Customer is not liable to Exetel for any consequential losses Exetel suffers or for any costs, expenses, loss or charges that Exetel incurs which are not a direct result of something the Customer has done.
- 14.3 Exetel is not in any way liable to any Business End User (whether in contract or tort (including negligence), under any legislation or otherwise). A Business Customer must indemnify and keep Exetel fully indemnified against any loss or damage incurred in connection with any claim against Exetel by a Business End User in relation to:
- a. The use (or attempted use) of the Service; or
  - b. The equipment used in connection with the Service.
- 14.4 Exetel has responsibilities and obligations under the law, including under:
- a. the Telecommunications Legislation;
  - b. the Competition and Consumer Act; and
  - c. applicable laws, regulations and codes.
- Nothing in the Agreement removes or limits any rights that the Customer has under existing laws or regulations.
- 14.5 Exetel may be liable to the Customer for:
- a. any damage to the Customer's property which has been caused by the fault, negligence or fraud by Exetel or Exetel's personnel during installation, repair or maintenance;
  - b. interruptions in the Customer's use of the Service as a result of a fault or negligence of Exetel or Exetel's personnel, to the extent of a refund or rebate for the period of the interruption and compensation for any reasonable loss incurred as stated in the Agreement and where required by law
  - c. if a customer applies for a Residential Grade Service, which is supplied on the basis is solely for personal, domestic or household use and they use it for any business purposes, Exetel is not liable for any business related losses
  - d. death or personal injury caused by Exetel or Exetel's personnel; or
  - e. breach of terms that are implied by the Competition and Consumer Act and other laws into contracts for the supply of goods and services. If any condition or warranty is implied into the Agreement under the Competition and Consumer Act or other laws then Exetel's liability (if any) for breach of that condition or warranty in connection with any goods or services Exetel supplies under the Agreement is (in relation to a Business Customer) limited to re-supply, repairing or replacing the goods or services, where those goods or services are not of a kind ordinarily acquired for

personal, domestic or household use and where it is reasonable and fair to do so.

- 14.6 Other than as provided in clauses 14.4 and 14.5, Exetel is not liable to the Customer under this Agreement.
- 14.7 If the Customer has contributed to any loss or damage the Customer is claiming against Exetel, Exetel's liability is reduced to the extent of the Customer's contribution.
- 14.8 Exetel is not liable to the Customer for any consequential losses the Customer suffers or for any costs, expenses, loss or charges that the Customer incurs which is not a direct result of something Exetel has done.
- 14.9 In relation to a Business Customer, to the extent permitted by law, Exetel's total liability for loss is limited in aggregate for any claim or series of connected claims to \$5 million to the extent that the exclusions or limitations in clauses 14.4 to 14.7 do not apply.

## 15. Assignment and transfer

- 15.1 Exetel may:
- assign some or all of its rights under the Agreement to any person;
  - transfer some or all of its obligations under the Agreement to any Exetel Group Company that is able to perform those obligations; and/or
  - perform any of its obligations under the Agreement by arranging for them to be performed by another person, including a supplier or another Exetel Group Company provided Exetel remains responsible for the performance of the obligations, and the Customer irrevocably authorises Exetel to execute on their behalf all such documents that may be required to be executed by the Customer to effect such assignment or transfer.

## 16. General

- 16.1 The Agreement is governed by the laws of the Commonwealth of Australia and the laws of the state or territory in which the Customer normally reside and the parties submit to the exclusive jurisdiction of the courts of the Commonwealth and its states and territories.
- 16.2 Exetel owns all material (including intellectual property rights) developed by Exetel or Exetel's personnel, at Exetel's direction.
- 16.3 Exetel may permit the Customer to use this material, or other material licensed by Exetel, as part of the Service. This permission is subject to any conditions which Exetel may impose from time to time and will cease when the Service is cancelled.
- 16.4 The Customer must not infringe any person's intellectual property rights (such as by using, copying or distributing data or software without the permission of the owner) in using the Service. If the Customer breaches this clause, Exetel may suspend or cancel the Service without notice.
- 16.5 If the Customer has been provided with a service equivalent to the Service by another carrier, carriage service provider or service provider and has elected to have that service replaced by the Service under the Agreement (including, by churning), the Customer authorises Exetel to:
- inform that carrier, carriage service provider or service provider that the Customer has elected to have the Service supplied by Exetel or have churned to Exetel; and

- to take such action (including give such notices and sign such documents) on behalf of the Customer as may be necessary or appropriate to effect the transfer or churning transaction.

