

FaceMe Video Conferencing and Collaboration Services



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 Exetel's acceptable use policy (as modified from time to time) which may be found on <http://www.exetel.com.au/files/ExetelAcceptableUsePolicy.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 Exetel of the cancellation of a Service and any outstanding amounts that to cover installation costs or Equipment Charges where Exetel owned equipment can be used by the Customer in connection with services provided by any third party.

Agreement means the agreement between Exetel 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 online application to Exetel 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 dishonour 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 other than resale, and for who complete an application for a Business Grade Service.

Business End User means any person:

- a. to whom a Business Customer asks Exetel to supply the Service directly;
- b. to whom a Business Customer (with Exetel's prior permission) re-supplies the Service or allows to distribute the Service;
- c. who a Business Customer allows to use the Service; or
- d. 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 (Exetel 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 Exetel that the Customer wishes to cancel the Service, unless Exetel agrees otherwise;
- b. the date at least thirty (30) days after Exetel notifies the Customer that Exetel 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 online application to Exetel 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 dishonour fees, reconnection fees or reactivation fees payable by the Customer and any refund or rebate to which a Customer may be entitled.

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 Exetel and who acquires and uses the Service from Exetel.

Equipment Charge means any payment to Exetel for use of equipment.

Exetel means Exetel Pty Ltd ABN 350 979 865 46.

Exetel Group Company means Exetel and each of its related corporations.

FaceMe means FaceMe Australia Pty Ltd ABN 25 152 999 249.

Fixed-Term Agreement means an Agreement (other than a month-to-month 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 Exetel 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.

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 Exetel, includes the employees, agents, contractors or other representatives of any Exetel Group Company.

Premises means locations:

- a. at which Exetel supply the Service, and/or
- b. to which Exetel 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. (Exetel imply and express no warranties as to its suitability or availability for any purpose. Exetel doesn't recommend residential grade services for business needs, or mission critical purposes.)

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 Exetel 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 Exetel to the Customer.

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

Special Offer means a special promotion or offer made by Exetel 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 Exetel 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 Exetel accepts the Application.
- 2.2 Exetel 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, Exetel 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, Exetel will provide the Service to the Customer in accordance with the Agreement for the Minimum Term or until the Service is cancelled in accordance with the Agreement, as the case may be. If neither party cancels the Service at the end of the Minimum Term Exetel will continue to supply the Service to the Customer on a month-to-month basis in accordance with the Agreement until the Service is cancelled in accordance with the Agreement.

3. Variation to Agreement

- 3.1 Exetel may vary any part of the Agreement:
 - a. with the Customer's consent; or
 - b. without the Customer's consent provided Exetel complies with the Telecommunications Legislation.
- 3.2 If Exetel varies a Fixed-Term Agreement under clause 3.1:
 - a. Exetel 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 forty-two (42) days from the date of the notice) without incurring fees or charges other than Accrued Charges.
 - b. Exetel must if the variation affects the Customer 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 Exetel may vary a Fixed-Term Agreement even if the variation affects the Customer so long as it complies with the provisions of the Telecommunications Legislation, if the change is:

- a. required by law;
- b. in relation to the cost of international services or roaming;
- c. in relation to a fee or charge to account for a tax imposed by law;
- d. in relation to a fee or charge for a service ancillary to the supply of the Service provided that if the change affects the Customer, Exetel offers the Customer:
 - i. a right to cancel the Service without incurring fees or charges other than Accrued Charges;
- e. to increase the price of a content or premium service (where the supplier who supplies the content service or premium service to Exetel to allow supply of the Service increases the price they charge Exetel for the content service or premium service) provided that if the change affects the Customer, Exetel:
 - i. gives the Customer reasonable notice of the increase in price if the Customer has used the content or premium service within the previous six (6) months; and
 - ii. allows the Customer to elect to not use the content or premium service without attracting any additional charges;
- f. as a result of another carrier or service provider varying the agreement Exetel has with it in relation to a carriage service and as a result Exetel needs to make changes to the Agreement, provided that if the change affects the Customer, Exetel gives the Customer:
 - i. notice in writing of the change; and
 - ii. forty-two (42) days from the date of the notice in which the Customer may cancel the Service without incurring fees or charges other than Accrued Charges.

- 3.4 Unless expressly allowed in the Agreement, the Customer may not make any changes to the Agreement without Exetel'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 Exetel may give the Customer notice in writing of a changes to the Agreement by:
 - a. delivering notice of the change to the Customer by mail; or
 - b. sending the notice to the Customer's email address (if the Customer has agreed to communication by email); or
 - c. by including a message or insert in an invoice sent to the Customer; or
 - d. (in the case of a pre-paid Service) by posting the information on Exetel's website or in Exetel's retail outlets and informing the Customer through a recorded message, text message or in writing) of how to obtain the information.

