



# STANDARD FORM OF AGREEMENT (SFOA)

## 1.0 Introduction

1.1 Some words or expressions have a special meaning in this document. These words are in bold type when they are used with that meaning.

1.2 This document sets out the general terms and conditions under which we agree to provide services to you. It is formulated as a Standard Form of Agreement for the purposes of section 479 of the Telecommunications Act 1997 (Cth) ("the Act").

1.3 This document does not contain details of the specific services we have agreed to provide to you. These details were agreed with you when you purchased the service and may be indicated in the application forms, other documentation or product packaging.

1.4 If anything in this document is inconsistent with something specifically agreed in writing with you, then the particular arrangement agreed with you applies instead of the inconsistent part of this document to the extent of the inconsistency only.

1.5 We may vary the agreement made with you including the charges, at any time in accordance with the requirements of the Act.

1.6 You may obtain a copy of this document from our business office at Level 8, QV.1 Building, 250 St Georges Terrace, Perth, WA 6000, or by visiting our website ([www.eftel.com.au](http://www.eftel.com.au)).

## 2.0 Definitions

"we", "our" and "us" means Eftel Limited ABN 47 073 238 178, its successors or assigns.

"you", "your" and "yourself" means the entity that has purchased the service from us.

"Acceptable Use Policy" means the policy published on our website ([www.eftel.com.au](http://www.eftel.com.au)).

- "Customer Service Guarantee" means any applicable performance standard of that name made pursuant to the Telecommunications (Consumer Protection and Service Standards) Act 1999 (Cth) (see [www.acma.gov.au](http://www.acma.gov.au)).

"equipment" means anything we provide to you except by outright sale.

"notice" means any written notice that we send to you at the physical address, postal address, email address or fax or telephone number in our records.

"the service", "service" and "services" means any of the services that we provide to you under this agreement, including any advice that we may give you.

"third party" means any entity we engage to assist with provision of the services.

"this agreement" means the agreement made between us consisting of:

- these general terms and conditions;
- the Acceptable Use Policy;
- terms specific to the service, as described on the application

forms, our website, the product packaging and other published documentation; and

- everything else agreed between us in writing, and with the consent of our Chief Executive Officer, when you ordered the services (as amended from time to time).

## 3.0 Provision of service

3.1 Your use of the service is subject to this agreement. We may update the Acceptable Use Policy from time to time.

3.2 You certify that you are over 18 years of age. You agree to provide proof of age if we request it.

3.3 We will remedy faults in the equipment or the services in a timely manner and, if applicable to you, in accordance with any obligations to you under the Customer Service Guarantee.

3.4 We do not warrant that the service will be provided on an uninterrupted or fault-free basis.

3.5 We will not provide the service until you have met our requirements which may include, for example, pre-service testing and the provision of an appropriate power supply.

3.6 We may assign priority to certain types of data traffic.

3.7 We may, without notice, take any action that we consider necessary in order to ensure the secure and efficient operation of our network.

3.8 We may permanently and irrevocably remove your stored email messages from our servers if you do not access your mailbox for more than 3 months.

## 4.0 Charges and payment

4.1 You must pay any charges on your account in full and without any set-off or deduction by the date shown on the invoice.

4.2 You are responsible for all charges incurred through use of the service, including telecommunications costs and call charges, even if it was not you that used the service.

4.3 If you continue to use the service after the expiry date, we may charge you for an additional period of service of the same duration as the period of service for which you previously paid.

4.4 Unless the product description for the service indicates otherwise, unused time, data and included call allowances are not cumulative and are not carried forward from one billing period to the next.

4.5 If you supply your credit card or direct debit details to us, we may debit that account for all charges under this agreement until you notify us otherwise in writing.

4.6 If you do not pay any amount due to us under this agreement by the due date, we may:

- terminate, restrict or suspend the service and all other services in your name;
- use an external agency to recover the debt;
- charge you a late payment fee;
- charge you a disconnection fee if we terminate, restrict or



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suspend the service; and

- • add our collection costs to the amount that you owe us.

