



**Standard Agreement for the supply of the
Hosted Phone System**

Specified Terms and Conditions of Service

(engin™)

MIBROADBAND PTY LTD
ABN 70 080 250 371

Introduction

The *Specified Terms and Conditions of Service* sets out the terms and conditions of the Service. To the extent of any inconsistency, the *Specified Terms and Conditions of Service* shall prevail over the relevant Service Description.

The *Specified Terms and Conditions of Service* have been partitioned into nine sections:

- Section One – Service
 - Section Two – Charges and Billing
 - Section Three – Obligations to Provide Service
 - Section Four – Customer Obligations
 - Section Five – Term of Agreement
 - Section Six – Suspension or Termination of the Service
 - Section Seven – Personal Information
 - Section Eight – Liability and Indemnity
 - Section Nine – Service Limitations
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Section One - Service

You agree to acquire from engin the Service on these Terms and Conditions and the terms and conditions contained in the relevant Service Description. engin agrees to provide the Services to you subject to these Terms and Conditions and the relevant Service Description provided that you meet the requirements of engin. To the extent of any inconsistency, these Terms and Conditions shall prevail over the relevant Service Description. You must ensure that third parties using the Service do so in accordance with these Terms and Conditions and the relevant Service Description.

1.1 Features of the Service

- (a) engin will endeavour to provide the Service in accordance with the relevant Service Description but may change some elements of the Service Description at any time for operational or network planning reasons. engin will use its reasonable endeavours to ensure that such changes do not adversely impact your use of the Service.
- (b) The Service has the features set out in the Description of Service Features and Charges. You agree that we may at any time, and without first telling you or asking for your consent:
 - modify or replace one or all of the features of the Service; or
 - provide additional features to those set out in the Description of Service Features and Charges.

1.2 Call Termination

You are responsible for ensuring all calls that you or another person (with or without your consent) initiates on the engin Network are terminated.

1.3 Near Real time billing

Within 24 hours of call termination, engin will endeavor to provide details of the successful calls initiated by you, via the engin customer self care website.

From time to time there may be a delay between calls made and calls loaded onto the website. If for any reason a delay occurs, engin will bear no responsibility for reliance upon this service by the customer.

1.4 Necessary interruptions

From time to time necessary interruptions to the Service may occur for reasons such as maintenance or upgrades.

1.5 Emergency Services

You acknowledge and understand that dialling 000 emergency services do not function correctly if you move or otherwise change the physical location of the Service.

In the event that you dial an emergency service number from the Service, the service address provided by you to engin will be displayed to the emergency services operator. It is your responsibility to notify engin of any changes to your Service address details.

In the event of a power failure or disruption to your Broadband Internet connection, you will not be able to use the engin service to contact emergency services. For this reason we recommend that you have an alternative medium of contact, such as a cellular telephone.

1.6 Equipment and Access

In order to access the Service, you:

- will need a dedicated fixed line Broadband Internet connection, such as ADSL 2+;
- will need an IP Phones;
- may need extra hardware depending on your set up e.g. router, switches

Unless otherwise agreed with us in writing, the Service must be accessed with hardware approved by engin.

You agree that:

When installing the Service, engin accepts no responsibility for damage to the End User Equipment (EUE) or the customer's personal property. engin limits that liability to the fullest extent under the law, as you are provided with manufacturer user guides and offered technical support.

You further agree to and accept that the ability to use the Service and associated features will depend upon the features and functionality of your hardware, as well as our Network.

You may purchase equipment from engin for use in connection with the Service. The manufacturer's warranty in any such equipment, and title to that equipment passes to you when you pay for it. Risk in that equipment passes to you upon delivery.

For System requirements please contact engin Business Sales on 1300 305 315

1.7 Codec Requirements

- G729
- G711a/G711u

If you are using other Internet related software or hardware you will require additional upload/download speed to avoid interruption to your engin service.

1.8 Firewall and Security Devices

engin will not accept liability for any change, or consequence that may occur as a result of changes, to firewalls or other security devices, which may be required to use the engin service.

1.9 Required Ports

Use of the engin Service may require you to open/forward UDP ports in your firewall or other security devices. This is to allow communication of the SIP protocol and voice traffic.

engin can supply the complete port settings upon request. Port settings may change from time to time; engin will notify customers via email if these settings change.

1.10 Broadband speed

The speed required for the engin service will depend largely on your network demands.

Generally, a ADSL 2+ connection is recommended, however other fixed line media are also acceptable e.g. Cable Internet.

1.11 Network Coverage

The engin Network is not free from faults or interruptions. The Quality of Service (QoS) and each of its features may be subject to congestions, “dropouts” and/or loss of data.

Coverage is dependant on the availability of a Broadband connection in any given area.

1.12 External interruptions

Because the engin Network is dependent on the networks of other Carriers over which we have no control, certain features of the Service may not be available when you are using the Service, and we do not guarantee the quality and reliability of the Service.

Other factors such as third party hardware and/or software together or your Broadband Internet connection may also cause interruptions to the Service for which engin takes no responsibility.

engin will not be liable to provide the Service to you if it becomes impracticable to do so due to causes beyond engin’s reasonable control, including, without limitation, acts of God, civil disorder or war, national or local emergency, adverse weather conditions, industrial dispute or acts or omissions of other Carriers or Carriage Service Providers or any authority.

1.13 Effect of Geographic numbers

The Telecommunications Numbering Plan 1997 is administered and regulated by the Australian Communications and Media Authority (ACMA).

The Numbering Plan stipulates that “*a geographic number must not be used except in connection with the supply of a local service*” meaning that geographic telephone numbers such as the type used and allocated with the Service may only be used within their allocated geographic area. For example, you are not permitted to use a Melbourne number in Sydney or a number registered to the Clayton Standard Zoning Unit in the Melbourne Standard Zoning Unit.