4. Application for the supply of the Service

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

5. Privacy

- 5.1 Exetel may collect, use and disclose personal information about the Customer to decide whether to start, stop or limit supply to the Customer of personal credit, the Service or the products and services of other Exetel Group Companies.
- 5.2 Exetel may collect, use and disclose personal information about the Customer for purposes related to the supply of the Service (or for purposes which would be reasonably expected) including invoicing and account management, business planning and product development, and to provide the Customer with information about promotions, as well as the products and services of Exetel Group Companies and other organisations.
- 5.3 Exetel 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 credit reporting agency or credit provider;
 - another Exetel Group Company;
 - third parties who are not related to Exetel, including Exetel's agents, dealers, contractors, franchisees and debt recovery or mercantile agents;
 - suppliers who need access to the Customer's personal information to provide Exetel with services to allow supply of the Service; and
 - joint venture partners of Exetel Group Companies
- 5.4 Exetel may be permitted or required by applicable laws to collect, use or disclose personal information about the Customer, including to:
- the operator of the Integrated Public Number Database, which is an industry wide database of all listed and unlisted public numbers in Australia;
 - emergency services organisations; and
 - to law enforcement agencies and government agencies for purposes relating to the enforcement of criminal and other laws.
- 5.5 Where Exetel will be or will under the Privacy Act 1988 (Cth) be considered to be a credit provider to the Customer in relation to the Agreement, the following provisions will apply:
- Exetel may give information about the Customer to a credit reporting agency for the following purposes:
 - to obtain a consumer credit report about the Customer; and/or
 - to allow the credit reporting agency to create or maintain a credit information file containing information about the Customer
 - Such information is limited to:
 - identity particulars such as the Customer's name, sex, address (and the previous two addresses), date of birth, name of employer and driver's licence number;
 - the Customer's application for credit or commercial credit and the fact that the Customer has applied for credit and the amount;
 - the fact that Exetel is a current credit provider to the Customer;
 - loan repayments which are overdue by more than sixty (60) days and for which debt collection action has started;
- advice that the Customer's loan repayments are no longer overdue in respect of any default that has been listed;
 - information that, in the opinion of Exetel, the Customer has committed a serious credit infringement (that is, acted fraudulently or shown an intention not to comply with the Customer's credit obligations); and
 - dishonoured cheques - cheques drawn by the Customer for \$100 or more which have been dishonoured more than once.
- c. The Customer agrees that:
- Exetel may obtain information about the Customer from a business which provides information about the commercial credit worthiness of persons for the purpose of assessing the Customer's application for consumer credit;
 - Exetel may obtain a consumer credit report containing information about the Customer from a credit reporting agency for the purpose of assessing the Customer's application for commercial credit;
 - Exetel may exchange information about the Customer with those credit providers named in a consumer credit report issued by a credit reporting agency for the following purposes:
 - to assess an application by the Customer for credit;
 - to notify other credit providers of a default by the Customer;
 - 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
 - to assess the Customer's credit worthiness; and
 - 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 Exetel.
- 5.7 If the Customer is an individual, the Customer is entitled to:
- gain access to the Customer's personal information held by Exetel, unless Exetel is permitted or required by any applicable law to refuse such access; and
 - correct any personal information held by Exetel
- 5.8 If the Customer does not provide part or all of the personal information requested by Exetel then Exetel may refuse to supply, or limit the supply to the Customer of, personal credit or the Service.

