

## Terms and conditions

The Service enables one or more of the following to be done: SMS, MMS, and / or other format messages to be sent and/or received; Any such message shall be referred to in these Terms and Conditions as a "Transaction". The Service is made available to the Customer as one or more accounts, to which a unique 11 digit virtual mobile number may be allocated. The service is accessed via Exetel's web application "Send SMS from Web" or via an API made available by Exetel.

For the avoidance of doubt, the Service includes all messages that are sent from either the web portal or via an Exetel account, such messages are treated as requests, and each request is charged for. All Requests will receive a delivery report. Delivery Reports stating delivered, sent or failed will be charged at the same rate. Failed messages, for whatever reason are charged the same as successful messages.

## Availability and Interruption of the Service

Exetel will make the Service available to the Customer using reasonable skill and care. The Customer does however acknowledge and agree that the availability of the Service, the Customer's ability to access and / or use the Service and the conducting of any given Transaction may depend upon factors beyond Exetel's reasonable control, including (but not limited to):

- (i) factors affecting the operation of the Service and / or preventing Transactions from being successfully conducted such as, by way of example, geographical or topographical shortcomings in the network of any telecommunications network operator ("Network Operator"), network capacity, physical obstructions or atmospheric conditions; or
- (ii) factors preventing end-users from receiving messages, such as, by way of example, the terms and conditions of an end-user's service provider.

Exetel cannot therefore guarantee:

- (i) that the Service will be available to the Customer at all times or free from faults or interruptions;
- (ii) the receipt by any intended recipient of any message sent using the Service (as applicable);

If at any time the Service becomes unavailable, Exetel will use reasonable efforts to inform the Customer (without undue delay) of any such unavailability through email, Exetel's website at [www.exetel.com.au](http://www.exetel.com.au) and / or other appropriate channels.

Exetel may at its sole discretion alter or improve the Service at any time, provided that any such alteration does not materially affect the nature or detract from the functionality of the Service.

It may be necessary from time to time for Exetel to suspend the Service for routine or emergency maintenance and / or repairs and Exetel will, in so far as it is reasonably possible, provide the Customer with a reasonable period of notice prior to any such suspension.

Exetel may at its sole discretion suspend the Customer's access to the Service and / or cease to allow any Transactions to be conducted by the Customer if:

The Customer is in material breach of the Agreement and / or any applicable codes of practice, guidelines, rulings or regulations of any national telecommunications regulatory authority or other competent body or authority ("Regulator") relating to the Service that may be introduced or made from time to time during the continuation of the Agreement and with which the Customer must comply or to which the Customer has agreed to be bound ("Codes"), including the SPAM Act 2003 (Cth);

The Customer is doing or has done anything unlawful in the course of using or relating to the Customer's use of the Service; a Network Operator or a Regulator requires it;

at any time the number of Transactions that the Customer is conducting exceeds any forecast the Customer has given Exetel of the number of Transactions that the Customer expected to conduct at that time ("Forecast") or, in the absence of any applicable Forecast, the number of Transactions conducted by the Customer at any time causes or is likely to cause congestion to any telecommunications network; or

Exetel is entitled to terminate the Agreement for any reason, in which case Exetel will give the Customer appropriate notice as soon as is reasonably possible.

## Confidentiality and Data Protection

Exetel will at all times keep confidential all information acquired as a consequence of the Agreement in respect of the Customer or the Customer's business, except for information already in the public domain or information which Exetel are required to disclose by law, requested by any Regulator or reasonably required by Our professional advisors for the performance of their professional services.

The Customer will at all times keep confidential all information acquired as a consequence of the Agreement in respect of Exetel, the Service or any Network Operator, except for information already in the public domain or information which the Customer is required to disclose by law, requested by any Regulator or reasonably required by the Customer's professional advisors for the performance of their professional services.

Each of us will comply with the provisions of the Privacy Act 1988 (Cth) and all regulations made under that Act in the processing of any personal data, including the mobile telephone numbers of the Customer's recipients who will be sent messages as a consequence of making the Service available to the Customer ("End-User Data"), under or in connection with the Agreement.

Exetel will treat the Customer's End-User Data as confidential and will not disclose it to any third party or use or copy any part of it except for the purposes of making the Service available to the Customer and providing any technical support required. Exetel will make no further use of the Customer's End-User Data without the Customer's specific authorisation.