1.14 Functionality

You agree that you or any other person using the Service may not be able to receive material if:

- Your EUE has not been appropriately configured;
- Your Broadband connection has insufficient bandwidth to enable it to receive the material;
- Your Broadband connection is disabled, disconnected or disrupted

1.15 Material

While we will exercise due care and skill in providing the Service, you agree that:

- Your ability to use the Service to access, use or send Material (voice data), will depend upon the features and functionality of your EUE and the nature and quality of the Material sent; AND

- We do not provide any security (such as encryption) over any Material you send;
AND
- You are responsible for any reliance on or use of any Material you send.

1.16 Calling Number Display (CND)

You agree that if you do not block CND, when a call is made from the Service, your telephone number may be displayed on the EUE of the called party.

You further agree that if a party calling the Service has not blocked CND for calls made from their equipment, the telephone number of the calling party may be displayed on your EUE, if the EUE is technically capable of displaying CND and therefore you shall have no claim against engin in this regard.

You can block the CND permanently or on a call-by-call basis, except in the event of an engin user calling another engin user. Please be aware that the CND will be displayed when you contact emergency services, regardless of whether it has been blocked in the past.

1.17 Changing Pricing Plans

We may in our absolute discretion agree with you:

- to change your Pricing Plan.

engin will only permit you to change your choice of Pricing Plan once a month. Your Pricing Plan will be changed within 7 days of engin receiving your request and your Monthly Service Fee and any included calls will pro rated. To change Pricing Plans contact engin Business Sales on 1300 305 315.

The matters referred to in clause may be agreed to verbally or in writing between you and engin and will be binding on at the date of the verbal or written agreement.

Section Two - Charges and Billing

You will be invoiced monthly (unless otherwise stipulated) for the Service.

The Charges included for the Service are:

- A Monthly Service* fee which we will charge you on your invoice issue date, monthly in advance;
- Charges for your use of each feature of the Service which we will charge you monthly in arrears; and
- Miscellaneous charges (for example, connection and disconnection charges if applicable) which we will also charge you monthly in arrears whenever you incur such charges, each of which are set out in the Description of Service Features and Charges and include GST (where applicable or unless otherwise indicated) but not any other government taxes, which you may also be required to pay.

* The Activation of a second line on any other date other than your invoice issue date, will be charged on the next invoice for monthly service fee and will be pro rated from the activation date to invoice issue date. Each month thereafter will be invoiced as per the initial connections invoice issue date.

2.1 Included and Free Calls

If your Pricing Plan states that there are:

- A certain amount of free or included calls per month;

in addition to charging you the Monthly Service fee, we will charge you for any calls you make that month in excess of the free or included calls per month, applicable to your chosen Pricing Plan.

2.2 Free and Included Calls in Monthly Service Fee forfeited each month

You agree that only standard calls qualify as free or included calls per month, except where your Pricing Plan states that other call types may also qualify.

If, in any month, you have not:

- Made an amount of calls equal to the free or included call allowance per month.

The balance of the free or included calls per month will not be carried forward to the next month. You will forfeit those calls during each monthly billing cycle.

2.3 Rounding

The actual charges we charge you may vary on your Invoice, as each Charge is rounded up to the nearest cent before GST is included.

2.4 Variations to Charges and special promotions

If we wish, we may:

- Change the Charges from time to time or decide not to make a particular Charge; and
- Run special promotions or offers from time to time in connection with the service under which particular Charges may be waived or may differ from those set out in the Description of Service Features and Charges. You may be eligible to participate in a special promotion or offer depending on its terms and conditions. We may withdraw a promotion at any time.

Unless otherwise specified or agreed to by engin, promotions may not be used in conjunction with one another.

Please be advised that rates to International destinations may be varied at any time, without prior warning, in accordance with the relevant industry code.

2.5 Invoicing

We will issue you with invoices via your registered e-mail address that you provided at order entry (when your account was established). You will be invoiced monthly on your invoice issue date. If you do not receive your invoice, it is your responsibility to notify engin immediately.

The presentation of the invoice may be affected by your choice of equipment and software. engin will not accept any responsibility for consequential presentation, distortion or absence.

2.6 Invoice Delivery

Invoices that are sent via e-mail in a softcopy 'pdf' format from 'billing@engin.com.au' do not attract charges.

'billing@engin.com.au' is not a monitored email address and any billing enquiries should be forwarded to 'feedback@engin.com.au'

If you request an archived or hard copy invoice you will be charged \$5.50 per invoice.

2.7 Invoice Frequency

An e-bill is issued once a month, on your invoice issue date.

2.8 Payment of your invoices

Upon connection to engin you agreed to make all payments from your nominated credit/charge card, unless otherwise agreed by us, at our discretion. Depending on your method of payment, you may be required to pay a surcharge (e.g. BPAY).

2.9 When must you pay your invoices

You must pay each invoice in full by the due date, that is, 15 days from your invoice issue date or on the next business day.

2.10 If you do not pay your invoices on time

If you do not pay your invoices on time or cancel your payment authority, you must pay us extra charges as set out in Section 1 of this Agreement.

2.11 High Usage

High usage is randomly monitored by engin. At our discretion we may impose a High usage alert. If engin deems your usage as high, we may suspend or restrict the Service (or any part of the Service) until you pay either the next invoice we send you or you pay an agreed amount of monies toward the uninvoiced charges.

A customer may view their uninvoiced calls by accessing their account engine's Self Care Portal.

2.12 Security Deposits

We may require you to pay a security deposit if you intend to use some Special Services. If we choose to do so, we may apply the security deposit (or any part of it), in payment of any outstanding charges.



Section Three – Obligations to Provide Service

We have various obligations to you in providing you with the Service.

3.1 Provision of Service

We must supply you the Service on the *Specified Terms and Conditions of Service* and take all reasonable steps to ensure that you can receive the Service.