- 5.9 By providing the Customer's personal information to Exetel and obtaining the Service, the Customer acknowledges and consent to the collection, use and disclosure of the Customer's personal information as set out in this clause 5 and in accordance with Exetel's privacy policy a copy of which will be made available by Exetel on request or may be viewed on Exetel's website <http://www.exetel.com.au/files/ExetelPrivacyPolicy.pdf>
- 5.10 If the Customer has authorised Exetel to give or accept verbal instructions or other communication to or from the Customer in connection with the Service and the Customer has informed Exetel of a password to be used for Exetel's verification purposes when such verbal instructions or other communication is given or received, the Customer agrees:
- to keep confidential such password;
 - that Exetel may assume that any person who quotes the password is authorised by the Customer to accept or give verbal instructions or other communication from or to Exetel in connection with the Service on behalf of the Customer;
 - that the Customer will not hold Exetel liable in any way if any information relating to the Customer's account or any of the Customer's personal information is inadvertently disclosed to any person not authorised by the Customer to receive such information who quotes such password to Exetel; and
 - that all calls made to or from Exetel's customer service centre(s) may be recorded for customer training, improvement programs and verification purposes.
- 5.11 The reference to "Customer" in this clause 5 includes a reference to and is applicable to Exetel's collection, use and disclosure of the personal information of the director or other officer of the Customer who completes or signs an Application on the Customer's behalf as he/she hereby acknowledges.
- ## 6. Using the Service
- 6.1 The Customer must reasonably co-operate with Exetel to allow Exetel, or a supplier, to establish and supply the Service to the Customer safely and efficiently.
- 6.2 Exetel will provide the Service to the Customer with reasonable care and skill. In the event of unexpected faults Exetel will use reasonable endeavours to ensure the Service is restored as soon as possible.
- 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 Exetel
- 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 Exetel to liability; or
 - in any way which or which may damage, interfere with or interrupt the Service, the Exetel network or a supplier's network used to supply the Service
- 6.5 Exetel may require the Customer to stop doing something which Exetel reasonably believes is in breach of clauses 6.3 or 6.4. The Customer must immediately comply with any such request failing which Exetel 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, Exetel, or any supplier whose network is used to supply the Service, may be required to intercept communications over the Service and may also monitor the Customer's usage of the Service and communications sent over it.
- 6.7 Exetel may (but is not obliged to) contact the Customer if Exetel becomes aware of an unusually high use of the Service by the Customer (including to verify any costs or charges which the Customer may have incurred). In such event, Exetel may ask the Customer to make a pre-payment usage charge under clause 9.5. Exetel 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 equipment 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 Exetel, failing which Exetel 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 Exetel owned equipment remains Exetel's property;
 - the Customer is responsible for any Exetel owned equipment from the time when the Customer receives it;
 - the Customer must not mortgage or grant a charge, lien or encumbrance over any Exetel owned equipment; and
 - the Customer may purchase equipment from Exetel 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 Exetel's personnel (and no other person) to service, modify, repair or replace any Exetel owned equipment.
- 7.5 The Customer is responsible for any lost, stolen or damaged Exetel owned equipment, except where caused by Exetel or Exetel's personnel.

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

8. Network maintenance, fault reporting and rectifications

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

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

8.3 The Customer must provide all reasonable assistance to enable Exetel or Exetel 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 Exetel will repair faults within the Exetel network used to supply the Service [this means, Exetel will repair faults within the core network and any Exetel supplied equipment only]. Unless the Service Description expressly provides otherwise, Exetel is not responsible for repairing any fault in the Service where the fault arises in or is caused by:

- a. a supplier's network; [this means the network and components that exist between the point of interconnect with the Exetel core network and the suppliers network and the point of service delivery or demarcation as defined by the ACMA at the customers premise. This is typically the MDF A-Side in an MDU or the first Phone Socket in an SDU.]
- b. equipment that is not Exetel owned equipment; or [this means any equipment required to use the service that is not owned by Exetel]
- c. facilities outside the Exetel network. [this means any facility in a network not owned or operated by Exetel, including customer premise network equipment or facilities on the customer side of the services delivery or demarcation as defined by the ACMA at the customers premise. This is typically the MDF B-Side (including all on-premise cabling) in an MDU or socket and cabling beyond the first Phone Socket in an SDU.]

8.5 Where:

- a. a fault arises in or is caused by a supplier's network;
- b. Exetel becomes aware of the fault; and
- c. Exetel is not responsible for the repair of that fault.

Exetel will notify the supplier of the fault and request that the fault be corrected promptly, but Exetel will not bear any further liability or responsibility.

8.6 Where a fault arises in or is caused by equipment that is not Exetel owned equipment, Exetel is not responsible for the repair of that fault. Nevertheless:

- a. if the Customer asks Exetel to investigate a fault or asks Exetel to request a supplier to investigate a fault, Exetel will give the Customer an estimate of the probable cost of such investigation and obtain the Customer's agreement to bear those costs before undertaking or arranging an investigation and using reasonable endeavours to identify and inform the Customer of the probable cause of the fault; and
- b. if the Customer requests Exetel to repair the fault and Exetel agrees, Exetel will give the Customer an estimate of the probable cost of repairing the fault and obtain the Customer's agreement to bear those costs before carrying out the repair.

8.7 If Exetel investigates a fault and determines that the fault is attributable to a breach of the Agreement by the Customer, a negligent or fraudulent act or omission by the Customer or any of the Customer's personnel or a failure of any of the Customer's equipment and/or premises, the Customer must pay the costs incurred by Exetel in investigating.

9. Fees and charges

9.1 The Customer must pay:

- a. the fees and charges for the Service, which are set out in the Agreement or in any applicable Special Offer; and
- b. any additional fees and charges noted in the Agreement (including in the Application) or notified by Exetel in accordance with the Agreement from time to time.

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), Exetel may charge the Customer administration fees and other similar charges including suspension fees, cancellation fees, late payment fees, payment dishonour fees or reconnection or reactivation fees as set out in the Agreement.