4.7 We may report any payment default to a credit reporting agency.

4.8 If we terminate, restrict or suspend the service for any reason, we reserve the right not to reinstate the service until you have paid all amounts outstanding on all your accounts. We may also charge a fee for reinstating your service. This fee is in addition to any late payment fees and disconnection fees.

4.9 We may terminate, restrict or suspend the service without notice if we reasonably believe that your use of the service may be a credit risk to us.

4.10 If another supplier charges us in relation to the service, we may bill you the amount of those charges, plus a service fee.

4.11 We will use our best endeavours to bill you promptly. However due to circumstances outside our control it is not always possible for us to include all charges for to a billing period on the bill for that period. Some charges may appear on a later bill. In some cases, we may bill you for earlier charges after the service has been terminated.

4.12 In order to provide some services to you (like international calls), we enter into arrangements with third parties and may be charged by them. If the third parties charge us more than we charge you for the service, we can charge you the difference in addition to our charge if we think your use of the services has been excessive or unusual.

4.13 We are not obliged to notify you of any excessive or unusual use of the service.

4.14 We may set off any amount payable to you against any amount payable by you to us.

4.15 If any payment, including an automatic payment, is dishonoured by you, we may charge a dishonour fee. This is in addition to any collection costs applicable under clause 4.6.

4.16 If we restrict or suspend the service in accordance with this agreement, charges will continue to accrue at the same rate that would have been applicable had the service not been restricted or suspended.

4.17 If we provide a telephone service to you, our advertised call prices do not apply to calls that you place via another supplier by using an override code (a special number that you dial prior to the number that you are calling). If you use an override code, we may bill you the amount that the other supplier charges us for that call, plus a service fee.

4.18 Our advertised call prices apply only once the service is fully transferred to us. In the meantime, your previous supplier may charge us instead of you for some of your calls. We will bill you the amount of those charges, plus a service fee.

4.19 We may change call prices at any time without notice. You may check current call pricing by visiting our website ([www.eftel.com.au](http://www.eftel.com.au)).

4.20 We may change any other component of the price of the service by giving you 21 days notice. If we increase the overall price of the service (excluding call costs) during an agreed fixed term, you may cancel the service within 42 days with no early termination fee. However, you must still pay any other charges applicable to the period during which you used the service.

### 5.0 Termination

#### 5.1 Termination by you

5.1.1 You may cancel the service at any time by giving us 30 days notice in writing.

5.1.2 You must pay the full balance of the account within 14 days of receiving the final invoice, which may include charges incurred or billed after the date of your cancellation notice and other termination and cancellation charges. We will not pay you a refund for any unused part of the service.

5.1.3 If you cancel the service before the end of an agreed fixed term, an early termination fee will apply. Unless the product description indicates otherwise, that fee will be the number of months remaining in the agreed fixed term multiplied by the monthly access fee.

#### 5.2 Termination by us

5.2.1 If we reasonably believe that you may have breached this agreement, we may terminate, restrict or suspend the service without notice at our discretion. If we do this, we will not pay you a refund for any unused part of the service.

5.2.2 We may terminate the service at any time without notice if the service depends upon a third party service, and the third party withdraws that service from us. If we do this, we will give you a pro-rata refund of any access fees that you have paid in advance.

5.2.3 We may terminate the service at any other time, by giving you 30 days notice. If we do this, we will give you a pro-rata refund of any access fees that you have paid in advance.

### 6.0 Ownership of equipment

#### 6.1 If we have provided equipment to you then:

- 6.1.1 the equipment always remains our property, or the property of third parties;
- 6.1.2 You must not enter into any agreement for the transfer, sale, mortgage, granting of any security interest or other dealing in connection with the equipment;
- 6.1.3 You must not part with possession of the equipment except to us;
- 6.1.4 You bear the risk of loss or damage to the equipment (except as a result of a negligent act or omission by us or our employees, agents or contractors) and you must indemnify us in respect of any such loss or damage;
- 6.1.5 You are liable to pay us on demand any cost or expense incurred in repairing or replacing the equipment or other property that we own, or for which we are liable, which is damaged or destroyed as a result of a connection to your



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equipment or network, as applicable; and

- 6.1.6 You must return the equipment to us as soon as practicable in accordance with any request by us to do so where the equipment is no longer used by you or this agreement is terminated.

