

Business Fibre Broadband

Terms and conditions

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1. Definitions and interpretation

1.1 Definitions

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

Acceptable Use Policy means Evolution IT's acceptable use policy (as modified from time to time) which may be found on <http://www.evit.com.au/AcceptableUsePolicy.pdf>

Accrued Charges means all charges and fees (including usage charges and access fees) incurred by the Customer to the date on which the Customer notifies Evolution IT of the cancellation of a Service and any outstanding amounts that cover installation costs.

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

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

Business Customer means any Customer who is a business or non-profit organisation (including a body corporate, sole trader or partnership) that acquires and uses the Service for business purposes.

Business End User means any person:

- a. to whom a Business Customer asks Evolution IT to supply the Service directly;
- b. who a Business Customer allows to use the Service; or
- c. to whom a Business Customer supplies any goods or services which use or rely on the Service.

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

Cancellation Date means:

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

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

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

Consumer Application means the Customer's application to Evolution IT for provision of the Service which sets out the Minimum Term, Service Description, Pricing Plan and details of any charge such as Equipment Charge, any fees such as access fees, administration fees, suspension fees, cancellation fees, late payment fees, payment dishonor fees, reconnection fees or reactivation fees payable by the Customer.

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

Customer means the person who submits an Application to Evolution IT and who acquires and uses the Service from Evolution IT.

Equipment Charge means any payment to Evolution IT for use of equipment.

Evolution IT means Evolution IT Pty Ltd ABN 29 119 526 304.

Fixed-Term Agreement means an Agreement that has a Minimum Term.

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

Insolvency Event means:

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

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

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

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

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

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

ONT Optical Network Terminal. Device installed by Technicians on the day of activation for fibre broadband access

Party means a party to the Agreement.

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

Personnel of a person means that person's employees, agents, contractors or other representatives and, in the case of Evolution IT, includes the employees, agents, contractors or other representatives of Evolution IT.

Premises means locations:

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

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

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

Residential Grade Service means a service that does not carry a service level agreement, or a guarantee of uptime. (Evolution IT imply and express no warranties as to its suitability or availability for any purpose).

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

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

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

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

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

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

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

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

Telecommunications Legislation means the Telecommunications Act 1997 (Cth), the Telecommunications (Consumer Protection and Service Standards) Act 1999 (Cth) and Part XIB, Part XIC and related provision of the Competition and Consumer Act.

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

1.2 Interpretation

- a. The following words have the same meaning in the Agreement as they have in the Telecommunications Legislation:
 - i. Carriage service;
 - ii. Carriage service provider;
 - iii. Carrier; and
 - iv. Content service.
- b. A term which is defined in any part of the Agreement has the same meaning in every other part of the Agreement.
- c. The singular includes the plural and vice versa.
- d. Different grammatical forms of the same word(s) have the same meaning.
- e. A reference to a statute, ordinance, code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-

enactments or replacements of any of them.

- f. A reference to A\$, \$A, dollar or \$ is to Australian currency, unless otherwise stated.

2. Terms

- 2.1 The Agreement commences when Evolution IT accepts the Application.
- 2.2 Evolution IT will commence providing Service to the Customer under the Agreement from the Service Start Date.
- 2.3 If the Agreement is not a Fixed-Term Agreement, Evolution IT will provide the Service to the Customer in accordance with the Agreement until the Service is cancelled in accordance with the Agreement.
- 2.4 If the Agreement is a Fixed-Term Agreement, Evolution IT will provide the Service to the Customer in accordance with the Agreement for the minimum term or until the Service is cancelled in accordance with the Agreement, as the case may be. If neither party cancels the Service at the end of the minimum term Evolution IT will continue to supply the Service to the Customer on a month-to-month basis in accordance with the Agreement until the Service is cancelled in accordance with the Agreement.

3. Variation to Agreement

- 3.1 Evolution IT may vary any part of the Agreement:
 - a. with the Customer's consent; or
 - b. without the Customer's consent provided Evolution IT complies with the Telecommunications Legislation.
- 3.2 If Evolution IT varies a Fixed-Term Agreement under clause 3.1:
 - a. Evolution IT must if the variation affects the Customer and it is not a change of a type listed in clause 3.3:
 - i. Comply with the provisions of the Telecommunications Legislation;
 - ii. Giving the Customer twenty-one (21) days' notice in writing of the change before the change occurs; and
 - iii. Offer the Customer the right to cancel the Service (within thirty (30) days from the date of the notice) without incurring fees or charges other than Accrued Charges.
 - b. Evolution IT must if the variation affects the Customer and is a change of the type listed in clause 3.3, comply with any additional notice provisions in clause 3.3; and
 - c. If the variation relates to the characteristics of the Service (including price) and the Customer does not agree that the change is likely to benefit the Customer or have only a neutral or minor detrimental effect on the Customer, the Customer may (if the change is not of a type described in clause 3.3), cancel the Service without incurring fees or charges other than Accrued Charges.
- 3.3 Evolution IT may vary a Fixed-Term Agreement even if the variation affects the Customer so long as it complies with the provisions of the Telecommunications Legislation, if the change is:
 - a. required by law;
 - b. in relation to the cost of international services or roaming;
 - c. in relation to a fee or charge to account for a tax imposed by law;