## Support

Unless Exetel otherwise agree in writing, Exetel will provide support in respect of the Service from 08:30 to 17:30 EST time, Monday to Friday (except for Public Holidays in Australia), and outside such hours Exetel will use reasonable efforts to provide support in respect of the Service.

## The Customer's Liabilities and Obligations

The Customer is liable to Exetel for any breach of the Agreement that causes foreseeable loss to Exetel.

Except as in the Agreement otherwise expressly provided 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.

The Customer will not use the Service or permit the Service to be used:

- a. to send messages to any recipient without that recipient's explicit request for or prior consent to receiving them. Prior to the Customer sending any message for commercial purposes to any of the Customer's recipients who have explicitly requested that the Customer send, or otherwise provided explicit prior consent to the Customer sending such a message for commercial purposes, the Customer must give those recipients the right to opt out of receiving any further messages sent by the Customer for commercial purposes (and the Customer shall promptly process any end-user's election to opt out);
- b. to convey messages to any recipient, the frequency and number of which is excessive in Exetel's reasonable opinion;
- c. for any improper, fraudulent, immoral or unlawful purpose;
- d. for the transmission of any material which is of a defamatory, offensive, abusive, obscene or menacing character or nature;
- e. in a manner that infringes the intellectual property rights or any other proprietary rights of any third party; or
- f. in a manner that may injure or damage any person or property or cause the quality of the Service to be impaired.

The Customer will at all times during the continuation of the Agreement:

- a. send only messages that comply with all applicable laws, regulations and Codes and that contain nothing which is likely to cause offence in view of the generally prevailing standards of decency and propriety from time to time;
- b. comply with all reasonable directions and instructions issued by Exetel from time to time in relation to the Service;
- c. comply with and observe at all times all applicable laws, regulations and Codes and any directions, recommendations and decisions of any Regulator;
- d. and not act in any manner likely to bring Exetel, the Service or any Network Operator into disrepute.

The Customer will, upon request, provide Exetel or any Network Operator or Regulator with any information relating to the Customer's use of the Service that the requesting party reasonably requires. The Customer is responsible for ensuring that any information relating to the Customer's recipients is accurate and complete.

The Customer will not state or imply any approval by Exetel of any particular message that the Customer sends using the Service or refer to Exetel in any way without Exetel's prior written approval.

Where requested by Exetel, the Customer will promptly provide Exetel with a representative Forecast of Your Service needs for the requested period, including (but not limited to) all reasonable details required for Exetel to plan network capacity requirements.

Exetel may, at its sole discretion cease to convey, and the Customer will promptly cease to transmit at Exetel's request, any message which Exetel reasonably considers to be in breach of the Agreement.

The Customer will not acquire any title or other proprietary right to any intellectual property, including (but not limited to) any patents, know-how, registered or unregistered trademarks, design rights or copyright, relating to the Service, nor will the Customer cause or knowingly permit anything to be done which may in any way damage or endanger any such intellectual property. The Customer will notify Exetel of any suspected infringement of Exetel's intellectual property of which the Customer becomes aware and will take all reasonable action as Exetel may direct in relation to that suspected infringement.

The Customer warrants that the Customer is the sole owner or licensor of all rights in the Customer's recipients sent data or the Customer has obtained all necessary rights, licences and consents from all relevant third parties to enable the Customer, Exetel and Exetel's sub-contractors to use the recipient's data for the purposes of the Agreement.

Without prejudice to any other rights or remedies available to Exetel under the Agreement or at law, the Customer shall fully indemnify Exetel for all liabilities, losses, damages, costs and expenses suffered or incurred by Exetel as a result of any breach by the Customer or any of the Customer's officers, employees or sub-contractors of any term(s) or condition(s) of the Agreement.

## Exetel's Liability To the Customer

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.
  - c. Exetel has responsibilities and obligations under the law, including under:
  - d. the Telecommunications Legislation;
  - e. the Trade Practices Act; and
  - f. applicable laws, regulations and codes.
- Nothing in the Agreement removes or limits any rights that the Customer has under existing laws or regulations.

Exetel may be liable to the Customer for:

- a. 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
- b. 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

- c. death or personal injury caused by Exetel or Exetel's personnel; or
- d. breach of terms that are implied by the Trade Practices 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 Trade Practice 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.