- 16.6 If an Intervening Event occurs which affects a party (the said party) from performing any of the said party's obligations under the Agreement (other than an obligation to pay money), then the said party will not be liable for failing to perform that obligation provided:
- the said party must notify the other party of the Intervening Event and use its best efforts to resume performance in accordance with the Agreement as soon as reasonably possible; and
  - the said party's obligations continue during the Intervening Event unless it is not able to perform its obligations due to the other party being unable to perform its obligations due to the Intervening Event.
- 16.7 The Customer represents that the Customer is not a carrier or carriage service provider. If the Customer are or become a carrier or carriage service provider, Exetel may immediately cancel the Service by giving the Customer notice.
- 16.8 If the Customer breaches the Agreement and Exetel does not exercise a right that Exetel has because of the Customer's breach, Exetel does not waive:
- that right unless Exetel gives the Customer notice in writing confirming that Exetel have waived that right; or
  - Exetel's right to insist that the Customer perform any obligation the Customer has under the Agreement.
- 16.9 Exetel may pay a commission to any of Exetel's personnel in connection with the Agreement.
- 16.10 Each party will do, sign, execute and deliver and will procure that each of its employees and agents does, signs, executes and delivers, all agreements, documents, instruments and acts reasonably required of it by notice from the other party to effectively carry out and give full effect to the Agreement and the rights and obligations of the parties under it.
- 16.11 Information and advice about the Customer's rights can be obtained by contacting the Australian Communications and Media Authority, the Telecommunications Industry Ombudsman, the Australian Competition and Consumer Commission or the relevant Department of Fair Trading or Department of Consumer Affairs in the Customer's state or territory.
- 16.12 Any notice or demand given pursuant to this Agreement shall be in writing and shall be delivered, posted, e-mailed or transmitted by facsimile:
- to the Customer at the Customer's e-mail address, address and/or facsimile number indicated on the Application or the Customer's latest e-mail address, address and facsimile number notified to Exetel in writing; and
  - to Exetel at Exetel's latest address and facsimile number indicated on Exetel's website at <http://www.exetel.com.au>.
- Any such notice shall be deemed to be received:
- in the case of delivery, at the time of delivery;
  - if served by post, at the expiration of forty-eight (48) hours from time of posting (if sent to a local address) or ten (10) days from the time of posting (if sent to an overseas address), notwithstanding that it may

subsequently be returned through the post office unclaimed;

- c. in the case of a facsimile transmission, on production of a transmission control report indicating transmission without error.
  - d. in the case of an e-mail, on production of a e-mail header indicating delivery without error
- 16.13 The Agreement sets out the entire agreement and understanding between the parties in relation to the Service and no party has entered into the Agreement in reliance upon any representation, warranty or undertaking of any party which is not set out or referred to in the Agreement.
- 16.14 In the event of any inconsistency between a provision in these terms and conditions and another part of the Agreement, then unless otherwise stated, these terms and conditions prevail to the extent of the inconsistency.

## 17. Special terms and conditions applicable to the Service

- 17.1 Provision of the phone service is conditional upon the Customer obtaining and maintaining operational at the Premises throughout the term of the Agreement a public switched telephone network (PSTN) line and number which is capable of being conditioned for purposes of carrying voice traffic across the network. If the Customer fails to comply with this requirement for any reason resulting in Exetel not being able to provide the Service, then the Customer will be deemed to have breached a material term of the Agreement and Exetel shall:
- a. Cancel the Service and
  - b. Charge the Customer a cancellation where applicable
- 17.2 The Customer acknowledges and agrees that Exetel is unable to provide or continue to provide the Service to the Customer if the Customer changes the location of the Premises.
- In the event a customer does change the location of the Premises, the existing service can only be terminated and any applicable cancellation charges will apply. Then the customer can submit a new application for a new service for the new location/Premise and the relevant new application charges and new terms and conditions are applicable.
- 17.3 If an Exetel broadband plan is also selected to obtain discounts from the phone line monthly service charge the customer acknowledges that they are aware that minimum monthly charges, irrespective of use, may apply to Exetel's broadband service plans.
- 17.4 This type of service is of residential grade.
- 17.5 For residential grade phone services the initial service period is exactly 12 months from the (start date) activation date of the service.
- For example if your service was activated 15th January 2007 then your 12 month initial service period ends midnight 15th January 2008.
- This means if there is any event that cancels or otherwise terminates the phone service, on or before 15th January 2008 in this example, a cancellation fee is payable.

- 17.6 Installation, 1st month pro-rated charge, ongoing monthly access charges and the cost of any modem will be debited to the Customer's bank account or credit card which the Customer has provided to Exetel;
- a. On or after the activation date, the credit card or bank account will be debited for:
    - i. the phone line activation charge; and
    - ii. the balance of the month (pro-rated) which is based on the day the Service is activated to the end of the current billing cycle.
  - b. Two days prior to activation date, the credit card or bank account will be debited for the cost of any modem ordered from Exetel and freight if ordered or otherwise requested by the Customer from Exetel.
  - c. Monthly Access charges are known as Recurring charges and are charged for one whole or part of one month in advance of the billing date.
  - d. Usage charges are charged in arrears and Exetel can reasonably invoice for usage up to 160 days after the charge has been incurred.
  - e. The first invoice issued after the activation of the Service may contain a pro-rated charge for Recurring Charges from the date of activation until the provision of the invoice as well as charges mentioned in 17.7 (c) and (d).

- 17.7 The early cancellation fee for the telephone service is \$99.00 inc GST prorated per month over the 12 month contract term.

An Early Termination Charge (ETC) will apply if you cancel your phone Service within your Contract Term. It will be calculated by multiplying the ETC phone line rental service) by the number of remaining months in the contract term divided by the contract term of 12 months. E.g.: if you cancel your phone line rental service after month 6 of a 12 month contract term, your ETC will be:  $(\$99.00 \times 1 \text{ service}) \times (6\text{th Month}/12 \text{ Months}) = \$99.00 \times 0.5 = \$49.50$ .

- 17.8 Exetel may charge an amount of one dollar (\$1.00) to the Customer's bank account or credit card to make reasonably sure that the Customer has legal control over one or more of his or her payment methods. This charge will be applied in full as a credit to the first invoice of the Customer, or as soon as is practicable thereafter. If the Customer cancels the service prior to the issue of the first invoice and no other fees or charges have been levied, then Exetel will refund the verification charge in full.

### Phone summary of other charges

\$10.00	Failed Payment Fee
1.0%	Per month if paying by credit card
\$100.00	Change of name or ownership
\$99.00	Prorated per month over the 12 month contract term per Service
\$220.00	Incorrect Call Out Fee
On Request Ad hoc, or any other charges will be advised at time of application, enquiry or request.	