- d. in relation to a fee or charge for a service ancillary to the supply of the Service provided that if the change affects the Customer, Evolution IT offers the Customer:
 - i. a right to cancel the Service without incurring fees or charges other than Accrued Charges;
- e. to increase the price of a content or premium service (where the supplier who supplies the content service or premium service to Evolution IT to allow supply of the Service increases the price they charge Evolution IT for the content service or premium service) provided that if the change affects the Customer, Evolution IT:
 - i. gives the Customer reasonable notice of the increase in price if the Customer has used the content or premium service within the previous six (6) months; and
 - ii. allows the Customer to elect to not use the content or premium service without attracting any additional charges;
- f. as a result of another carrier or service provider varying the agreement Evolution IT has with it in relation to a carriage service and as a result Evolution IT needs to make changes to the Agreement, provided that if the change affects the Customer, Evolution IT gives the Customer:
 - i. notice in writing of the change; and
 - ii. thirty (30) days from the date of the notice in which the Customer may cancel the Service without incurring fees or charges other than Accrued Charges.

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

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

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

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

4. Application for the supply of the Service

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

5. Privacy

5.1 Evolution IT may collect, use and disclose personal information about the Customer to decide whether to start, stop or limit supply to the Customer.

5.2 Evolution IT may collect, use and disclose personal information about the Customer for purposes related to the supply of the Service (or for purposes which would be reasonably expected) including invoicing and account management, business planning and product development, and to provide the Customer with information about promotions, as well as the products and services.

5.3 Evolution IT may collect, use and disclose personal information about the Customer for the purposes in clauses 5.1 and 5.2 above to or from:

- a. a credit reporting agency or credit provider;
 - b. third parties who are not related to Evolution IT, including Evolution IT's agents, dealers, contractors, and debt recovery or mercantile agents;
 - c. suppliers who need access to the Customer's personal information to provide Evolution IT with services to allow supply of the Service; and
- 5.4 Evolution IT may be permitted or required by applicable laws to collect, use or disclose personal information about the Customer, including to:
- a. the operator of the Integrated Public Number Database, which is an industry wide database of all listed and unlisted public numbers in Australia;
 - b. emergency services organisations; and
 - c. to law enforcement agencies and government agencies for purposes relating to the enforcement of criminal and other laws.
- 5.5 Where Evolution IT will be, or will under the Privacy Act 1988 (Cth) be, considered to be a credit provider to the Customer in relation to the Agreement, the following provisions will apply:
- a. Evolution IT may give information about the Customer to a credit reporting agency for the following purposes:
 - i. to obtain a consumer credit report about the Customer; and/or
 - ii. to allow the credit reporting agency to create or maintain a credit information file containing information about the Customer.
 - b. Such information is limited to:
 - i. identity such as the Customer's name, sex, address (and the previous two addresses), date of birth, name of employer and driver's license number;
 - ii. the Customer's application for credit or commercial credit and the fact that the Customer has applied for credit and the amount;
 - iii. the fact that Evolution IT is a current credit provider to the Customer;
 - iv. invoices which are overdue by more than sixty (60) days and for which debt collection action has started;
 - v. advice that the Customer's invoices are no longer overdue in respect of any default that has been listed;
 - vi. information that, in the opinion of Evolution IT, the Customer has committed a serious credit infringement (that is, acted fraudulently or shown an intention not to comply with the Customer's credit obligations); and
 - vii. dishonoured cheques - cheques drawn by the Customer for \$100 or more which have been dishonoured more than once.
 - c. The Customer agrees that:
 - i. Evolution IT may obtain information about the Customer from a business which provides information about the commercial credit worthiness of persons for the purpose of assessing the Customer's application for consumer credit;
 - ii. Evolution IT may obtain a consumer credit report containing information about the Customer from a credit reporting agency for the purpose of assessing the Customer's application for commercial credit;
 - iii. Evolution IT may exchange information about the Customer with those credit providers named in a consumer credit report issued by a credit reporting agency for the following purposes:
 - a. to assess an application by the Customer for credit;
 - b. to notify other credit providers of a default by the Customer;
 - c. to exchange information with other credit providers as to the status of the loan where the Customer is in default with other credit providers; and/or
 - d. to assess the Customer's credit worthiness; and
 - iv. Such the information exchanged may include anything about the Customer's credit worthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988 (Cth).
- 5.6 If the Customer wishes to only receive communications that are account-related or legally required, the Customer may request not to receive other communications by submitting a written request to Evolution IT.
- 5.7 If the Customer is an individual, the Customer is entitled to:
- a. gain access to the Customer's personal information held by Evolution IT, unless Evolution IT is permitted or required by any applicable law to refuse such access; and
 - b. correct any personal information held by Evolution IT.
- 5.8 If the Customer does not provide part or all the personal information requested by Evolution IT then Evolution IT may refuse to supply, or limit the supply to the Customer of, personal credit or the Service.
- 5.9 If the Customer has authorised Evolution IT to give or accept verbal instructions or other communication to or from the Customer in connection with the Service and the Customer has informed Evolution IT of a password to be used for Evolution IT's verification purposes when such verbal instructions or other communication is given or received, the Customer agrees:
- a. to keep confidential such password;
 - b. that Evolution IT may assume that any person who quotes the password is authorised by the Customer to accept or give verbal instructions or other communication from or to Evolution IT in connection with the Service on behalf of the Customer;
 - c. that the Customer will not hold Evolution IT liable in any way if any information relating to the Customer's account or any of the Customer's personal information is inadvertently disclosed to any person not authorised by the Customer to receive such information who quotes such password to Evolution IT; and
 - d. that all calls made to or from Evolution IT's may be recorded for customer training, improvement programs and verification purposes.
- 5.10 The reference to "Customer" in this clause 5 includes a reference to and is applicable to Evolution IT's collection, use and disclosure of the personal information of the director or other officer of the Customer who completes or signs an Application on the Customer's behalf as he/ she hereby acknowledges.
- ## 6. Using the Service
- 6.1 The Customer must reasonably co-operate with Evolution IT

to allow Evolution IT, or a supplier, to establish and supply the Service to the Customer safely and efficiently.