What we provide to you:

- a) Subject to engin's acceptance of your application, engin provides you with the ability to make local, national, service, international calls and calls to mobile numbers from the local calling areas of Australia using the engin Service;
- b) These calls can terminate at:
 - i. Australian national geographic numbers (calls dialled using an Australian area code);
 - ii. Australian service number (calls dialled with a prefix 13);
 - iii. Mobile numbers (calls dialled with a prefix 04); and
 - iv. Most international numbers (calls dialled as 0011 + Country Code).
- c) However, engin does not guarantee that you will be able to make successful calls to every valid number listed above in point b) as engin does not own or operate every part of the network/s used to provide these services to you.

3.2 Credit Assessment

When assessing your application for the Service, engin may at its discretion undertake a Credit Assessment to determine whether to supply you with a Service. If you are a new customer to engin this Credit Assessment may include but is not limited to:

- A charge of \$1.00 against the credit/charge card supplied by you in your application/order. This charge is to ensure the credit card supplied by you is valid. The charge of \$1.00 will then be refunded the following business day;
- Your employment status;
- Your residential history;
- A Credit Check with a Credit Reporting Agency

If you are an existing engin customer this Credit Assessment may include but is not limited to:

- Your previous payment history with engin;
- Another charge of \$1.00 against a new/replacement credit card nominated by you. This charge is to ensure the credit card supplied by you is valid. The charge of \$1.00 will then be refunded the following business day.

Should engin decline to supply you with a Service, which is entirely or partially based on information provided by a Credit Reporting agency, engin will contact you within seven days to advise:

- That the application has been refused;

- That the decision was entirely or partially based on information about you, provided to engin by a Credit Reporting Agency;
- The name and address of the Credit Reporting Agency; and
- Your right to obtain access to your credit file from the Credit Reporting Agency.

3.3 Quality of Service

engin's commitment and position on QoS is as follows:

- It is technically impractical to guarantee that the Service is free of fault or error and that there always is sufficient capacity to carry all calls attempted using the Service. engin will undertake to provide the Service using the reasonable care and skill of a competent carriage service provider.
- The choice of devices and telephone handset may affect the quality of your call.
- There is no agreed standard for QoS that gives voice traffic priority over data traffic such as email that pass through a Network. QoS is therefore considered more a broadband issue rather than a VoIP issue.
- Despite any other provision of these Terms and Conditions or the Service Description, engin will not be liable to you, or any person claiming through you, in contract, tort or otherwise (including negligence) for any loss or damage arising from suspension of the Service or any faults arising in the Service in accordance with this clause.

3.4 Numbering

Numbers are allocated to you upon activation in line with the Telecommunications Numbering Plan 1997.

You will be provided with a 10 digit phone number applicable to your geographical location and you will have rights of use of this number under the ACIF Industry Code C566:2005 "Rights of use of Numbers"

engin may agree with you to reserve a number for future use for an agreed period of time. During this time engin will not issue this number to another party. engin is under no obligation to accept a customer's request for a specific number.

engin does not offer full Number portability and therefore cannot port your number out of the engin Network in all cases.

Once a service has been disconnected, the number will be quarantined for a specified period and the account holder will no longer have Rights of Use of that number.

engin will comply with the National Numbering Plan and reserves the right to alter or replace any number as a result of compliance with the National Numbering Plan or with any direction from the ACMA. engin will notify the customer of any numbering change affecting the customer as soon as possible. Please refer to section 1.4 of this agreement 'Effect of Geographic Numbers'

Information about Rights of Use is available at www.acma.gov.au

3.5 Service Barring

You may ask us to bar your engine telephone number at anytime. Blocking a service number from use on the engine Network will prevent you:

- Making or receiving voice calls (IMPORTANT: includes calls to emergency "000" numbers)

Ordinarily, upon your request engine must bar your engine telephone number. Circumstances under which we will not bar an engine telephone number occurs when:

- To do so would adversely impact upon another person's use of the Service in good faith.

We must, upon your request:

- Subject to Section 7 of this Agreement, unbar an engine telephone number that you previously requested us to block.

3.6 Local Number Portability

Local Number Portability refers to a Customer's ability to transfer their local telephone number from one service provider to another. In order to Port your Telephone Number across to the engine Network, engine will action two types of Ports – Category A Ports and Category C Ports, colloquially referred to as Simple and Complex Ports respectively.

Please be advised that the Standard Hours in which a Port will be facilitated are between 8:00 a.m. and 5:00 p.m. AEST/AEDT on Business Days. Should you choose to Cut Over your numbers during a timeframe outside the Standard Hours of Operation, you will be charged a premium.

During the Extended Hours of Operation, Ports will be facilitated between 5:00 p.m. and 8:00 p.m., Monday to Friday and between 8:00 a.m. and 8:00 p.m. on Saturdays, except for National Public Holidays.

Charges for Ports completed during the Extended Hours of Operation will cost:

Number of Services	Cost Associated (inc. GST)
1-5	\$107.25
6-20	\$133.10
21-100	\$271.70
101-200	\$379.50
>200	\$858.00

During hours outside of the Extended Hours of Operation or the Standard Hours of Operation, excluding National Public Holidays, the following charges will apply:

Number of Services	Cost Associated (inc. GST)
1-5	\$198.00
6-20	\$198.00
21-100	\$326.70
101-200	\$434.50
>200	\$913.00

If you choose to cancel a Port order after the Critical Order Point, or choose to reschedule a Port order, you will be charged the Prescribed Rescheduling / Cancellation fees. The Critical Order Point refers to the ten Business Days prior to the determined Cut Over date. If an order is cancelled at or after the Critical Order Point, you will be charged a punctuated fee depending on the number of lines you have ordered to port.

You accept that you are liable for all costs accumulated during the Porting process and will be required to pay these charges in full.

There are a number of reasons why a Port may need to be rescheduled. In the following cases you will be charged an administration fee to facilitate this change:

- Should you ask to reschedule the Cut Over date for the Port within 10 Business Days of the determined Cut Over date, you will be charged the Prescribed Rescheduling Fee.
- Should you not be present 60 minutes prior to the designated Cut Over time for the Port, you will be charged the Prescribed Rescheduling Fee.
- Should you have provided incorrect information which may cause the Cut Over of a Port to be rescheduled, you will be charged the Prescribed Rescheduling Fee.