9.5 Exetel may also ask the Customer to make a pre-payment usage charge or request that the Customer make an interim good-faith payment (including, for example, if there has been an unusually high use of the Service or if the Customer wishes to activate roaming).

9.6 Exetel will calculate fees based on billing information generated or received by Exetel which will be prima facie evidence of the Customer's use of the Service and the fees and charges incurred.

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 Exetel invoices the Customer for the Customer's use of the services of a third party, it will be in Exetel's capacity as that third party's billing agent only.

- 9.8 Exetel may offer the Customer a Special Offer from time to time. In such event, Exetel will notify the Customer of the Special Offer and the terms of the Special Offer either through general advertising or by specifically advising the Customer. A Special Offer may be an offer to vary the pricing plan or the terms of supply (including the Minimum Term) for the Service and it may be subject to certain conditions. If the Customer validly accepts a Special Offer, the terms of the Special Offer will prevail only to the extent they are inconsistent with the terms of the Agreement. Upon the expiry or termination of the Special Offer, the full terms and conditions of the Agreement will apply.
- 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 Exetel before using the Service from outside Australia.
- ## 10. Payments
- 10.1 Exetel 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 retrieve their invoice from their Secure Users Facility and/or the Customer can request Exetel to send a copy of the invoice electronically.
- 10.2 Service usage records are obtained by Exetel from a wholesale supplier. Exetel will make reasonable efforts to supply these records in a timely manner to the Customer via the online Secure Users Facility or where otherwise agreed to by Exetel and the Customer, by post or facsimile.
- 10.3 If Exetel receive usage records in time from the wholesale supplier, Exetel 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 Exetel, Exetel 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 Exetel outside the relevant billing period, Exetel will incorporate these and associated charges on a subsequent or later invoice. This is called back billing. Exetel will not backbill for usage that has occurred 160 days or more previously, if Exetel 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, Exetel may charge the Customer a 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 Exetel.
- 10.8 If the Customer does not pay the invoice by the date the payment is due, Exetel may:
- charge the Customer a late fee which is payable until all outstanding amounts are paid;
 - require the Customer to provide reasonable security to Exetel 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 Exetel suspends or cancels the Service, Exetel may charge the Customer a suspension fee, cancellation fee and/or reconnection or reactivation fee as set out in the Agreement. Reconnection or reactivation of the Service is subject to payment of the reconnection or reactivation fee;
 - engage a mercantile agent to recover the money the Customer owes Exetel and charge the Customer a recovery fee;
 - institute legal proceedings against the Customer to recover the money the Customer owes Exetel 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 a invoicing error, the Customer's account will be credited with the amount overpaid or Exetel will use reasonable endeavours to notify the Customer and refund the over payment.
- 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 Exetel in relation to, or on any supply under or in connection with the Agreement, Exetel will increase the tax exclusive fees and charges by an additional amount on account of the tax. The Customer must pay the additional amount at the same time the Customer pays the fees and charges.
- 10.11 If the Customer requires a copy of any invoice sent by Exetel in relation to the Service after cancellation of the Service or termination of the Agreement and a copy of such invoice remains retrievable from Exetel's records, the Customer must pay Exetel's reasonable administration fee for such retrieval.
- ## 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 Exetel.
- 11.2 Exetel will handle all complaints in accordance with its complaints procedure which is available from Exetel on request or on Exetel's website: <http://www.exetel.com.au>
- 11.3 Exetel will use its best endeavours to resolve all complaints, however if Exetel is not able to resolve a complaint to the Customer's satisfaction, the Customer may take other action, such as informing the Telecommunications Industry Ombudsman, the Department of Fair Trading or Department of Consumer Affairs in the relevant state or territory.
- 11.4 Where a Customer's complaint is about a fee or charge for the use of the Service, Exetel may suspend payment obligations, for that fee or charge only, until the complaint has been investigated and resolved. All other fees and charges that are not in dispute remain due and payable.
- 11.5 Where a Customer's complaint is about a significant and sustained loss of access to, or use of, the Service which is not reasonably attributable to the Customer or non Exetel owned equipment, the Customer may be entitled on request to a refund or a rebate of any access fees for the period in which the Customer's access or use was interrupted (including when an Intervening Event occurs) as stated in the Agreement or under the law.

12. Cancelling the Service

12.1 The Customer may cancel the Service at any time by:

- a. giving Exetel 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
- b. giving Exetel notice, if Exetel breaches a material term of the Agreement and Exetel either:
 - i. cannot remedy that breach; or
 - ii. fails to remedy that breach within thirty (30) days after the Customer gives Exetel notice requiring Exetel to do so.

12.2 If a Consumer Customer acquires the Service from Exetel through a sales method regulated by door-to-door sales legislation in the Customer's state or territory, the Consumer Customer may cancel the Service before the end of the cooling-off period set out in the relevant legislation.

