



Standard Form of Agreement: General Terms

MIBROADBAND PTY LTD
ABN 70 080 250 371

Contact engin

If you have any concerns or queries, you may contact us as follows:

By Telephone	<u>Customer Service</u> Trading Hours: Monday – Friday: 8 a.m. – 9 p.m. (AEST / AEDT) Saturday: 9 a.m. – 3 p.m. (AEST / AEDT) Contact Number: 1300 305 000
Non English Speaking Customers*	<u>Translating and Interpreting Service (TIS)</u> Contact Number: 131450
Communication, Speech or Hearing Impairments*	<u>National Relay Service</u> Contact Number: 133 677
Postal Contact	Customer Service Locked Bag 1002 Frenchs Forest 2086
Fax	Contact Number: (02) 89855888
email	feedback@engin.com.au

* Non English speaking or communication impaired customers may contact engin with the assistance of an advocate whose only involvement would be to relay, interpret or translate.

If the arrangement is to be permanent, you may elect that your advocate be your Authorised Representative.

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Introduction

The *Standard Form of Agreement: General Terms* sets out the terms and conditions of the Service. To the extent of any inconsistency, the *Standard Form of Agreement: General Terms* shall prevail over the relevant Service Description.

The *Standard Form of Agreement: General Terms* has been partitioned into eight sections:

Section One – Service

Section Two – Charges and Billing

Section Three – Term of Service

Section Four – Suspension or Termination of the Service

Section Five – Personal Information

Section Six – Liability and Indemnity

Section Seven - Miscellaneous

Section Eight – Service Limitations

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 Service 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 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.

1.3 Necessary interruptions

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

1.4 Customer Service

If you experience a fault using the Service call 1300 305 000 and inform a Customer Service Representative of your difficulties. We will attempt to resolve any problems as soon as practicable.

1.5 Fraudulent Use of Service

You agree to notify engin immediately, in writing or by calling the engin Customer Service line on 1300 305 000, if the Voice Box is stolen or 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 Voice Box theft or fraudulent use of engin 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 the Service is breached and used inappropriately regardless of lack of awareness or knowledge.

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.

1.6 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 mobile telephone.

1.7 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, force majeure, 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.

1.8 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 Customer Service on 1300 305 000.

1.9 Your Obligations Regarding the Use of the Service

When using the 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.

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.

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;
- (f) 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; or
- (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

- (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.

1.10 Change of Details

If you relocate or change your correspondence address (electronic or otherwise) you must inform engin of this change immediately. 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 305 000.

Section Two - Charges and Billing

2.1 What you will be charged for the service

We will charge you the Charges for your use of the services applicable to the chosen Pricing Plan selected.

The Charges

The Charges include:

- A Monthly Service* fee which we will charge you on your invoice issue date, monthly in advance;
- Charges for your use of the Service which engin 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 than your invoice issue date, will be charged on the next invoice for monthly service fee at a pro rata rate from the activation date to invoice issue date. Each month there after will be invoiced as per the initial connections invoice issue date.

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.

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. engin may withdraw a promotion at any time. And unless otherwise specified or agreed to by engin, promotions may not be used in conjunction with one another. You may obtain a copy of the current Charges by visiting www.engin.com.au or contacting Customer Service on 1300 305 000.

2.2 Payment for the service

Invoicing

We will issue you with invoices, which will be sent to nominated e-mail address. 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 maybe affected by your choice of equipment and software. engin will not accept any responsibility for consequential presentation, distortion or absence.

Invoice charges

Invoices are sent via e-mail in a softcopy PDF format from billing@engin.com.au.

Invoices sent in an electronic format do not attract charges.

This is an automatically generated email and the mailbox billing@engin.com.au is not a monitored email address.

Any billing enquiries should be sent to feedback@engin.com.au

If you request an archived or hard copy invoice you will be charged a \$5.50 administrative fee per invoice to cover our costs for recovery of the material.

Invoice Frequency

An electronic invoice is issued once a month on your invoice issue date.

Payment of your Invoices

Upon connection, you agree to make all payments from your nominated credit/charge card or bank account 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, American Express/Diners Card).

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.

Overdue Invoices

If you do not pay your invoices on time or cancel your payment authority, you will be liable for additional fees as set out in Section 2.5 of this Agreement.