The Prescribed Rescheduling/Cancellation Fees are:

Number of Services	Rescheduling Fee (inc. GST)
1-10	\$495.00
11- 20	\$990.00
>20	\$2200.00

Engin may deny your request to port a number to our Network for a number of reasons. Your request may reasonably be denied if:

- You pose a credit risk
- If it is financially detrimental to provide you with a Service
- It is it is technically unfeasible to provide you with a Service

Section Four – Customer Obligations

You have various obligations to us in relation to the use of the Service. These obligations are outlined below.

4.1 Broadband connection requirement

The engin Service is completely dependent on a Broadband Internet connection and it is important you understand that the engin Service can sometimes affect the Broadband connection. We ask that you to:

- (a) **Warrant that:**
 - (i) You are the legal lessee of the standard Broadband connection service to which your engin Service will be connected; or
 - (ii) If you are not the legal lessee of the relevant Broadband Connection service, you have obtained the legal lessee's permission to connect the engin Service;
- (b) **Acknowledge that:**
 - (i) If the relevant Broadband connection is disconnected, your engin Service will be unusable, in which case you must arrange another Broadband connection or advise engin in writing to disconnect your Service. We exclude liability for the termination of your Service;
 - (ii) The installation of your engin Service may cause minor disruptions to the relevant broadband connection and associated hardware e.g. use of external hardware i.e. router;
 - (iii) You may experience minor disruptions to your engin Service if the relevant broadband connection is transferred to another ISP;
 - (iv) Your choice of Broadband Service may affect your engin service e.g. your connection speeds;
 - (v) Technical inconveniences beyond the control of engin may affect the quality of the Service e.g. your distance from your local telephone exchange may impact on your Broadband speeds, synchronisation etc.
 - (vi) You may not be able to access some other products and services that are incompatible with the Service.

4.2 Payment obligations

You must pay us all the Charges and fees, which you incur accessing and using the Service together with all applicable government taxes and charges by the due date of your invoice.

You agree that all Charges incurred by you in using the engin Service are your responsibility, irrespective of whether you or another person (with or without your consent) used this Service i.e. to make calls and incur charges without your knowledge.

We have chosen to structure our charges so that all monthly Service Fees are charged in advance and any call charges are charged in arrears.

- You must provide us with your credit card details, or alternate payment details (agreed to by us at our discretion) and advise of any changes to these details, for the purposes of paying for your engin Service. We may:

- (a) Charge all fees to your nominated payment method on a monthly basis from your Service commencement date;
 - (b) Disclose your payment details to, and obtain information from, any financial institution to verify your payment details;
- You must take steps to verify that you have sufficient funds on your credit card / in your account to meet likely fees.
- You must take all steps to ensure that engin is notified of any changes to your payment details.
- If any amount owed by you remains unpaid after the due date, we may terminate this Agreement.
- Processing and verification procedures may mean that not all calls made during the period covered by an invoice can be included in that invoice. engin may include those calls in any subsequent invoices for a period of up to 190 days after the call was made.
- Your invoice will be calculated by reference to data recorded or logged by engin. Records held and call-logging procedures adopted by engin will be conclusive evidence of the usage of the Service and the charges payable by you.
- If your accumulated call charges for use of the Service are deemed as high usage at any time, engin may at engin's discretion, suspend your access to the Service. engin may suspend provision of the Service to you without prior notice.
- In addition, engin may impose a charge on you to cover engin's reasonable expenses and costs incurred in enforcing any failure or delay in your payment.
- You must pay any taxes (including, without limitation, any goods and services tax), duties, stamp duties, imposts, levies or government charges relating to your use of the Service.

Despite anything in these Terms and Conditions, engin will not continue to provide you with the Service, as a result of any unpaid charges extending beyond 60 days from the date that the charges were due for payment. If any amounts are outstanding beyond 60 days from the date on which payment for those charges was due, this Agreement may be terminated by engin immediately and you will be required to pay all outstanding charges to engin immediately.

If after standard collection activities, your account remains unpaid in part or in whole for a period of two months (60 days) from the due date, your information may be referred to a debt collection agency or credit reference agency. engin may charge reasonable expenses in connection with recovery of late payments (including the costs of engaging a mercantile recovery agency). If engin engages a mercantile agent or institutes legal proceedings to recover any outstanding amounts due under the terms and conditions of this contract, you will, to the extent permitted by law, be liable for engin's costs of taking that action.

If you are declared to be experiencing financial hardship under engin's Financial Hardship Policy and your account remains unpaid in part or in whole for a period of two months (60 days) from the due date, engin may agree to extend repayment of any outstanding fees beyond 60 days.

If you believe there is an error with your account, please let us know immediately. If we agree that there is an error, engin will endeavour to rectify this error and will reflect the rectification on your next invoice.

4.3 Obligations regarding use of the Service

You must take all reasonable steps to ensure that any other person who uses the Service must only use the Service in accordance with this Agreement or otherwise in a manner approved by us;

Part 1 - You must not use the Service, attempt to use the Service or allow the Service to be used in any way that involves:

Breach of law

- (a) Which results in you or engin breaching, or being involved in a breach of a law, order or regulation (including a foreign law, order or regulation), a mandatory code of conduct; or a voluntary code of conduct that you have agreed to comply with;
- (b) Damage to property or people which results, or could result, in damage to property or injury to any person;
- (c) To harass, menace or stalk people;

Protection of minors

- (d) Which enables a minor to access material inappropriate for a minor or to establish (or try to establish) contact with a minor not otherwise known to you;

Discrimination

- (e) Which unlawfully incites discrimination, hate or violence towards one person or group, for example because of their race, religion, gender or nationality;

Obscene, defamatory, offensive, abusive

- (f) To send, display or be otherwise involved in material, which is obscene or defamatory;
- (g) Which is, or which would be considered by a reasonable person to be, offensive or abusive;

Illegal business practices and gambling

- (h) To engage in any misleading or deceptive business or marketing practice;
- (i) that involves providing or promoting illegal pyramid selling schemes or unlawful gambling or gaming activities;

The rights of others

- (l) Which infringes engin or any other person's rights (including intellectual property rights and moral rights);
- (k) Which constitutes a misuse of engin or any other person's confidential information;
- (l) Which results in a breach by you of any obligation that you owe to any person;
- (m) Resell, distribute or reproduce any part of the Service;
- (n) Use calling line identification or information derived from calling line identification except in accordance with the Privacy Act; or
- (o) Disclose to any person any Confidential Information, security number or password provided by us (including but

not limited to your customer number, or personal identification number).