Other than as provided in clauses above, Exetel is not liable to the Customer under this Agreement.

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.

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.

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 above do not apply.

Nothing in the Agreement will in any way exclude or limit either party's liability for death or personal injury caused by its negligence, for fraudulent misrepresentation or concealment or for any other liability that cannot be excluded or limited at law.

Exetel will not be in any way liable to the Customer for any liabilities, losses, damages, costs and / or expenses incurred or suffered by the Customer as a result of the Customer's use of the Service, except to the extent that such liabilities, losses, damages, costs and / or expenses directly result from Exetel's negligence or wilful misconduct.

Exetel will not be in any way liable for the content of any messages sent or transmitted using the Service, nor will Exetel be in any way liable for any failure to make the Service available to the Customer to the extent that such failure results from a technical or other failure on the part of any Network Operator or any other event which is beyond Exetel's reasonable control.

Subject to any express provision to the contrary in the Agreement, neither the Customer nor Exetel will in any circumstances be liable in contract, tort, negligence or otherwise for any economic loss (including, but not limited to, any loss or profits, business, contracts, revenue, turnover or anticipated savings) or for any indirect or consequential losses, whether or not they were foreseen or foreseeable.

Each of us acknowledges that neither the Customer nor Exetel have entered into the Agreement on the basis of or in reliance upon any representation (save for any representation made fraudulently), warranty or other term except as otherwise expressly provided in the Agreement and, as such, all conditions, warranties and other terms implied by statute, common law or otherwise are hereby excluded to the greatest extent permitted by law.

## Agreement

The Agreement commences when Exetel accepts the Application.

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

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.

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.

## Variation to Agreement

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.

If Exetel varies a Fixed-Term Agreement

- a. Exetel must if the variation affects the Customer
  - 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 comply with any additional notice provisions; and
- 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 cancel the Service without incurring fees or charges other than Accrued Charges

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.
- ii. fails to remedy that breach within thirty (30) days after the Customer gives Exetel notice requiring Exetel to do so. 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.

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.

Exetel may cancel the Service at any time, 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. any Intervening Event prevents the supply of the Service in accordance with the Agreement for more than fourteen (14) days; or

Exetel may cancel the Service under the above clause 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.

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

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

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
- 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.

## Application for the supply of the Service

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

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.

## Cancelling the Service

The Customer may cancel the Service at any time by:

- a. giving Exetel thirty (30) days notice; or
- b. giving Exetel notice, if Exetel breaches a material term of the Agreement and Exetel either:
  - i. cannot remedy that breach; or

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.

If the Service is cancelled:

- a. 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);
- b. subject to the above (a) and unless otherwise set out in the Service Description, Exetel will refund any over payment on the Customer's account and any money that the Customer has paid in advance for the Service which is being cancelled on a pro-rata basis to the Customer; and
- c. 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;
- d. provided 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.

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.

## Network maintenance, fault reporting and rectification

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.

Exetel will repair faults within the Exetel network used to supply the Service. 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. a supplier's network;
- b. equipment that is not Exetel owned equipment; or
- c. facilities outside the Exetel network.

Where:

- a. a fault arises in or is caused by a supplier's network;
- b. Exetel becomes aware of the fault; and
- c. 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.

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:

- a. 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
- b. 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.

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.

## Force Majeure

Neither party will be liable for any delay in the performance of or any failure to perform any of its obligations under this Agreement that is caused by any event which is beyond its reasonable control, including, but not limited to, the failure, malfunction or unavailability of necessary telecommunications, data communications and / or computer services, power supply failures or shortages, acts or omissions of third parties (including, but not limited to, Network Operators), acts of government or Regulators or telecommunications network congestion.

## Using the Service

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

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.

When using the Service, the Customer must comply with:

- a. all laws;
- b. all directions by a regulator;
- c. all notices issued by authorisation of or under law;
- d. reasonable directions by Exetel

The Customer must not use, or attempt to use, the Service:

- a. to break any law or to infringe another person's rights;
- b. to transmit, publish or communicate material which is defamatory, offensive, abusive, indecent, menacing, unwanted or otherwise unlawful or unauthorised
- c. in any way that may expose Exetel to liability; or
- d. 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

Exetel may require the Customer to stop doing something which Exetel reasonably believes is in breach of the above. The Customer must immediately comply with any such request failing which Exetel may take any steps reasonably necessary to ensure compliance with the above.