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.

2.3 Assessment

Credit Assessment

When assessing your application for engin services, engin may at it's discretion undertake a Credit Assessment to determine whether to supply you with a service. When subscribing to engin, a 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.

Note - For more information regarding the Provision of Credit and the Privacy Act 1998 please refer to Section 5 - Personal Information of this Agreement.

Should engin decide to refuse to supply you with a service, which is entirely or partially based on information provided by a Credit Reporting agency, you have the right to ask:

- Why the application/order for engin services has been refused;
- Why the decision was entirely or partially based on information about you, provided to engin by a Credit Reporting Agency;
- What the name and address of the Credit Reporting Agency; and
- What your right to obtain access to your credit file from the Credit Reporting Agency.

2.4 Payment Obligations

Your 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; and
 - (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 or bank 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 charges made during the period covered by an invoice can be included in that invoice. engin may include those charges 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 may suspend your 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.

- After debt 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 maybe 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 to reflect on your next invoice.

2.5 Miscellaneous Costs

Miscellaneous Costs	Associated Charge
<p><u>Late Payment Fee</u></p> <p>The late payment fee may apply to customers who do not pay their invoice in full on the Due Date.</p>	<p>\$5.50 per dishonoured payment (GST inc.)</p>
<p><u>Direct Debit Decline Fee</u></p> <p>Where your direct debit payment is dishonoured.</p>	<p>\$11.00 per dishonoured payment (GST inc.)</p>
<p><u>Cheque Decline Fee</u></p> <p>Where your cheque payment is dishonoured.</p>	<p>\$22.00 per dishonoured payment (GST inc.)</p>
<p><u>Reconnection of a Suspended Account</u></p> <p>This fee is charged if your account is reconnected, after having been suspended due to non-payment of an invoice/s.</p> <p>Together with this fee you are also required to pay the outstanding invoice/s owing, prior to the reconnection-taking place.</p>	<p>\$27.50 per reconnection (GST inc.)</p>
<p><u>Third Party Collection</u></p> <p>Applicable once an account is passed to a third party collection agency.</p> <p>But only after the account has been disconnected due to non-payment, and previous Credit Control activity deemed futile.</p>	<p>\$55.00 or 17% of the disputed amount (GST inc.) <i>(Whichever figure is the larger)</i></p> <p>Please refer to Section Four of this Agreement.</p>
<p><u>Account Split / Merge Fee</u></p> <p>Applicable when a customer requests to have the phone numbers from their account split into separate accounts. Or to have separate accounts merged into a single account.</p>	<p>\$11.00 (GST inc.)</p>

<p><u>Hardcopy Invoice</u></p> <p>The charge applies to each hardcopy invoice you request in addition to your e-mail invoice automatically sent on your invoice issue date.</p>	<p>\$5.50 per hardcopy invoice (GST inc.)</p>
<p><u>Number Selection</u></p> <p>Applicable if you request a specific geographic number and this number is issued to you for use.</p>	<p>\$49.95 one-off fee (GST inc.)</p>
<p><u>Number Swap</u></p> <p>engin may permit a customer to swap their geographic phone number between devices (including ATA's and softphones). This also refers to a change of number on the customers account.</p> <p>The customer must allow 5 working days for completion of the process.</p> <p><u>IMPORTANT</u> - At anytime engin reserves the right, or upon instruction from a government agency to refuse a customer the ability to swap their number between devices without explanation or reason.</p>	<p>\$20.00 per swap (GST inc.)</p>
<p><u>Access to Personal Information</u></p> <p>In accordance with the National Privacy Principles, engin must provide the customer with access to the information on request by the customer</p> <p>To provide a copy of the Customer Details and Notes History file, engin will charge a fee of \$7.50, per request, per number, including GST.</p> <p>For a copy of all personal customer information held by engin, we will charge a fee of \$12.50 per request, per number, including GST.</p> <p>To Retrieve or access archived customer information, engin will charge the customer a \$32.50 per request, per number, including GST.</p> <p>N.B. customer information is archived 3 months after the account is disconnected.</p>	<p>Varied Charges</p>
<p><u>Access to Invoices after 12 months</u></p> <p>If you request a copy of your invoice 12 months after it is issued, you will be charged an archive retrieval fee for each invoice you seek.</p> <p>Invoices are archived 12 months after they are</p>	<p>\$5.50 per invoice (GST inc.)</p>