- 6.2 Evolution IT will provide the Service to the Customer with reasonable care and skill. In the event of unexpected faults Evolution IT will use reasonable endeavours to ensure the Service is restored as soon as possible.
- 6.3 When using the Service, the Customer must comply with:
- all laws;
 - all directions by a regulator;
 - all notices issued by authorisation of or under law;
 - the Acceptable Use Policy (unless it is stated in clause 17 to be not applicable to the Service); and
 - reasonable directions by Evolution IT.
- 6.4 The Customer must not use, or attempt to use, the Service:
- to break any law or to infringe another person's rights;
 - to transmit, publish or communicate material which is defamatory, offensive, abusive, indecent, menacing, unwanted or otherwise unlawful or unauthorised;
 - in any way that may expose Evolution IT to liability; or
 - in any way, which or which may damage, interfere with or interrupt the Service, the Evolution IT network or a supplier's network used to supply the Service.
- 6.5 Evolution IT may require the Customer to stop doing something which Evolution IT reasonably believes is in breach of clauses 6.3 or 6.4. The Customer must immediately comply with any such request failing which Evolution IT may take any steps reasonably necessary to ensure compliance with clauses 6.3 and 6.4.
- 6.6 The Customer acknowledges that, where the Service is a carriage service, Evolution IT, or any supplier whose network is used to supply the Service, may be required to intercept communications over the Service and may also monitor the Customer's usage of the Service and communications sent over it.
- 6.7 Evolution IT may (but is not obliged to) contact the Customer if Evolution IT becomes aware of an unusually high use of the Service by the Customer (including to verify any costs or charges which the Customer may have incurred). In such event, Evolution IT may ask the Customer to make a pre-payment usage charge under clause 9.5. Evolution IT is also entitled to suspend the Service under clause 13.1(a) for an unusually high use of the Service.
- 6.8 The Customer must comply with any rules imposed by any third party whose content or services the Customer access using the Service or whose network the Customer's data traverses.

7. Equipment

- 7.1 The Customer must ensure that all additional equipment connected from the ONT used in connection with the Service and the way the Customer uses that equipment complies with:
- all laws
 - all directions by a regulator;
 - all notices issued by authorisation of or under law; and
 - reasonable directions by Evolution IT,
 - adhere to the 'End User Gateway Minimum Requirements' with respect to connectivity, in particular;
- (i) The customer is to use a suitably configured router,

configured and supplied by Evolution IT, or alternatively configured by the end user which will have at the minimum a 10/100/1000 Base-T interface to plug into the NTD or VDSL modem to support the connection. This will present an Ethernet MAC address to the ONT or VDSL modem in order to ensure compatibility routing.

- (ii) In addition to the above requirements, the router must be able to support a PPPoE/IPoA or statically routed connection depending on the end user's location and connectivity options.

Failing which Evolution IT may disconnect the equipment from the Service upon giving the Customer reasonable notice or with no notice in the event of an emergency.

7.2 In relation to equipment:

- any Evolution IT/Carrier owned equipment remains Evolution IT's/ Carrier's property;
- the Customer is responsible for any Evolution IT owned equipment from the time when the Customer receives it;
- the Customer must not mortgage or grant a charge, lien or encumbrance over any Evolution IT owned equipment;
- the Customer may purchase equipment from Evolution IT to use in connection with the Service. In such event, the Customer will own the equipment and be responsible for the equipment from when the Customer receives it.

7.3 The Customer must provide an adequate and suitable space, power supply and environment for all equipment used in connection with the Service and located on the Premises.

7.4 Unless otherwise agreed between the parties, the Customer must allow Evolution IT's personnel (and no other person) to service, modify, repair or replace any Evolution IT owned equipment.

7.5 The Customer is responsible for any lost, stolen or damaged Evolution IT owned equipment, except where caused by Evolution IT or Evolution IT's personnel.

7.6 The Customer will be responsible for any outstanding payments for equipment that the Customer has purchased from Evolution IT, even when that equipment is lost, stolen or damaged.

8. Network maintenance, fault reporting and rectifications

8.1 Evolution IT may conduct maintenance on the Evolution IT network and maintenance may be conducted on a supplier's network used to supply the Service. Evolution IT will endeavour to conduct scheduled maintenance on the Evolution IT network outside normal business hours.

8.2 Evolution IT will provide a 24 hour fault reporting service for the Customer to report faults. Before the Customer reports a fault to Evolution IT, the Customer must take all reasonable steps to ensure that the fault is not caused by any equipment that is not Evolution IT owned equipment.