12.3 If the Agreement is a Fixed-Term Agreement, a Customer may also cancel the Service pursuant to clause 3.

12.4 If the Agreement is a non Fixed-Term Agreement, Exetel may cancel the Service at any time by giving the Customer at least thirty (30) days' notice.

12.5 Exetel may cancel the Service at any time, without liability, if:

- a. there is an emergency;
- b. Exetel reasonably suspects fraud or other illegal activity by the Customer or any other person in connection with the Service;
- c. any amount owing to Exetel in respect of the Service is not paid by its due date and the Customer fails to pay that amount in full within ten (10) business days after Exetel gives the Customer a notice requiring payment of that amount, unless otherwise set out in the Agreement;
- d. Exetel reasonably consider the Customer a credit risk because the Customer has not paid amounts owing to Exetel or any Exetel Group Company in respect of any service by its due date and the Customer fails to pay that amount in full within the period stated in any notice given to the Customer requiring payment of that amount;
- e. the Customer breaches a material term of the Agreement (other than a breach which separately gives rise to rights under this clause) and the Customer either cannot remedy that breach or fails to remedy that breach within thirty (30) days after Exetel gives the Customer notice requiring the Customer to do so;
- f. Exetel is required to do so to comply with an order, instruction, request or notice of a regulator, an emergency services organisation, any other competent authority or by authorisation of or under law;
- g. the Customer suffers an insolvency event and Exetel reasonably believes Exetel is unlikely to receive payment for amounts due;
- h. the Customer dies or if the Customer is a partnership and the partnership is dissolved or an application is made to dissolve the partnership, and Exetel reasonably believes Exetel is unlikely to receive payment for amounts due;
- i. the Service is suspended for more than fourteen (14) days, unless otherwise set out in the Agreement;

j. any Intervening Event prevents the supply of the Service in accordance with the Agreement for more than fourteen (14) days; or

k. Exetel is otherwise entitled to do so under the Agreement or Acceptable Use Policy.

12.6 Exetel may cancel the Service under clause 12.5 as soon as Exetel gives the Customer notice, unless otherwise set out in the Agreement. However, Exetel may cancel the Service immediately if there is an emergency.

12.7 If the Customer elects to have an equivalent service to the Service supplied by another carrier, carriage service provider or service provider (including, by churning) and that carrier, carriage service provider or service provider informs Exetel that the Customer has elected to have the Service supplied by them or have churned to them, the Service will be deemed to have been cancelled by the Customer immediately. This will be without prejudice to Exetel's rights under the Agreement with respect to the Service.

12.8 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 Exetel to apply any over payment on the Customer's account and/or money that the Customer has paid in advance for the Service which is being cancelled to pay for any undisputed outstanding charges (including the cancellation fee and outstanding Equipment Charges, if any as set out in the Agreement);
- c. subject to clause 12.8(b) and unless otherwise set out in the Service Description, Exetel will refund any over payment on the Customer's account and any money that the Customer has paid in advance for the Service which is being cancelled on a pro-rata basis to the Customer;
- 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 Exetel to debit any undisputed outstanding charges (including any cancellation fee and outstanding Equipment Charges, if any as set out in the Agreement) from the Customer's nominated bank or credit card account;

12.9 No cancellation fee shall be payable by the Customer:

- i. if the Agreement is not a Fixed-Term Agreement; or
- ii. if the Agreement is a Fixed-Term Agreement that is cancelled after the expiry of the Minimum Term.

12.10 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):

- a. before the Service Start Date, the Customer must pay Exetel all infrastructure and installation costs incurred by Exetel in connection with preparations for supplying the Service to the Customer;
- b. during the Minimum Term, the Customer must pay Exetel a cancellation fee or such higher amount as may be provided in clause 17;
- c. the Customer must pay Exetel all costs incurred to rectify the Customer's breach of the Agreement.

12.11 If the Customer wishes to reinstate the Service at any time after cancellation the Customer may make a request to Exetel provided that if the Service is cancelled as a result of circumstances attributable to the Customer and Exetel reinstates the Service, then the Customer may have to pay Exetel a reconnection or reactivation fee or such higher amount as may be provided in clause 17.

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

- a. in any of the circumstances described in clause 12.5(a) to (h) and (k);
- b. if it is necessary to allow Exetel or a supplier to repair, maintain or service any part of the Exetel network or a supplier's network used to supply the Service;
- c. if Exetel reasonably believes there has been an unusually high use of the Service; or
- d. problems are experienced interconnecting the Exetel network with any supplier's network used to supply the Service.

13.2 Exetel may suspend the Service under clause 13.1 as soon as Exetel gives the Customer notice, unless otherwise set out in the Agreement. However, Exetel may suspend the Service immediately if there is an emergency.