You indemnify and shall keep engin indemnified against all claims, costs, loss, expenses or injuries arising in relation to a breach of this clause.

Part 2-When using this Service, you will ensure that you and others comply at all times with all laws and obligations, regulations, codes or determinations or any other requirements of any government or statutory authority, including licence conditions, applicable to the Services and their use. Failure to comply with any licence, permit or authorisation relating to the connection of equipment to the Service Delivery Point or the use of the Services may result in immediate termination of the Agreement.

Part 3- If you change your address, (residential or e-mail), you must inform us within 7 days of such change. If the status of your line with your local network operator changes, this may affect your access to certain Services, and you should advise one of our Customer Service Representatives on 1300 305 315.

4.4 Customer Service

If you are disconnected during a call, or experience a fault using the Service you believe to be caused by our network or engin hardware or software, call 1300 305 315 and inform a Customer Service Representative of your difficulties. We will attempt to resolve any problems as soon as practicable. You may connect your hardware to a *LAN* for private use. However the set-up and configuration of a *LAN* connected to the DSL modem may not be supported by Customer Service.

4.5 Power Failure

You acknowledge and understand that the Service does not function in the event of power failure, even when calling 000 emergency services. Should there be an interruption in the power supply, the Service will not function until power is restored. A power failure or disruption may require the Customer to reset or reconfigure equipment prior to utilising the Service. For this reason we recommend that you have an alternative medium of contact, such as a cellular telephone.

4.6 Theft of Service

You agree to notify engin immediately if you become aware at any time that your Service is being stolen or fraudulently used. When you call or write, you must provide your account number and a detailed description of the circumstances of the fraudulent use of the Service. Failure to do so in a timely manner may result in the termination of your Service and additional charges to you. You will be liable to pay for the services used.

If you are responsible for theft of the Service, engin will take whatever course of action necessary to recover damages and lost income from you that engin is rightfully entitled to.

4.7 Service Distinctions

You acknowledge and understand that the Service is not a PSTN (**P**ublic **S**witched **T**elephone **N**etwork) service, which refers a telephone system based on copper wires carrying analogue voice data. Important distinctions exist between a PSTN service and the Voice Over Internet Protocol Service offering provided by engin.

Section Five – Term of Service

The temporal term of your connection is outlined below.

5.1 Term

No fixed term agreement:

- Commences when you are first connected;
- Ends when either you or we terminate it in accordance with the terms of this Agreement.

Minimum fixed term agreement:

- Commences when you are first connected;
- Ends when it is terminated by us; or
- Ends when it is terminated by you on your invoice issue date and upon the expiration of the minimum term specified in your chosen pricing plan; OR
- Ends where the minimum term has expired and you have continued to use the service on a month-to-month basis and thereafter until terminated by you in accordance with this Agreement.

Section Six – Suspension or Termination of the Service

Please be advised that your Service may be suspended or terminated in accordance with *Specified Terms and Conditions of Service*, and every care will be taken to undertake these activities with due process. Although engin will endeavour to give as much notice as reasonably practicable, engin may suspend the Service at any time.

6.1 Suspension for High Usage/Unusual Usage

engin randomly monitors high usage of the Service. At our discretion we may suspend the Service (or any part of the Service) until you pay the next invoice or incurred call charges.

We may suspend or limit the Service if in our opinion the amount of charges incurred is unusually high, having regard to matters including:

- Your previous daily charges;
- Your uninvoiced charges total; and
- Any unusual calling patterns.

Suspension for unusually high charges is to protect you against unaffordable charges incurred. engin will attempt to contact you prior to suspension of the service.

6.2 Immediate suspension, limitation and termination in our absolute discretion

Although we will try to give you as much notice as is reasonably practicable, we may, if we choose (and without notice) immediately:

- Suspend or limit the Service (or any feature of it) for any period we think is reasonably necessary; or
- Terminate this Agreement, if:
 - ❑ You fail to pay us the charges or are in breach of this Agreement, and where such breach can be corrected, you fail to correct the breach within 7 days of us requesting you to do so;
 - ❑ We believe that the use of the Service (or any feature of it) by you or any other person is or might damage, impair or interfere with the engin Network or any of our other systems or equipment;
 - ❑ The Service (or any feature of it) is being used to commit unauthorised, criminal or unlawful activities;
 - ❑ If engin becomes aware of unauthorised equipment being used on our network, we will issue you with a formal written warning to discontinue use and remove the equipment. If you do not comply with this request, engin will take steps to immediately disconnect you from the network.

You will be responsible for any costs incurred in:

- Becoming Insolvent; or if you are a partnership, the partnership ceases; or
- We believe that the use of the Service (or any feature of it) by you or any other person is or might damage, impair or interfere with the engin Network or any of our other systems or equipment;
- The Service (or any feature of it) is being used to commit unauthorised, criminal or unlawful activities;

- The Service (or any feature of it) is being used by you or another person in a manner which is unusual, unreasonable, excessive or fraudulent;
- You have engaged in fraudulent activities using the Service (or any feature of it); or.
- You are a Carriage Service Provider or Carrier, or are operating as a Carriage Service.