8.3 The Customer must provide all reasonable assistance to enable Evolution IT or Evolution IT personnel, or where necessary a supplier or supplier's personnel, to investigate and where applicable repair a fault including providing them with adequate and timely access to the Premises. For residential and business customers, this is up to the Network Boundary Point (NBP) or Main Distribution Frame (MDF) whichever is relevant of the premises

8.4 The Customer is responsible for ensuring permission is in

place with the landlord of the property where the installation is to occur and accepts any costs associated with any installation works required after the boundary point.

- 8.5 Evolution IT will repair faults within the Evolution IT network used to supply the Service. Unless the Service Description expressly provides otherwise. Evolution IT is not responsible for repairing any fault in the Service where the fault arises in or is caused by:
- a supplier's network;
 - equipment that is not owned by our carrier; or
 - facilities outside the Evolution IT network.
- 8.6 Where:
- a fault arises in or is caused by a supplier's network;
 - Evolution IT becomes aware of the fault; and
 - Evolution IT is not responsible for the repair of that fault. Evolution IT will notify the supplier of the fault and request that the fault be corrected promptly, but Evolution IT will not bear any further liability or responsibility.
- 8.7 Where a fault arises in or is caused by equipment that is not Evolution IT owned equipment, Evolution IT is not responsible for the repair of that fault. Nevertheless:
- if the Customer asks Evolution IT to investigate a fault or asks Evolution IT to request a supplier to investigate a fault, Evolution IT will give the Customer an estimate of the probable cost of such investigation and obtain the Customer's agreement to bear those costs before undertaking or arranging an investigation and using reasonable endeavours to identify and inform the Customer of the probable cause of the fault; and
 - if the Customer Requests Evolution IT to repair the fault and Evolution IT agrees, Evolution IT will give the Customer an estimate of the probable cost of repairing the fault and obtain the Customer's agreement to bear those costs before carrying out the repair.
- 8.8 If Evolution IT investigates a fault and determines that the fault is attributable to a breach of the Agreement by the Customer, a negligent or fraudulent act or omission by the Customer or any of the Customer's personnel or a failure of any of the Customer's equipment and/or premises, the Customer must pay the costs incurred by Evolution IT in investigating.

9. Fees and charges

- 9.1 The Customer must pay:
- The fees and charges for the Service, which are set out in the Agreement or in any applicable Special Offer; and
 - Any additional fees and charges noted in the Agreement (including in the Application) or notified by Evolution IT in accordance with the Agreement from time to time.
- 9.2 The Customer must pay all fees and charges which are incurred for the Service even if the Customer did not authorise its use.
- 9.3 The Customer must pay the fees and charges for the Service even if the Service is unavailable or the Customer is unable to access the Service. However, the Customer may be entitled to a refund or a rebate as stated in the Agreement or under the law.
- 9.4 In addition to the fees and charges the Customer incurs in the normal use of the Service (including an access fee,

where applicable), Evolution IT may charge the Customer administration fees and other similar charges including suspension fees, cancellation fees, late payment fees, payment dishonor fees or reconnection or reactivation fees as set out in the Agreement.

- 9.5 Evolution IT may also ask the Customer to make a pre-payment usage charge or request that the Customer make an interim good-faith payment (including, for example, if there has been an unusually high use of the Service or if the Customer wishes to activate roaming).
- 9.6 Evolution IT will calculate fees based on billing information generated or received by Evolution IT which will be prima facie evidence of the Customer's use of the Service and the fees and charges incurred.
- 9.7 If the Customer uses the services of a third party, the Customer will be billed at the third party's applicable rates and charges. Where Evolution IT invoices the Customer for the Customer's use of the services of a third party, it will be in Evolution IT's capacity as that third party's billing agent only.
- 9.8 Evolution IT may offer the Customer a Special Offer from time to time. In such event, Evolution IT will notify the Customer of the Special Offer and the terms of the Special Offer either through general advertising or by specifically advising the Customer. A Special Offer may be an offer to vary the pricing plan or the terms of supply (including the minimum term) for the Service and it may be subject to certain conditions. If the Customer validly accepts a Special Offer, the terms of the Special Offer will prevail only to the extent they are inconsistent with the terms of the Agreement. Upon the expiry or termination of the Special Offer, the full terms and conditions of the Agreement will apply.
- 9.9 Some fees and charges for the Service are subject to variation such as charges relating to:
- international services or roaming; and
 - content or premium services.
- The Customer should inform Evolution IT before using the Service from outside Australia.
- 9.10 A credit card will be required for all payments to be deducted and one month upfront payment on the first bill will be deducted as at 17.7.

10. Payments

- 10.1 Evolution IT will invoice the Customer on a regular basis (either in advance or in arrears), unless otherwise set out in the Service Description. The Customer can request Evolution IT to send a copy of the invoice electronically.
- 10.2 Service usage records are obtained by Evolution IT from a wholesale supplier. Evolution IT will make reasonable efforts to supply these records in a timely manner to the Customer via post or email.
- 10.3 If Evolution IT receive usage records in time from the wholesale supplier, Evolution IT will make all reasonable efforts to notify the Customer of the applicable usage records within the relevant billing period. In circumstances where this may not be possible, and for reasons outside the direct control of Evolution IT, Evolution IT will make all reasonable efforts to include these applicable usage charges as soon as it is able to after the relevant billing period.
- 10.4 Where usage records are provided by the wholesale supplier to Evolution IT outside the relevant billing period, Evolution IT will incorporate these and associated charges

on a subsequent or later invoice. This is called back billing. Evolution IT will not back bill for usage that has occurred 160 days or more previously, if Evolution IT has not already advised the Customer of the charges.