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

13.4 If the Service is suspended, the Customer will have to pay access fees for the Service while it is suspended.

13.5 If the Service is suspended and the suspension was not as a result of circumstances attributable to the Customer or non Exetel owned equipment, the Customer may be entitled on request to a refund or a rebate of any access fees for the period of suspension as stated in the Agreement or under the law.

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

13.7 If the Customer wishes to reactivate the Service at any time after suspension the Customer may make a request to Exetel provided that if the Service is suspended as a result of circumstances attributable to the Customer and Exetel reactivates the Service, the Customer may have to pay Exetel 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 Exetel for any breach of the Agreement that causes foreseeable loss to Exetel.

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

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

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

14.4 Exetel 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 Exetel 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 Exetel or Exetel'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 Exetel or Exetel's personnel, to the extent of a refund or rebate for the period of the interruption and compensation for any reasonable loss incurred as stated in the Agreement and where required by law
- 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, Exetel is not liable for any business related losses
- d. death or personal injury caused by Exetel or Exetel'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 Exetel's liability (if any) for breach of that condition or warranty in connection with any goods or services Exetel supplies under the Agreement is (in relation to a Business Customer) limited to re-supply, repairing or replacing the goods or services, where those goods or services are not of a kind ordinarily acquired for personal, domestic or household use and where it is reasonable and fair to do so.

14.6 Other than as provided in clauses 14.4 and 14.5, Exetel 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 Exetel, Exetel's liability is reduced to the extent of the Customer's contribution.

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

14.9 In relation to a Business Customer, to the extent permitted by law, Exetel's total liability for loss is limited in aggregate for any claim or series of connected claims to \$5 million to the extent that the exclusions or limitations in clauses 14.4 to 14.7 do not apply.

15. Assignment and transfer

15.1 Exetel may:

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

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

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

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, Exetel 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 Exetel to:

- a. Inform that carrier, carriage service provider or service provider that the Customer has elected to have the Service supplied by Exetel or have churned to Exetel; and
- b. To take such action (including give such notices and sign such documents) on behalf of the Customer as may be necessary or appropriate to effect the transfer or churning transaction.

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, Exetel may immediately cancel the Service by giving the Customer notice.

16.8 If the Customer breaches the Agreement and Exetel does not exercise a right that Exetel has because of the Customer's breach, Exetel does not waive:

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

16.9 Exetel may pay a commission to any of Exetel'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, e-mailed or transmitted by facsimile:

- a. to the Customer at the Customer's e-mail address, address and/or facsimile number indicated on the Application or the Customer's latest e-mail address, address and facsimile number notified to Exetel in writing; and
- b. to Exetel at Exetel's latest address and facsimile number indicated on Exetel's website at <http://www.exetel.com.au>

Any such notice shall be deemed to be received:

- a. in the case of delivery, at the time of delivery;
- b. if served by post, at the expiration of forty-eight (48) hours from time of posting (if sent to a local address) or ten (10) days from the time of posting (if sent to an overseas address), notwithstanding that it may subsequently be returned through the post office unclaimed; or
- c. in the case of a facsimile transmission, on production of a transmission control report indicating transmission without error.
- d. in the case of an e-mail, on production of a e-mail header indicating delivery without error

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 The following limitations and restrictions apply to the FaceMe services:

- a. Service availability depends on and is subject to the configuration and limitations (including capacity constraints) of the Exetel Network, Supplier Networks and other Networks not in the control of Exetel. Exetel may notify you from time to time of the extent of the availability of the Service.
- b. As this Service may be delivered over the internet or a mobile-telecommunications network, including those of a third party, Services that are sensitive to latency, jitter or packet loss, such as voice or real time video streaming, or require high volume continuous file transfers may be adversely affected.
- c. The quality of the Service relies on Retail Users (including other users of Suppliers to Exetel) not using the Service for what is considered to be sustained, high-volume traffic as this compromises the efficiency of networks providing the Service. The Customer must not use the Service in this manner.

17.2 Exetel warrants that the Service is free from error or Interruption to the limitation of our FaceMe Service Level Agreement.

17.3 The provision of the Service or an Individual Service does not include the installation, maintenance or provision of cabling or equipment.

17.4 Exetel will not be responsible for installing, maintaining or providing on-site technical support in relation to the Required Equipment.

17.5 Exetel may vary the Service if reasonably required to do so for technical, operational or commercial reasons.

17.6 The Service can only be supplied to you where you have an internet connection or mobile telecommunications device which meets any Minimum Requirements.

17.7 The Customer acknowledges that Exetel may not be able to supply the Service to the Customer.

17.8 Exetel will use reasonable endeavours to meet the service levels (if any) but does not guarantee they will be met.

17.9 Exetel limits our warranty or representation regarding the performance of the FaceMe web Hosted application as it operates on the computer or equipment of the Customer to the Service Level Agreement (SLA). The Customer agrees to limit any claim against Exetel, in respect of the FaceMe web Hosted applications performance to the SLA.