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.

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. Exetel is also entitled to suspend the Service for an unusually high use of the Service or for failed or non-payment.

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 usage traverses.

## Privacy

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.

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.

Exetel may collect, use and disclose personal information about the Customer for the purposes 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

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.

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; and
    - 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).

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.

If the Customer is an individual, the Customer is entitled to:

- a. 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
- b. correct any personal information held by Exetel

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.

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 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 <http://www.exetel.com.au/files/ExetelPrivacyPolicy.pdf>

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:

- a. to keep confidential such password;
- b. 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;
- c. 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
- d. that all calls made to or from Exetel's customer service centre(s) may be recorded for customer training, improvement programs and verification purposes.

The reference to "Customer" in this clause 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.

## Fees and charges

The Customer agrees to pay all charges due to Exetel in respect of making the Service available to the Customer and the Customer's access to and use of the Service ("Charges") by the payment method and in accordance with the applicable payment plan and terms agreed between Exetel and the Customer. Unless Exetel otherwise agree, payment of the Charges:

- (i) in the case of a customer with an already existing Exetel service, will be due and payable on the 1st of the month by direct debit; or
- (ii) in the case of a non-existing Exetel customer will be a pre-payment for a nominated number of SMS, by direct debit

Exetel will, before agreeing on the most appropriate payment method and terms for the Customer and from time to time thereafter during the continuation of the Agreement, check the Customer's details and / or those of the Customer's principal directors with one or more licensed credit reference and fraud prevention agencies. They and Exetel will keep a record of these checks and the payment details from the Customer's account and will share that information with other organisations and, if any of the Customer's and / or the Customer's principal directors' details are false or inaccurate and Exetel reasonably suspect fraud, this will also be recorded. Exetel will also be entitled in our sole but reasonable discretion to alter the Customer's payment terms at any time upon providing the Customer with such prior notice as is reasonable in the circumstances.

Each time any given Transaction is conducted, the Customer will incur a corresponding Charge and will reduce the value of the Transaction credits available to the Customer by 1 corresponding unit.

For the avoidance of doubt, a Charge will be incurred and the value of the Transaction credits available to the Customer reduced by 1 for every Transaction conducted by the Customer regardless of whether it is successful.

The Customer may wish to pre-purchase SMS credits in which case Exetel will allocate to the Customer a corresponding number of Transaction credits. Any such Transaction credits are valid until they are exhausted.

The Customer shall be solely responsible, by seeking adequate Transaction credit allocation(s) and checking the Customer's remaining available Transaction credit level on Exetel's website at [www.exetel.com.au](http://www.exetel.com.au), for ensuring that the Customer has enough Transaction credits to meet the Customer's requirements from time to time and Exetel shall not be in any way responsible or liable in the event that the Customer has insufficient Transaction credits to meet the Customer's requirements, and / or have exceeded the Customer's Transaction credit allocation(s).

If the Customer does not pay any Charges in accordance with the applicable payment terms, Exetel reserve the right to, at its sole discretion:

use any pre-payment or deposit that the Customer has provided to Exetel as full or part payment of the outstanding sum;

suspend the Customer's access to the Service and / or cease to allow any Transactions to be conducted by the Customer until payment of the outstanding sum is received by Exetel in full and cleared funds from the Customer.

Exetel may vary the SMS rate at any time on giving the Customer not less than 30 days' written notice. If the Customer does not agree with any proposed Charge variation, the Customer has the right to terminate the Agreement on giving Exetel no less than 30 days' written notice, such notice to take effect no sooner than the date on which the Charge variation was to become effective.

The Customer must pay:

- a. the fees and charges for the Service, which are set out in the Agreement or in any applicable Special Offer; and
- b. 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.

The Customer must pay all fees and charges which are incurred for the Service even if the Customer did not authorise its use.

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.

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.

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).

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.

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.

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.

Some fees and charges for the Service are subject to variation.

## Other charges

1.0% per month if paying by credit card.