6.3 Immediate suspension, limitation and termination on instruction of certain third parties or for technical problems

Although we will try to give you as much notice as is reasonably practicable, we may, if we so choose (and without notice) immediately:

- Suspend or limit the Service (or any feature of it) for any period we think is reasonably necessary; or
- Terminate this Agreement, if:
 - ❑ We are required to do so by: a regulatory authority such as the ACMA; or the law, or a law enforcement agency;
 - ❑ We are obliged to do so on the request of a Content Provider; or
 - ❑ There are technical problems with the engine Network, which require corrective action by us.

6.4 Suspension, limitation and termination with notice

In addition to our rights above, we may, by giving you reasonable notice (in any event at least 14 days' notice):

- Suspend or limit the Service (or any feature of it) for such period as we determine is reasonably necessary; or
- Terminate this Agreement.

6.5 Your right to terminate this Agreement

You may terminate this Agreement by giving us 30 days notice by contacting us on 1300 305 000 between 9am - 6pm AEST, on any Business Day. We will debit your nominated payment method (e.g. Credit Card) for all charges you incur (including the Monthly Service fee) up until the point of termination. Termination will take place on your designated invoice issue date (the 3rd, 10th, 17th or 24th of any given month), once the funds have been debited. If any calls are made and are not billed on your latest invoice, you may receive a final invoice with calls made after the request for the termination of your Service. You will be required to pay for these calls after termination.

If you have purchased hardware at a discounted rate and agreed to a minimum term contract you may also be liable for the full RRP (Recommended Retail Price) of the hardware upon termination (if within the minimum term).

6.6 Consequences of Suspension or Limitation

If we suspend or limit the Service (or any feature of it), you will be barred from using the Service (or the feature of it which we suspend/limit) until we un-bar the Service (or the feature of it which we have suspended/limited). We will continue to charge you, and you must pay us, the Monthly Service fee during the period in which your Service was suspended or limited the Service.

6.7 Consequences of Termination

Upon termination of this Agreement:

- We will stop providing you with the Service, disconnect the Service and send you a final invoice for all accrued and outstanding Charges; and
- You will no longer have the right to use the Service.

6.8 Obligations on Termination

If this Agreement is terminated, you must pay all amounts, which you owe us under this Agreement by the due date on your final invoice. We must refund to you any amount we hold on your behalf after you have paid us all the amounts, which you owe us under this Agreement. We may, if we choose, offset against any amounts we hold on your behalf (for example, a security deposit), any amounts, which you owe us.

You acknowledge that we may not pay you an amount we owe you because:

- We are unable to locate you; or
 - Your nominated credit card / payment account is no longer valid.
-

Section Seven – Personal Information

You acknowledge that engin may give information about you to a credit-reporting agency for the following purposes:

- a) To obtain a consumer credit report about you; and/or
- b) To allow the credit-reporting agency to create or maintain a credit information file containing information about you; provided that:
- c) This information is limited to:
 - (i) Identity particulars – your name, sex, address (and the previous two addresses), date of birth, name of employer and drivers licence number;
 - (ii) your application for credit or commercial credit – the fact that you have applied for credit and the amount;
 - (iii) the fact that engin is a current credit provider to you;
 - (iv) payments which are overdue by more than 60 days and for which debt collection action has started;
 - (v) advice that your payments are no longer overdue in respect of any default that has been listed;
 - (vi) information that, in the opinion of engin, you have committed a serious credit infringement (that is, acted fraudulently or shown an intention not to comply with your credit obligations); and
- (d) This information may be given before, during or after the provision of credit to you.

You agree that engin may obtain information about you from:

- (a) A business which provides information about the commercial credit worthiness of persons; and/or
- (b) A credit-reporting agency, for the purpose of assessing your application for consumer credit.

You agree that engin may exchange information about you with those credit providers names in your credit application or names in a consumer credit report issued by a credit reporting agency for the following purposes:

- (a) To assess an application by you for credit;
- (b) To notify other credit providers of a default by you;
- (c) To exchange information with other credit providers as to the status of this credit facility where you are in default with other credit providers; and/or
- (d) To assess your credit worthiness.

7.1 Collection

Agents and/or our service providers may collect personal information about you for the primary purpose of providing you with the Service. If you do not provide personal information to us, we will not be able to provide you the Service.

7.2 Use

We may use personal information about you for purposes that are related to providing you with the Service and reasons you would reasonably expect us to use to provide the Service (including for invoicing purposes).

We may also undertake market and product analysis based on your use of the Service and contact you with information about new developments, products, services and special offers by post, telephone and automated means such as your registered e-mail, WAP and the World Wide Web.

Under s18 (1) of the Spam Act 2003, you agree and acknowledge that:

- We may send you commercial electronic messages or marketing material however you can, at any time, opt-out of receiving marketing material by replying to the email, e-mailing 'feedback@engin.com.au' or contacting Customer Service on 1300 305 000.

You also agree and acknowledge that we will still need to send you essential information about your engin account or changes to the Service via your registered e-mail address.

7.3 Access and Correction

If you request (in writing), we will:

- Provide you with the personal information we have about you, with the exception of sub-clause 6.1 of the National Privacy Principles; or
- Correct personal information or note that information about you is inaccurate, incomplete or out of date, in accordance with *Privacy Act*.

Written requests should be made to:

The Privacy Manager
engin
Locked Bag 1002
FRENCHS FOREST NSW 2086

A certified copy of photo identification including current Drivers License, proof of age card or passport must accompany the written request. engin will only send the requested information to the customer via registered post. engin may charge you a reasonable fee to recover archived information.

7.4 Disclosure

We may receive and disclose personal information or documents about you to or from:

- Credit providers or credit reporting agencies for purposes permitted under the *Privacy Act*;
- Law enforcement agencies to assist them in the prevention of criminal activity; or
- Our service and content providers, dealers and agents, or any company within the MIBROADBAND group for purposes that are related to providing you with the service and which you would reasonably expect us to use that information for. We may disclose personal information about you to other third parties if required by law

or if we are permitted to make such disclosure under the *Privacy Act* or other legislation. In all other circumstances, we will not disclose personal information about you without your consent.