17.10 The FaceMe web Hosted application may not be compatible with some operating systems or internet browsers. Exetel will use its reasonable endeavours to notify the Customer of the operating systems or internet browsers which the FaceMe web Hosted application is compatible with.

17.11 The Customer acknowledges that Exetel does not warrant the availability or other characteristics of the Service or that any target provisioning, installation, response or rectification times will be met.

17.12 The Customer agrees and acknowledges that:

- a. the Service relies for its operation on services supplied by Suppliers and other third parties, that are not controlled or authorised by Exetel;

b. Exetel is not obliged to:

- i. monitor use of the Service or an Individual Service; or
- ii. ensure that the Customer does not exceed any monthly download or upload limits or excessively use the Individual Service

c. The FaceMe Service will evolve over time based on user feedback. These Terms are not intended to answer every question or address every issue raised by the use of the FaceMe Service. FaceMe and Exetel reserves the right to change these terms at any time, effective upon the posting of modified terms and Exetel will communicate these changes to you via this Website. It is likely the terms of use will change over time. It is the obligation of the Customer to ensure that the Customer has read, understood and agree to the most recent terms available on the Website.

d. By subscribing to the FaceMe Hosted services, the Customer agrees to accept, and be bound by, these general terms and conditions. This agreement is between FaceMe, Exetel and the Customer as an authorised user of the "FaceMe Video Services". If the Customer is using the FaceMe Services on behalf of an entity, the Customer individually or collectively represents and warrants that they are authorised to sign for and bind such entity, and the Customer shall refer to such entity.

e. The FaceMe Hosted Services are owned and operated by FaceMe. The FaceMe Hosted Services include the following;

- i. FaceMe: Multi-party video conferencing tools
- ii. FaceMe: Web conferencing tools
- iii. FaceMe: Audio tools
- iv. FaceMe: Screen share and share file tools

f. FaceMe reserves the right to terminate or modify individual features of the FaceMe Services from time to time and Exetel will make every effort to communicate these changes to Customers via this Website.

g. Each Moderator/User Account is for a named individual employed by the organisation of the Customer. Pool accounts are not permitted.

h. The FaceMe service will be supplied to you by Exetel for an Open/Month to Month, 12, 24, or 36 month term as authorised by the Customer, based Exetel's terms and conditions. The Customer may upgrade to a larger FaceMe Hosted Service Package at any time during the term of the contract. The Customer may downgrade to a lower FaceMe Hosted Service Package at any time without penalty however a new term will apply from the Plan change date.

i. The FaceMe Services made available to the Customer in connection with your use of the FaceMe Services are protected by copyright, trademark, patent, and/or other intellectual property laws. The use by the Customer of the FaceMe Services is governed by these terms and conditions and any other specific agreement between FaceMe, Exetel and the Customer. Except as expressly provided herein, the Customer does not have any express or implied right to use the FaceMe Services. The Customer agrees not to copy, republish, frame, download, transmit, modify, rent, lease, loan, sell, assign, distribute, license, sublicense, reverse engineer, or create derivative works based on the FaceMe Services, except as expressly authorised herein. FaceMe's trademarks, websites, corporate names, trade names, domain names, logos, and service marks ("marks") are FaceMe's property.

The Customer may not use FaceMe's marks without FaceMe's prior written consent. All FaceMe Services, text, software, music, sound, photographs, video, graphics or other material contained in either sponsor advertisements or commercially produced information presented to the Customer through the FaceMe Services (collectively, "Content") by FaceMe or FaceMe's advertisers is protected by copyrights, trademarks, service marks, patents or other proprietary rights and laws; and the Customer is permitted to use the Content only as expressly authorised. The Customer may not copy, reproduce, distribute, or create derivative works from this Content without express written authorisation by FaceMe or such advertiser.