## Payments

Exetel will invoice the Customer on a regular basis (either by pre-payment in advance or in arrears), unless otherwise set out in the Service Description. Such invoice may be sent to the Customer by post unless the Customer has requested and Exetel has agreed to send a copy of the invoice to the Customer electronically. For residential grade services, Exetel will not post any invoice, or send a copy of an invoice electronically, rather the customer must retrieve their invoice from their Secure Users Facility.

Exetel will try to include on the Customer's invoice all charges for the relevant billing period. However, where this is not possible Exetel may include unbilled charges in a later invoice(s).

Exetel may invoice the Customer using a billing agent (which may be another Exetel Group Company).

The Customer may pay by one of the payment methods as set out in the payment notification, on the back of the invoice or on Exetel's websites. For residential grade services, payment can only be made by direct debit or credit card.

If the Customer makes a request to Exetel to pay by direct debit from its nominated bank or credit card account and Exetel agrees, the Customer must comply with all terms and conditions imposed by Exetel for the direct debit arrangement. In such event, the Customer acknowledges that the direct debit arrangement may take up to thirty (30) days from the date of the Customer's request to put in place.

If the Customer's payment is not honoured for any reason, Exetel may charge the Customer a fee.

The Customer must pay the entire amount invoiced by the due date specified in the payment notification, invoice or as otherwise notified by Exetel.

If the Customer does not pay the invoice by the date the payment is due, Exetel may:

- a. charge the Customer a \$10 Failed payment fee.
- b. require the Customer to provide reasonable security to Exetel to secure the payment of future amounts due under the Agreement;
- c. suspend or cancel the Service. 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;
- d. engage a mercantile agent to recover the money the Customer owes Exetel and charge the Customer a recovery fee;
- e. institute legal proceedings against the Customer to recover the money the Customer owes Exetel and recover from the Customer its legal costs; and/or
- f. on-sell any unpaid amounts to a third party.

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.

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.

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.

## Complaints and disputes

If the Customer has any complaints in connection with the Service the Customer may complain in writing or by calling Exetel.

Exetel will handle all complaints in accordance with its complaints procedure which is available from Exetel on request or on Exetel's website: [www.exetel.com.au](http://www.exetel.com.au).

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.

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.



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.

## Suspending the Service

Exetel may suspend the Service at any time, without liability:

- a. in any of the circumstances described above;
- 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.

Exetel may suspend the Service 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.

If Exetel suspends the Service, Exetel may later cancel the Service for the same or a different reason.

If the Service is suspended as a result of circumstances attributable to the Customer, the Customer may have to pay Exetel a suspension fee.

## Assignment and transfer

Exetel may:

- a. assign some or all of its rights under the Agreement to any person;
- b. transfer some or all of its obligations under the Agreement to any Exetel Group Company that is able to perform those obligations; and/or
- c. 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.

## General

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.

Exetel owns all material (including intellectual property rights) developed by Exetel or Exetel's personnel, at Exetel's direction.

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.

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.

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:

- a. 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
- b. 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.

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:

- a. 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
- b. 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.

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.

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:

- a. that right unless Exetel gives the Customer notice in writing confirming that Exetel have waived that right; or
- b. Exetel's right to insist that the Customer perform any obligation the Customer has under the Agreement.

Exetel may pay a commission to any of Exetel's personnel in connection with the Agreement.

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.

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.

Any notice or demand given pursuant to this Agreement shall be in writing and shall be delivered, posted, e-mailed or transmitted by facsimile:

- a. 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
- b. to Exetel at Exetel's latest address and facsimile number indicated on Exetel's website at [www.exetel.com.au](http://www.exetel.com.au)

Any such notice shall be deemed to be received:

- a. in the case of delivery, at the time of delivery;
- b. 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; or
- 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.

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.

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.

Any notice or demand given pursuant to this Agreement shall be in writing and shall be delivered, posted, e-mailed or transmitted by facsimile:

- a. 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
- b. to Exetel at Exetel's latest address and facsimile number indicated on Exetel's website at **[www.exetel.com.au](http://www.exetel.com.au)**

Any such notice shall be deemed to be received:

- iii. in the case of delivery, at the time of delivery;
- iv. 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; or
- v. in the case of a facsimile transmission, on production of a transmission control report indicating transmission without error;

- vi. in the case of an e-mail, on production of a e-mail header indicating delivery without error.

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.

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