originally issued.	
<p><u>Incomplete Returns Charge</u></p> <p>All hardware that is returned to engin, must be returned in the original condition in which it was received, inclusive of the hardware, all cabling, manuals and any other included parts. If the hardware is returned without all the necessary components, you will be charged a fee. Damaged hardware will be charged the RRP of the package.</p>	A \$25.00 fee applies for incomplete returns (GST inc.)
<p><u>Incorrect Chargeback Fee</u></p> <p>In the event that you authorise an unsubstantiated or inappropriate charge back of your payment from a credit/charge card, bank account or any other applicable payment facility, you will be charged a fee.</p>	A \$33.00 fee per chargeback applies (GST inc.)
<p><u>Quotes / Repair Charges for Hardware</u></p>	To be advised upon inspection and assessment.
<p><u>BPAY Surcharge</u></p> <p>For every payment made using BPAY as your method of payment.</p>	\$1.00 per transaction (GST inc.)
<p><u>American Express/Diners Card</u></p>	A 3% surcharge (GST inc.) will be applied to each payment made with an American Express or Diners Card.
<p><u>Postage and Handling</u></p> <p>Orders/hardware purchased directly from engin over the phone or via the website will attract this fee.</p> <p>Providing the ordered product is in stock, engin will endeavour to despatch your order by the following business day.</p> <p>Delivery within Australia is generally 5-7 business days. During festive occasions, sale periods and special promotion offers, delivery may take up to two weeks.</p>	\$14.95 per consignment (GST inc.)

Section Three – Term of Service

3.1 Term of Agreement

The term of your connection is outlined below.

No fixed term agreement:

- Commences when you are first connected;
- Ends when it is terminated either by you or us in accordance with Section 4 of this Agreement.

Minimum fixed term agreement:

- Commences when you are first connected;
- Ends when it is terminated by us under Section Four of this Agreement.
- Ends when it is terminated by you under Section Four of this Agreement on your invoice issue date; 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 Section Four of this Agreement.

Section Four – Suspension or Termination of the Service

Please be advised that your Service may be suspended or terminated in accordance with the *Standard Form of Agreement: General Terms*, 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.

4.1 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.

4.2 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.

4.3 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 engin Network, which require corrective action by us.

4.4 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.

4.5 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 / AEDT, 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, 4th, 10th, 17th or 24th of any given month), once the funds have been debited.

After terminating your service with us, you will receive a final invoice on your regular invoice date, which will include all charges incurred by you up to, and including the date on which your Service was terminated.

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).

Other charges may be applicable if you terminate your Service within the minimum terms, refer to the relevant Service Description for details.

4.6 Termination as a result of Porting / Churning away from engin

You may terminate this Agreement by Porting / Churning your engin Service to another Carrier or Carriage Service Provider at any point. Should you port your number across to another provider, having purchased the Service at a subsidised rate by agreeing to a minimum term contract or for some other reason, you may be required to pay back the subsidy if the minimum term contract has not been fulfilled.

4.7 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.

4.8 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.

4.9 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 and/or contact you; or
- Your nominated credit card or bank account is no longer valid.

Section Five – Personal Information

5.1 Privacy

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.

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.

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.

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 acknowledge that we will send you essential information about your engin account or changes to the Service to your registered billing e-mail address.

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

engin will only send the requested information to the customer via registered post. engin may charge you a reasonable fee to recover archived information.

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.

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.

Privacy Policy

By providing personal information to engin 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.

5.2 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 and Media Authority (ACMA) is responsible for enforcing the provisions of the Spam Act 2003.

5.3 IPND

The Intergrated Public Numbering Database (IPND) 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 maybe disclosed for approved purposes such as operator and directory assistance services, publishing public number directories, use by emergency services and law enforcement agenices and any other activity specified by ACMA. For example law enforecement agencies and emergency services have access to numbers and information held on this database regardless of whether numbers are listed or unlisted.

Section Six – Liability and Indemnity

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

6.1 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 6.2 and 6.3 below, we are not liable to you for any loss or damage (including Consequential Loss) whatsoever arising (including for engines 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.

6.2 Implied representations and warranties and our maximum liability to you

Subject to the paragraph 6.3 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.