7.5 Acknowledgment

You acknowledge and give consent that any calls you make to our Customer Service centre may be monitored and/or recorded for quality training purposes.

If you wish for your call not to be monitored and/or recorded please advise the operator upon commencement of the call.

7.6 Privacy Policy

By providing personal information to us and obtaining the Service, you acknowledge and consent to the collection, use and disclosure of your personal information as provided in the Privacy Act and this Agreement

7.7 SPAM

With your express or inferred consent we may now and again send you commercial electronic messages. The Spam Act 2003 prohibits unsolicited commercial electronic messaging, which covers emails, instant messaging, SMS and other mobile phone messaging. The message must be commercial in nature. Commercial electronic messages must accurately identify their sender, and include a way for the recipient to unsubscribe from future such messages. The Australian Communications Authority is responsible for enforcing the provisions of the Spam Act 2003.

7.8 IPND

The Integrated Public Number Database is an industry-wide database of all listed and unlisted public telephone numbers. In accordance with the Communications Alliance IPND Code and the Telecommunications Act, carriers and carriage service providers are obligated to update this database daily with information such as the customer's name, the customer's address, the name of the service provider, what the number is to be used for (private or business) and whether the public telephone number is to be listed or unlisted in telephone directories.

In certain circumstances information held in the database may be disclosed for approved purposes such as operator and directory assistance services, publishing public number directories, use by emergency services and law enforcement agencies and any other activity specified by ACMA. For example law enforcement agencies and emergency services have access to numbers and information held on this database regardless of whether numbers are listed or unlisted.

Section Eight – Liability and Indemnity

The following section outlines liability and indemnity, as well as warranties.

8.1 Our Liability to the Customer

You agree to use the Service (and each of its features) accepting full risk and responsibility in doing so. You agree that, subject to paragraphs 8.2 and 8.3 below, we are not liable to you for any loss or damage (including Consequential Loss) whatsoever arising (including for engine breach of this Agreement) which you suffer under or in connection with this Agreement or the supply of the Service, unless you suffer direct loss or damage because of any negligent act or negligent omission by us under or in connection with this Agreement, in which event we will be liable to you for any such direct loss or damage suffered (but, for avoidance of doubt, not any Consequential Loss suffered). For example, we are not liable to you for any loss or damage (including Consequential Loss) you suffer as a result of:

- You or any other person using the Service or any of its features for any purpose (including a purpose in breach of this Agreement);
- Any person accessing or using Material you send or doing anything on the basis of Material you send;
- Any Material you send being inaccurate, incomplete, not current or of inadequate quality, or otherwise in breach of your obligations under this Agreement regarding use of the Service;
- Us Adapting any Material to enable it to be received or sent;
- You not receiving any material, or a delay in you receiving any material you have requested;
- Any person to whom you send or attempt to send Material not receiving the Material, or a delay in that person receiving the Material.

8.2 Implied representations and warranties and our maximum liability to you

Subject to the paragraph 8.3 below:

- To the extent legally permissible, all conditions, terms and warranties which may be implied by custom, law or legislation into this Agreement are excluded; and
- Our maximum liability to you under or in connection with this Agreement, the supply of the Service, for any negligent act or omission by us (including our employees, contractors and agents) or for any other liability which is not excluded under this Agreement, will not be more than the total Charges paid by you under this Agreement: during the 1 month period prior to your claim; or if this Agreement started less than month prior to your claim, since the start of this Agreement.

8.3 Liability, which we cannot exclude

Despite any of the above, we will be liable to you under any rights, which you may have under the *Trade Practices Act 1974* and other legislation, for which we cannot exclude our liability. Even so, where our liability in respect of such rights can be limited, it is limited as we choose, to:

- In the case of goods, the replacement of the goods or the supply of equivalent goods; the repair of the goods; the payment of the cost of replacing the goods or acquiring equivalent goods; or the payment of the cost of having the goods repaired; and
- In the case of services, the supply of the Services again; or the payment of the cost of having the services supplied again.

8.4 You indemnify us

You indemnify us any loss or damage we suffer relating to the use of the engine service by you. This indemnity does not apply to any loss or damage we suffer as a result of any wilful misconduct or reckless act or omission by us. Your obligations under this indemnity will continue despite:

- The Termination of this Agreement; or
- The occurrence of any other thing, until all monies you owe us have been paid in full.

Section Nine – Miscellaneous

9.1 Assurances

By entering into this Agreement you assure us that:

- You have provided full and accurate personal information to us in connection with this Agreement and that you will continue to ensure this information is accurate whilst there continues to be an Agreement between the parties (you and engin) in place;
- You have full power and authority to enter into this Agreement; and
- You will do all that you need to do to perform your obligations under this Agreement.

By entering this Agreement we assure you that:

- We are a carriage service provider under the Act; and
- Subject to the terms and conditions of this Agreement, we will provide the Service with all reasonable care and in a timely manner.

9.2 Assignment

You may not transfer any rights and obligations under this Agreement without us first agreeing in writing.

We may, without telling you:

- a) Transfer our rights and obligations under this Agreement to another entity;
- b) Temporarily or permanently get another entity to perform our obligations under this Agreement on our behalf; or
- c) Require you to sign an agreement in the form of this Agreement with the other entity we nominate (or, if we cannot find you, we may sign such an agreement on your behalf which, upon entering this Agreement, you authorise us to do).

9.3 Enforceability

If any term in this Agreement or a right of either of us under this Agreement is not enforceable in a certain State or Territory of Australia, that does not mean that:

- That term or right is not enforceable in any other State or Territory of Australia; or
- Any other term or right is not enforceable in that State or Territory of Australia or in any other State or Territory of Australia.

9.4 Waiver

The only way in which we can be said to have given up any rights we have under this Agreement is if we agree to do so in writing. Even if we give up one of our rights under this Agreement in a particular circumstance that does not mean that we have generally given up that right. A failure or delay to exercise a right under this Agreement does not constitute a waiver of the Agreement.