- 10.5 Where usage records are delayed and back billing occurs, if any plan allowances or inclusions are exceeded in the previous billing periods, any applicable excess or additional charges will be applied to and payable by the Customer on the subsequent invoices.
- 10.6 If the Customer's payment is not honoured for any reason, Evolution IT may charge the Customer a \$10 fee.
- 10.7 Subject to clause 11.4, the Customer must pay the entire amount invoiced by the due date specified in the payment notification, invoice or as otherwise notified by Evolution IT.
- 10.8 If the Customer does not pay the invoice by the date the payment is due, Evolution IT may:
- charge the Customer a late fee which is payable until all outstanding amounts are paid;
 - require the Customer to provide reasonable security to Evolution IT to secure the payment of future amounts due under the Agreement;
 - suspend or cancel the Service, in accordance with clauses 12 or 13 as relevant or the relevant Service Description. If Evolution IT suspends or cancels the Service, Evolution IT may charge the Customer a suspension fee, cancellation fee and/or reconnection or reactivation fee as set out in the Agreement. Reconnection or reactivation of the Service is subject to payment of the reconnection or reactivation fee;
 - engage a mercantile agent to recover the money the Customer owes Evolution IT and charge the Customer a recovery fee;
 - institute legal proceedings against the Customer to recover the money the Customer owes Evolution IT and recover from the Customer its legal costs; and/or
 - on-sell any unpaid amounts to a third party.
- 10.9 If the Customer has overpaid as a result of an invoicing error, the Customer's account will be credited with the amount overpaid or Evolution IT will use reasonable endeavours to notify the Customer and refund the over payment.
- 10.10 Unless otherwise indicated, the fees and charges set out in the Agreement include any amount on account of tax. Where the fees and charges do not include an amount on account of tax and tax is payable by Evolution IT in relation to, or on any supply under or in connection with the Agreement, Evolution IT will increase the tax exclusive fees and charges by an additional amount on account of the tax. The Customer must pay the additional amount at the same time the Customer pays the fees and charges.
- 10.11 If the Customer requires a copy of any invoice sent by Evolution IT in relation to the Service after cancellation of the Service or termination of the Agreement and a copy of such invoice remains retrievable from Evolution IT's records, the Customer must pay Evolution IT's reasonable administration fee for such retrieval.

11. Complaints and disputes

- 11.1 If the Customer has any complaints in connection with the Service, the Customer may complain in writing or by calling Evolution IT.
- 11.2 Evolution IT will use its best endeavours to resolve all complaints, however if Evolution IT is not able to resolve a complaint to the Customer's satisfaction, the Customer

may take other action, such as informing the Telecommunications Industry Ombudsman, the Department of Fair Trading or Department of Consumer Affairs in the relevant state or territory.

- 11.3 Where a Customer's complaint is about a fee or charge for the use of the Service, Evolution IT may suspend payment obligations, for that fee or charge only, until the complaint has been investigated and resolved. All other fees and charges that are not in dispute remain due and payable.
- 11.4 Where a Customer's complaint is about a significant and sustained loss of access to, or use of, the Service which is not reasonably attributable to the Customer or non Evolution IT owned equipment, the Customer may be entitled on request to a refund or a rebate of any access fees for the period in which the Customer's access or use was interrupted (including when an Intervening Event occurs) as stated in the Agreement or under the law.

12. Cancelling the Service

- 12.1 The Customer may cancel the Service at any time by:
- giving Evolution IT thirty (30) days' notice (including if the Customer does not wish to continue to use the Service after the end of the minimum term of a Fixed-Term Agreement); or
 - giving Evolution IT notice, if Evolution IT breaches a material term of the Agreement and Evolution IT either:
 - cannot remedy that breach; or
 - fails to remedy that breach within thirty (30) days after the Customer gives Evolution IT notice requiring Evolution IT to do so.
- 12.2 If a Consumer Customer acquires the Service from Evolution IT through a sales method regulated by door-to-door sales legislation in the Customer's state or territory, the Consumer Customer may cancel the Service before the end of the cooling-off period set out in the relevant legislation.
- 12.3 If the Agreement is a Fixed-Term Agreement, a Customer may also cancel the Service pursuant to clause 3.
- 12.4 Evolution IT may cancel the Service at any time including prior to the service start date, without liability, if:
- there is an emergency;
 - Evolution IT reasonably suspects fraud or other illegal activity by the Customer or any other person in connection with the Service;
 - any amount owing to Evolution IT in respect of the Service is not paid by its due date and the Customer fails to pay that amount in full within ten (10) business days after Evolution IT gives the Customer a notice requiring payment of that amount, unless otherwise set out in the Agreement;
 - Evolution IT reasonably consider the Customer a credit risk because the Customer has not paid amounts owing to Evolution IT in respect of any service by its due date and the Customer fails to pay that amount in full within the period stated in any notice given to the Customer requiring payment of that amount;
 - the Customer breaches a material term of the Agreement (other than a breach which separately gives rise to rights under this clause) and the Customer either cannot remedy that breach or fails to remedy that breach within thirty (30) days after Evolution IT gives the Customer notice requiring the Customer to do so;
 - Evolution IT is required to do so to comply with an order,