## 7.0 Conditions relating to equipment

7.1 We may at any time and from time to time change the equipment as we think fit.

7.2 You must ensure that the equipment is not damaged and remains in good condition.

7.3 You are responsible for obtaining insurance cover for the equipment. 7.4 You must ensure that the equipment, and any other equipment, facilities and connections used in providing the service, are not altered, maintained, repaired or connected to, or disconnected from, any power source or line except by personnel approved by us.

7.5 You must make available an adequate power supply and environment (including air conditioning where applicable) for the operation of the equipment used in the provision of the services.

7.6 You must allow us safe access to your premises:

- 7.6.1 to enable us to provide the equipment and the services to you;
- 7.6.2 as required by us in connection with the provision, maintenance, repair or termination of the service;
- 7.6.3 to inspect, test or modify equipment which may be causing interference or danger;
- and 7.6.4 this right of access will not end until all equipment is returned to us, even if this agreement has terminated in the meanwhile.

7.7 You must, to the extent possible under the terms of your occupation of the premises where the equipment is installed, allow us to, and, where applicable, will ensure that the landlord or any other relevant entity allows us to, enter and remove the equipment upon expiry or termination of this agreement.

7.8 We may charge you the replacement value of our equipment if you do not return it to us in good condition within 14 days of the termination of the service.

7.9 You must pay all costs associated with returning any equipment to us, including any freight and insurance charges.

## 8.0 General

8.1 We may change this agreement at any time without notice. However, if we believe that any such changes are likely to be to your detriment, we will give you 30 days notice.

8.2 You must not transfer your rights or obligations under this agreement to anyone else.

8.3 You must not resell or redistribute the service to anyone else. 8.4 We may transfer our rights and obligations under this agreement by giving you 30 days notice.

8.5 You must, at your expense, obtain and maintain all equipment,

software, services and other items that you need to use the service.

8.6 We will determine the route and technical means by which we provide the service. You authorise us to act as your agent if we decide to alter how we provide the service and we require that authorisation.

8.7 It is your responsibility to assess whether the service suits your ongoing requirements. We may inform you of new products and services that may suit your requirements, but we are not obliged to do so.

8.8 If you ordered all or part of the service or a previous service through a reseller, we may pay initial and ongoing commissions to that reseller.

## 9.0 Liability and indemnity

9.1 You indemnify us, and will keep us fully indemnified, from and against any losses, damages, costs or expenses (including legal costs assessed on a solicitor client basis) which we may suffer or incur arising out of or in connection with an action or claim brought by any entity against us which relates to your use of the service.

9.2 We will not be responsible for any loss or damage to you or your business which may result from any interruptions, delays, faults or errors in the supply of the service.

9.3 All terms, conditions or warranties which may be implied into this agreement, statutory or otherwise, relating to the provision by us of the service are excluded to the fullest extent permitted by law.

9.4 Our liability for breach of any term, condition or warranty or under any remedy implied by law (which cannot be excluded) will be:

- 9.4.1 limited (if permitted by law) at our option to the repair or re-supply of equipment or services or the payment of the cost of having the equipment or services re-supplied;
- and 9.4.2 reduced to the extent that such liability is caused by your negligent acts or omissions, or a breach by you of the terms of this agreement.

9.5 The aggregate of our liability to you for all direct, indirect and consequential losses, damages, costs, expenses, actions and claims arising out of or otherwise in connection with this agreement, whether based on an action or claim in contract, equity, negligence, intended conduct, tort or otherwise, is limited to the total fees paid by you under this agreement in respect of the relevant services in the 12 months preceding the relevant cause of action accruing (or, if there is more than one, the last cause of action accruing).