9.5 Variation

We may vary any term of this Agreement at any time in writing. To the extent required by the Act and any other applicable laws or determinations made by the ACMA, we will notify you of any such variation up to 21 days prior to the change/variation-taking place, should the variation or change be deemed detrimental to your use of the Service. The agreement will be posted on the web site and supersedes all previously agreed to electronic and written terms and conditions.

International call rates can be varied at any time, without notice, in accordance with the relevant industry codes.

9.6 Standard Form of Agreement

This Agreement constitutes a Standard Form of Agreement within the meaning of the Act and is subject to the Act.

9.7 Inconsistency

If there is any inconsistency between this Agreement and any brochures or other marketing or advertising material, which relate to the Service or this Agreement then this Agreement prevails to the extent of the inconsistency.

9.8 Commission

You acknowledge that we may pay an agent a commission for introducing you to us and/or the Service.

9.9 Notices

You agree that we may give you written notice in connection with this Agreement by:

- Sending the notice to the e-mail address, postal address or fax number, which you advise us of in your application or otherwise. Where engin is entitled to notify you of information relating to the SFOA and changes to it by email, you acknowledge that you have consented to engin sending you such notices to your nominated addresses;
- If the change is deemed to be detrimental engin will, prior to the change taking place, supply a notice of varying terms no less than 21 (twenty-one) days prior to the change taking place.

9.10 Complaints

engin has implemented an internal customer complaints procedure which is designed to resolve your complaint with minimal disconcert and expense. This complaints procedure has been written in accordance with the Communications Alliance's "Complaint Handling Code – C547:2004" and is available by phoning Customer Service on 1300 305 000.

You may complain verbally by calling an engin Customer Service representative on 1300 305 000, or in writing to CustomerRelations@engin.com.au

The Telecommunications Industry Ombudsman (TIO) can also resolve disputes between telecommunication companies and their customers. The TIO is an independent body that provides a free service. The TIO describes itself as an office of last resort. It only takes up a complaint if the customer has first tried to resolve it with the relevant company. The Office of Fair Trading (or similar) in your State or Territory may also investigate consumer complaints.

9.11 Governing law & jurisdiction

The laws of New South Wales govern this Agreement. Each of us agrees to submit (and may not subsequently change our mind about doing so) to the exclusive jurisdiction of the courts of New South Wales.

If you do not understand this Agreement please call:

- Customer Service on 1300 305 000; or
- The National Relay Service for communications assistance or the Translating and Interpreting Service on 131 450 to ask an interpreter to contact us for help.

Please contact our Customer Service if you would like a copy of this Agreement in an alternative format, for example, large print size.

9.12 Website

Acceptance

Please note that by accessing, browsing or using our web site, you acknowledge that you have read and agreed to be bound by these terms of use and our privacy policy and statement.

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Governing Law

The laws of New South Wales, Australia, exclusive of its conflict of law provisions, shall govern any claims relating to our web site.

Changes to Terms of Use

engin may unilaterally revise these terms and conditions without notice and any such changes shall be effective upon posting. By using this web site, you agree to be bound by any such revisions and should therefore periodically visit this page to determine the then-current Terms of Use to which you are bound.

Section Ten – Service Limitations

Below are a list of Service limitations. Outlined are engin's policies on emergency service limitations, priority assistance, porting and other miscellaneous topics.

10.1 Emergency Services

Dialing emergency services will cease to function correctly if you move or otherwise change the physical location of your engin service. Onus rests on the customer to notify engin of any changes to your service address details.

In the event of an engin network outage, power failure or disruption to your Broadband Internet connection, you will not be able to use the Service to dial emergency services. For this reason we recommend that you have an alternative medium of contact, such as a cellular telephone.

Switchboard is an incoming call service only. Therefore outgoing calls and calls to emergency services using the Switchboard number are not possible.

10.2 Number Portability

Currently engin is capable of porting some allocated VoIP numbers. However engin cannot port particular ranges of numbers. engin is working with other carriers on a Number Portability solution. There is no definitive timeframe as to when this service may be available.

10.3 Switchboard

This is deemed a secondary service, whereby you only receive incoming calls to your pre-existing primary engin number via your Switchboard number. The Switchboard number acts in a call forwarding manner. Therefore outgoing calls from the Switchboard number are not possible.

Switchboard numbers can only be allocated within engin's 'Point of Presence' areas - Brisbane, Gold Coast, Central Coast, Sydney, Canberra, Melbourne, Geelong, Adelaide and Penrith.

IMPORTANT:- The service does not support calls to emergency services or Voicemail and other features.

10.4 BYO (Bring Your Own)

engin limits the extent of support for BYO users to that of Customer Service only, which includes account and billing enquires. Due to the flexibility the service offers users, it is not feasible or practicable for engin to offer technical support.

Whilst the BYO service is designed to allow users to bring their own device, under no circumstances does engin offer any guarantee or assurance that all SIP Devices will be compatible and function with the BYO service.

Features available through BYO are at a network level. Both network and individual device features may be incompatible with BYO depending on the SIP device and the settings used.

BYO does not support Provisioning. Therefore users of the service will not receive automatic updates or configurations from the BYO network.

The BYO service will cease to work in the event of power failure as no network redundancy is provided.

BYO does not support calls to emergency services. Whilst calls may connect to emergency services, these calls may not be routed to the correct State.

Calls to 13/1300/1800 numbers may not be routed to the correct termination point.

10.5 Priority Assistance

At present engin does not offer a Priority Assistance service for life threatening medical conditions.

10.6 13/1300/1800 Numbers

If you are issued a geographic telephone number in accordance with the address you provided (where the engin service is to be used) engin will attempt to route these calls through the local gateway. Generally calls to these numbers should work correctly, with exception to an incidence of network congestion where an alternate gateway overflow is used for example.

However, once engin has routed the call out the correct gateway, it is still a matter of whether the upstream carrier has configured the 1300 Service to allow their switches to correctly route to a termination point.