- instruction, request or notice of a regulator, an emergency services organisation, any other competent authority or by authorisation of or under law;
- g. the Customer suffers an insolvency event and Evolution IT reasonably believes Evolution IT is unlikely to receive payment for amounts due;
 - h. the Customer dies or if the Customer is a partnership and the partnership is dissolved or an application is made to dissolve the partnership, and Evolution IT reasonably believes Evolution IT is unlikely to receive payment for amounts due;
 - i. the Service is suspended for more than fourteen (14) days, unless otherwise set out in the Agreement;
 - j. if Evolution IT reasonably determines that it is not technically or operationally feasible or commercially viable to supply the Service to the Customer;
 - k. any Intervening Event prevents the supply of the Service in accordance with the Agreement for more than fourteen (14) days; or
 - l. Evolution IT is otherwise entitled to do so under the Agreement or Acceptable Use Policy.
- 12.5 Evolution IT may cancel the Service under clause 12.5 as soon as Evolution IT gives the Customer notice, unless otherwise set out in the Agreement. However, Evolution IT may cancel the Service immediately if there is an emergency.
- 12.6 If the Customer elects to have an equivalent service to the Service supplied by another carrier, carriage service provider or service provider (including, by churning) and that carrier, carriage service provider or service provider informs Evolution IT that the Customer has elected to have the Service supplied by them or have churned to them, the Service will be deemed to have been cancelled by the Customer immediately. This will be without prejudice to Evolution IT's rights under the Agreement with respect to the Service.
- 12.7 If the Service is cancelled:
- a. the Customer is liable for any charges incurred (including the cancellation fee and outstanding Equipment Charges, if any as set out in the Agreement) up to, and including, the Cancellation Date;
 - b. the Customer authorises Evolution IT to apply any over payment on the Customer's account and/or money that the Customer has paid in advance for the Service which is being cancelled to pay for any undisputed outstanding charges (including the cancellation fee and outstanding Equipment Charges, if any as set out in the Agreement);
 - c. subject to clause 12.8(b) and unless otherwise set out in the Service Description, Evolution IT will refund any over payment on the Customer's account;
 - d. if the Customer is required under the Service Description to pay for the Service by direct debit payment (either from the Customer's nominated bank or credit card account), the Customer authorises Evolution IT to debit any undisputed outstanding charges (including any cancellation fee and outstanding Equipment Charges, if any as set out in the Agreement) from the Customer's nominated bank or credit card account;
- 12.8 No cancellation fee shall be payable by the Customer:
- a. If the Agreement is a Fixed-Term Agreement that is cancelled after the expiry of the minimum term.
- 12.9 If the Service is cancelled as a result of circumstances reasonably attributable to the Customer (including if the Customer changes the location of the Premises, or elects to churn their service to another carriage service provider):
- a. before the Service Start Date, the Customer must pay Evolution IT all infrastructure and installation costs incurred by Evolution IT in connection with preparations for supplying the Service to the Customer;
 - b. during the minimum term, the Customer must pay Evolution IT a cancellation fee or such higher amount as may be provided in clause 17;
 - c. the Customer must pay Evolution IT all costs incurred to rectify the Customer's breach of the Agreement.
- 12.10 If the Customer wishes to reinstate the Service at any time after cancellation the Customer may make a request to Evolution IT provided that if the Service is cancelled as a result of circumstances attributable to the Customer and Evolution IT reinstates the Service, then the Customer may have to pay Evolution IT a reconnection or reactivation fee or such higher amount as may be provided in clause 17.
- 12.11 If the Customer is able to use the Service after the Cancellation Date, the Customer is liable for any charges incurred by the Customer for that use, in addition to any other charges under this clause 12.
- ### 13. Suspending the Service
- 13.1 Evolution IT may suspend the Service at any time, without liability:
- a. in any of the circumstances described in clause 12.5(a) to (h) and (1);
 - b. if it is necessary to allow Evolution IT or a supplier to repair, maintain or service any part of the Evolution IT network or a supplier's network used to supply the Service;
 - c. if Evolution IT reasonably believes there has been an unusually high use of the Service; or
 - d. problems are experienced interconnecting the Evolution IT network with any supplier's network used to supply the Service.
- 13.2 Evolution IT may suspend the Service under clause 13.1 as soon as Evolution IT gives the Customer notice, unless otherwise set out in the Agreement. However, Evolution IT may suspend the Service immediately if there is an emergency.
- 13.3 Evolution IT may suspend the Service if any amount owing to Evolution IT is not paid by its due date, Evolution IT gives you notice requiring payment of that amount (which Evolution IT may not give in respect of any amount which is validly disputed in accordance with clause 11 (Complaints and disputes) until after Evolution IT has completed investigations referred to in clause 11.4) and you fail to pay the amount in full within five Business Days after Evolution IT gives you that notice.
- 13.4 If Evolution IT suspends the Service, Evolution IT may later cancel the Service for the same or a different reason.
- 13.5 If the Service is suspended, the Customer will have to pay access fees for the Service while it is suspended.
- 13.6 If the Service is suspended and the suspension was not as a result of circumstances attributable to the Customer or non Evolution IT owned equipment, the Customer may be entitled on request to a refund or a rebate of any access fees for the period of suspension as stated in the Agreement or under the law.
- 13.7 If the Service is suspended as a result of circumstances

attributable to the Customer, the Customer may have to pay Evolution IT a suspension fee.

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

14. Liability

- 14.1 The Customer is liable to Evolution IT for any breach of the Agreement that causes foreseeable loss to Evolution IT.