9.6 We do not have any liability to you or to any other person for:

- 9.6.1 the acts or omissions of any other entity, including any third party;
- 9.6.2 faults or defects in services which are caused by your own conduct or misuse;
- 9.6.3 faults or defects that arise in telecommunications services provided to you other than under this agreement (even if they are connected with our consent to services



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that we have arranged);

- 9.6.4 any loss of revenue, profits or anticipated savings, loss of data, loss of bargain, other economic loss of any kind, damage to reputation or for any form of indirect or consequential loss, or special or penalty damages, whether in respect of negligence or other tort, breach of contract, equity or otherwise, arising out of or in connection with the provision of the service or this agreement;
- 9.6.5 faults or defects in the service that arise due to equipment or cabling owned or leased by you, or otherwise in your control;
- or 9.6.6 faults or defects in the service that arise due to failure by you or any other entity to appropriately maintain any equipment relevant to the supply of the service.

9.7 We do not guarantee local call charge Internet access from all locations. Although we may provide general advice in good faith, you are solely responsible for verifying Internet call costs with your telephone service supplier.

9.8 You are responsible for all use of the service, even if it was not you that used the service.

9.9 If you transfer to us from another service provider, it is your responsibility to find out what costs or penalties you will have to pay to that provider arising from the transfer. You must pay those costs and penalties.

9.10 We are not liable for any losses resulting from an act of god, national or local emergency, acts of government, acts of war or civil disorder, military operation, industrial disputes, fire, flood, lightning strike, weather damage, subsidence or earthquake, acts of terrorism or other events which are beyond our reasonable control.

## 10.0 Privacy

10.1 You authorise us to obtain, use, disclose and exchange personal information and credit information with other telecommunications companies and sub-contractors, credit agencies, credit reporting agencies and other credit providers for the following purposes (or purposes related to these purposes):

- 10.1.1 conducting credit checks, obtaining credit reports and maintaining your credit records;
- 10.1.2 entering into this agreement and establishing and managing your account;
- 10.1.3 developing, researching and promoting our products and services and the products and services of other entities;
- 10.1.4 reporting or gaining information on overdue payments, serious credit infringements and dishonoured payments;
- 10.1.5 managing your relationship with us and marketing our products and services and the products and services of other entities to you;
- 10.1.6 submitting your details to the Integrated Public

Number Database;

- and 10.1.7 as required or permitted under law, including the Privacy Act 1988 (Cth).

10.2 You acknowledge and agree that we do not guarantee the security of information conveyed over our network and that we are not liable to you for any loss or damage resulting from the diversion, publication, corruption or inappropriate or unlawful use of any information provided over our network.

10.3 You authorise us and our sub-contractors to contact you regarding anything to do with this agreement, the services or any other services we may wish to offer you. You may notify us if you wish to opt out of promotional communications.

## 11.0 Third Parties

11.1 We may engage third parties to provide any part of the services. All our rights and benefits under this agreement (including indemnities) are also for the benefit of third parties and may be exercised by them. Nothing in this agreement entitles you to make any claim against a third party. The words "we", "us" and "our" may be interpreted to include a third party in support of the intent of this clause.

## 12.0 General

12.1 This agreement is the entire agreement between you and us. It replaces any previous agreement.

12.2 This agreement will be interpreted under the laws of the Australian state or territory in which you ordinarily reside, or if you ordinarily reside outside Australia, under the laws of Western Australia. You agree to submit to the jurisdiction of the courts of the state or territory under which this agreement is to be interpreted.

12.3 The contact telephone number for customer service is 1300 550 550. The contact telephone number of the National Relay Service is 133 677. The contact telephone number of the Translating & Interpreting Service is 13 1450.

## 13.0 Survival

13.1 Clauses 4 to 7, 8.2, 8.4, 9 to 13, and all interpretative clauses survive termination of this agreement.