6.3 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; of the payment of the cost of having the services supplied again.

6.4 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.

6.5 Contributory Loss

engine's liability for any loss, cost or damage suffered or incurred by you is reduced to the extent that your acts, omissions, equipment or external causes contribute to that loss, cost or damage.

Section Seven – Miscellaneous

7.1 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.

7.2 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).

7.3 Enforceability

If any term in 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.

7.4 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.

7.5 Variation

- a) From time to time we may need to make changes to the SFOA, this may be done without your agreement if the change is beneficial to you or does not adversely affect you.
- b) If a change to this Agreement is detrimental to you we will give you at least 30 days notice before the change takes place. We will post notice of the change on our website and we will notify you directly of the change in writing either by:
 - i) Mail, to the last address you have given us; or
 - ii) Email, to the last address you have given us (providing you have agreed for us to let you know about changes to the SFOA by email); or
 - iii) A message on your monthly invoice
- c) If a change we make is detrimental to you and you are in a fixed term agreement at the time of receiving notice of the change, you may cancel the agreement without incurring any Break fees or Early termination fees, by giving us notice within 42 days after the date of receiving written notice of the change under 7.5.b above
- d) If you give us notice to cancel your service in accordance with 7.5.c above, you will still be liable for any usage based chargers or variable charges incurred by you up to the date of your cancellation, you will also be liable for installation fees and costs of equipment we provided to you that you did not pay for, as long as that equipment can be used in connection with services supplied by another provider
- e) You acknowledge that we do not have to give you 30 days notice of a change to the Agreement or offer you the right to cancel your service if you are in a fixed term agreement, even if that change impacts you, in relation to:
 - i) an increase in international call rates, which can be varied without notice at any time in accordance with relevant industry codes. Current international call rates are available on our website.
 - ii) An increase in charges related to premium services which we resell to you from a third party
 - iii) the introduction of an additional tax or levy that is imposed by law (for example an increase in the rate of GST which is directed at you, but not for example an increase in the corporate tax rate which is directed at us)
 - iv) changes we are required to make due to a change in the law
 - v) changes we are required to make for security reasons
 - vi) changes we are required to make to protect the integrity of our service or network

Unless allowed for in the Agreement you cannot make any changes to this Agreement without firstly obtaining our consent.

7.6 Standard Form of Agreement

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

7.7 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.

7.8 Commission

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

7.9 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.

7.10 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 Code C628:2007 - "Telecommunications Consumer Protection Code" 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.

7.11 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.

7.12 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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Limitation of Liability

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engin also assumes no responsibility, and shall not be liable for, any damages to, or viruses that may infect, computer equipment or other property on account of access to, use of, or browsing in the site or downloading of any materials, data, text, images, video, or audio from the web site.

Product and Service information

engin may at any time make changes to its products or services or discontinue any product or service without notice. The availability of the products and services described on this site, and the product and service descriptions, may vary from country to country. Please contact Customer Service on 1300 305 000 for specific product and service information.

All products and services are licensed or sold subject to engin's applicable terms and conditions of license or sale supplied at the time of order acknowledgment. Mention of non-engin products or services is for information purposes only and constitutes neither an endorsement nor a recommendation.

Local Access

engin makes no representation that the information contained in this web site or that access to this web site is appropriate or available for use throughout the world. You are responsible for compliance with all applicable local laws in the particular location from which you access this web site, including but not limited to, all applicable export and import laws and regulations.

Prohibited Use

You are prohibited from posting or transmitting any unlawful, threatening, obscene, libellous, defamatory or otherwise offensive material.

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.

Section Eight – Service Limitations

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

8.1 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.

8.2 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.

8.3 Switchboard

This is deemed a secondary service, where you receive incoming calls to your 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 Points of Presence.

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

8.4 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.

8.5 Priority Assistance

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

8.6 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 13/1300/1800 Service to allow their switches to correctly route to a termination point.

8.7 Communication

You agree that engin's primary mode of communication will be via electronic mail for the delivery of invoices and all other collateral (including communications pertaining to Fair Use, Marketing, Compliance and Regulatory matters) issued by engin. This however, does not rule out the use of post, facsimile or telecommunications as means of communication and they shall be employed at our discretion to contact you.