- 14.2 Except as in the Agreement otherwise expressly provided (including under clause 14.3), the Customer is not liable to Evolution IT for any consequential losses Evolution IT suffers or for any costs, expenses, loss or charges that Evolution IT incurs which are not a direct result of something the Customer has done.

- 14.3 Evolution IT is not in any way liable to any Business End User (whether in contract or tort (including negligence), under any legislation or otherwise). A Business Customer must indemnify and keep Evolution IT fully indemnified against any loss or damage incurred in connection with any claim against Evolution IT by a Business End User in relation to:

- a. the use (or attempted use) of the Service; or
- b. the equipment used in connection with the Service.

- 14.4 Evolution IT has responsibilities and obligations under the law, including under:

- a. the Telecommunications Legislation;
- b. the Competition and Consumer Act; and
- c. applicable laws, regulations and codes.

Nothing in the Agreement removes or limits any rights that the Customer has under existing laws or regulations.

- 14.5 Evolution IT may be liable to the Customer for:

- a. any damage to the Customer's property which has been caused by the fault, negligence or fraud by Evolution IT or Evolution IT's personnel during installation, repair or maintenance;
- b. interruptions in the Customer's use of the Service as a result of a fault or negligence of Evolution IT or Evolution IT's personnel, to the extent of a refund or rebate for the period of the interruption and compensation for any reasonable loss incurred as stated in the Agreement and where required by law
- c. if a customer applies for a residential grade service, which is supplied on the basis is solely for personal, domestic or household use and they use it for any business purposes, Evolution IT is not liable for any business related losses
- d. death or personal injury caused by Evolution IT or Evolution IT's personnel; or
- e. breach of terms that are implied by the Competition and Consumer Act and other laws into contracts for the supply of goods and services. If any condition or warranty is implied into the Agreement under the Competition and Consumer Act or other laws then Evolution IT's liability (if any) for breach of that condition or warranty in connection with any goods or services Evolution IT supplies under the Agreement is (in relation to a Business Customer) limited to re-

supply, repairing or replacing the goods or services, where those goods or services are not of a kind ordinarily acquired for personal, domestic or household use and where it is reasonable and fair to do so.

- 14.6 Other than as provided in clauses 14.4 and 14.5, Evolution IT is not liable to the Customer under this Agreement.

- 14.7 If the Customer has contributed to any loss or damage the Customer is claiming against Evolution IT, Evolution IT's liability is reduced to the extent of the Customer's contribution.

- 14.8 Evolution IT is not liable to the Customer for any consequential losses the Customer suffers or for any costs, expenses, loss or charges that the Customer incurs which is not a direct result of something Evolution IT has done.

- 14.9 In relation to a Business Customer, to the extent permitted by law, Evolution IT's total liability for loss is limited in aggregate for any claim or series of connected claims to the service cost as per the Agreement, to the extent that the exclusions or limitations in clauses 14.4 to 14.7 do not apply.

15. Assignment and transfer

- 15.1 Evolution IT may:

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

16. General

- 16.1 The Agreement is governed by the laws of the Commonwealth of Australia and the laws of the state or territory in which the Customer normally reside and the parties submit to the exclusive jurisdiction of the courts of the Commonwealth and its states and territories.

- 16.2 Evolution IT owns all material (including intellectual property rights) developed by Evolution IT or Evolution IT's personnel, at Evolution IT's direction.

- 16.3 Evolution IT may permit the Customer to use this material, or other material licensed by Evolution IT, as part of the Service. This permission is subject to any conditions which Evolution IT may impose from time to time and will cease when the Service is cancelled.

- 16.4 The Customer must not infringe any person's intellectual property rights (such as by using, copying or distributing data or software without the permission of the owner) in using the Service. If the Customer breaches this clause, Evolution IT may suspend or cancel the Service without notice.

- 16.5 If the Customer has been provided with a service equivalent to the Service by another carrier, carriage service provider or service provider and has elected to have that service replaced by the Service under the Agreement (including, by churning), the Customer authorises Evolution IT to:

- a. inform that carrier, carriage service provider or service

- provider that the Customer has elected to have the Service supplied by Evolution IT or have churned to Evolution IT; and
- b. to take such action (including give such notices and sign such documents) on behalf of the Customer as may be necessary or appropriate to affect the transfer or churning transaction.
- 16.6 If an Intervening Event occurs which affects a party (the said party) from performing any of the said party's obligations under the Agreement (other than an obligation to pay money), then the said party will not be liable for failing to perform that obligation provided:
- a. the said party must notify the other party of the Intervening Event and use its best efforts to resume performance in accordance with the Agreement as soon as reasonably possible; and
- b. the said party's obligations continue during the Intervening Event unless it is not able to perform its obligations due to the other party being unable to perform its obligations due to the Intervening Event.
- 16.7 The Customer represents that the Customer is not a carrier or carriage service provider. If the Customer are or become a carrier or carriage service provider, Evolution IT may immediately cancel the Service by giving the Customer notice.
- 16.8 If the Customer breaches the Agreement and Evolution IT does not exercise a right that Evolution IT has because of the Customer's breach, Evolution IT does not waive:
- a. that right unless Evolution IT gives the Customer notice in writing confirming that Evolution IT have waived that right; or
- b. Evolution IT's right to insist that the Customer perform any obligation the Customer has under the Agreement.
- 16.9 Evolution IT may pay a commission to any of Evolution IT's personnel in connection with the Agreement.
- 16.10 Each party will do, sign, execute and deliver and will procure that each of its employees and agents does, signs, executes and delivers, all agreements, documents, instruments and acts reasonably required of it by notice from the other party to effectively carry out and give full effect to the Agreement and the rights and obligations of the parties under it.
- 16.11 Information and advice about the Customer's rights can be obtained by contacting the Australian Communications and Media Authority, the Telecommunications Industry Ombudsman, the Australian Competition and Consumer Commission or the relevant Department of Fair Trading or Department of Consumer Affairs in the Customer's state or territory.
- 16.12 Any notice or demand given pursuant to this Agreement shall be in writing and shall be delivered, posted or e-mailed:
- a. to the Customer at the Customer's e-mail address, address and indicated on the Application or the Customer's latest e-mail address, address notified to Evolution IT in writing; and
- b. to Evolution IT at Evolution IT's latest address indicated on Evolution IT's website at: <http://www.evit.com.au>
- Any such notice shall be deemed to be received:
- a. In the case of delivery, at the time of delivery;
- b. If served by post, at the expiration of forty-eight (48) hours from time of posting (if sent to a local address) or ten (10) days from the time of posting (if sent to an overseas address), notwithstanding that it may subsequently be returned through the post office unclaimed;
- c. In the case of a facsimile transmission, on production of a transmission control report indicating transmission without error; or
- d. In the case of an e-mail, on production of e-mail header indicating delivery without error.
- 16.13 The Agreement sets out the entire agreement and understanding between the parties in relation to the Service and no party has entered into the Agreement in reliance upon any representation, warranty or undertaking of any party which is not set out or referred to in the Agreement.
- 16.14 In the event of any inconsistency between a provision in these terms and conditions and another part of the Agreement, then unless otherwise stated, these terms and conditions prevail to the extent of the inconsistency.
- 17. Special terms and conditions applicable to the Service**
- 17.1 Provision of the Telstra wholesale based internet services is conditional upon the Customer obtaining and maintaining operational, at its own cost, at the Premises and throughout the term of the Agreement. A public switched telephone network (PSTN) phone service and number on the Telstra Network, supplied by Evolution IT, or through Telstra directly. This is applicable only to Telstra based internet services supplied by Evolution IT. NBNCo services supplied by Evolution IT are completed on a separate fibre, copper or wireless link, hence any changes or cancellation of the PSTN number will not affect the NBN service. If the Customer fails to comply with this requirement for any reason resulting in Evolution IT not being able to provide the Telstra wholesale based service, then the Customer will be deemed to have breached a material term of the Agreement and Evolution IT shall:
- a. cancel the Service; and
- b. charge the Customer a cancellation fee where applicable.
- 17.2 The Customer acknowledges and agrees that Evolution IT may not be able to provide the same internet service should they change their premises.
- In the event a customer does change the location of the Premises; the existing service may be able to be relocated, however applicable relocation fees may apply. Should it not be possible to relocate the existing service, then any applicable cancellation fees will apply.
- If the existing service cannot be relocated, then the customer can submit a new application for a new service for the new location/Premise and the relevant new application charges and new terms and conditions are applicable.
- 17.3 The Customer acknowledges and agrees that excessive use of internet peer-to-peer file exchanges may cause network congestion and performance deterioration. Therefore, Evolution IT has a right to, from time to time and at any time, limit the Customer's internet bandwidth available for peer-to-peer file exchanges and or cancel the customer's service.
- 17.4 If a telephone service is also activated from another provider the customer acknowledges that while on the

same infrastructure (Optical Fibre) that these are mutually exclusive services unless a fault with the infrastructure is detected onto which any service running on Fibre may be affected.

- 17.5 This type of service is of residential grade.
- 17.6 In delivering data services Evolution IT deems that 1 gigabyte equals 1,024 megabytes and that 1 megabyte equals 1,024,000 bytes for the purposes of calculating usage.
- 17.7 Installation, 1st month pro rata and ongoing monthly access charges will be debited to the customer's credit card which they have provided to Evolution IT at the time of their internet application;
- a. Installation charge(s) debited on the date of advice from our wholesale supplier(s) of an estimated activation date.
 - b. Pro rata (balance) of the first month's access debited on the date of advice from our wholesale supplier(s) the service has been activated.
 - c. Subsequent monthly access charges are currently charged one month in advance either;
 - i. on, or around, the 1st working day of each calendar month for that month. This date may change if any

of our suppliers change the date in which they bill Evolution IT for services; or

- ii. advance on, or around 28th, for the billable period 28th of the month to the 27th of the next month. This date may change if any of our suppliers change the date in which they bill Evolution IT for services.
- d. Any excess usage charges are debited:
- i. on, or around, the 1st working day of each calendar month following the month in which excess usage was incurred, per GB or part thereof.
 - ii. on, or about the 28th of the month, for the billable period 28th of the prior month to the 27th of the next month, in which excess usage was incurred, per GB or part thereof.

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

Summary of other charges

1.0%	Per month if paying by credit card
\$10.00	Failed Payment Fee
\$20.00	Per change of static IP address (on the 31 st and each subsequent)
\$100.00	Change of name or ownership
On Request	Early Termination Fee for 24 Month Term
On Request	Early Termination Fee for 36 Month Term
\$132.00	Incorrect Call Out Fee
On Request	Ad hoc, or any other charges will be advised at time of application, enquiry or request