- j. The Customer is solely responsible for the content of all communications made by or to the Customer through your use of the FaceMe Services, and for all activity with respect to the account of the Customer, including any unauthorised use by any third party. In connection with the use of the FaceMe Services by the Customer, the Customer shall;
 - i. maintain and update all information the Customer is required to provide to FaceMe and Exetel
 - ii. use the FaceMe Services in compliance with applicable local, state, federal, and international law
 - iii. not use the FaceMe Services for illegal purposes
 - iv. comply with all regulations, policies and procedures of networks connected to the FaceMe Services
- k. The Customer shall not use the FaceMe Services to;
 - i. make any are unlawful, harassing, libellous, abusive, threatening, harmful, vulgar, obscene or include otherwise objectionable communications
 - ii. encourage criminal conduct, conduct that could give rise to civil liability, or otherwise violate any applicable local, state, national or international law or regulation
 - iii. gain or attempt to gain unauthorised access to other computer systems
 - iv. iv. interfere with any other person's use and enjoyment of the FaceMe Services
- l. Exetel's use of any personal information you provide is governed by our Privacy Policy. The Privacy Policy may be amended from time to time and is incorporated by this reference.
- m. The maximum disk space allocated per Customer for file uploads and storage into the FaceMe Libraries 1 Giga Byte or 1,000 Mega Bytes.
- n. FaceMe does not own any of the information, data, files or other content that the Customer uploads to FaceMe. FaceMe will apply 'best efforts' and sound industry practice to ensure the protection of such content in the storage process. However, access by the Customer to the data is contingent on full payment of the FaceMe Access Fee when due. If this agreement ends for any reason then FaceMe will retain the content of the Customer for a period of 6 months unless the Customer requests immediate deletion of data. The Customer must maintain copies of all data inputted into the Service. FaceMe adheres to its best practice policies and procedures to prevent data loss, including a daily system data back-up regime, but does not make any guarantees that there will be no loss of Data. FaceMe expressly excludes liability for any loss of data no matter how caused.
- o. Use of the FaceMe services is at the own risk of the Customer. The FaceMe services are provided on an "as is" and "as available" basis supplied with "best efforts".

FaceMe expressly disclaims all warranties of any kind, whether expressed or implied, including, but not limited to the implied warranties of merchantability and fitness for purpose and non-infringement. FaceMe make no warranty that the FaceMe services will meet the requirements of the Customer or that the FaceMe services will be uninterrupted, timely, secure or error free. FaceMe does not guarantee any specific result from using the FaceMe services, or that the accuracy or reliability of any information obtained through the FaceMe services, or that defects in the FaceMe services will be corrected. FaceMe assumes no responsibility for the deletion of or failure to store or deliver content. The Exetel commercial SLA will apply.

- p. FaceMe and Exetel shall not be liable for any direct, indirect, incidental, special or consequential damages, resulting from the use or the inability to use any FaceMe service or for the cost of procuring any substitute goods and services, or resulting from any goods or services purchased or obtained, or messages received or transactions entered into through the FaceMe services or resulting from unauthorised access to or alteration of your transmissions or data, including but not limited to, damages for loss of profits, use, data, or other intangible, even if we have been advised of the possibility of such damages.
- q. FaceMe and Exetel shall not be responsible for any delay or failure in performance that results from causes beyond its reasonable control, whether or not foreseeable by any party.
- r. The Customer shall indemnify, defend, and hold FaceMe and Exetel, its parents, subsidiaries, affiliates, officers, directors, and employees free and harmless from any and all claims, costs, damages, and expenses (including but not limited to reasonable attorneys' fees), which arise from or are related to any act or omission by the Customer in connection with the use of the FaceMe Services, including but not limited to, any such claims, costs, damages, and expenses arising from or related to your violation of any terms and conditions of this Agreement, violation by the Customer of any applicable law, rule, or regulation, or any infringement by the Customer (or any other person using the FaceMe Services in reliance on the rights of the Customer under this Agreement) of any intellectual property or other rights of any other person. This shall survive termination of this Agreement.
- s. The Customer warrant and represent that the Customer are acquiring the right to access and use the FaceMe Services for the purposes of a business and that, to the maximum extent permitted by law, any statutory consumer guarantees or legislation intended to protect non-business consumers in any jurisdiction does not apply to the supply of the Services, the Website or these Terms.
- t. The Customer may terminate the Agreement by providing 30 days written notice to Exetel, subject to the penalty clause contained below prior to the expiration of the initial term, provided that you pay Exetel all the Fees which would have been due until the expiration of the initial term, such fees to be calculated according to the formula:
 - $C \times A$ = Termination Fee
 - Where;
 - C = Monthly Fee
 - A = Remaining months of agreed term

- u. On termination of the Agreement, Exetel will cease providing the FaceMe service to the Customer, and all amounts which the Customer may owe to Exetel will immediately become due and payable. FaceMe and Exetel shall not be liable to the Customer or any third party, or responsible for any charges or any other expense incurred with respect to the termination. Exetel may terminate the FaceMe services by delivering to you written or electronic notice of such termination if the Customer is in breach of the terms of this agreement and/or Privacy Policy.
- v. The parties agree to use their best efforts to resolve any dispute that may arise under this Agreement through good faith negotiations. No party shall commence any arbitration or litigation in relation to this Agreement unless it has first invited the chief executive of the Customer and Exetel's CEO to meet for the purpose of endeavouring to resolve the dispute on mutually acceptable terms. Any dispute arising under this Agreement which cannot be settled by negotiation between the parties or their respective representatives shall be submitted to mediation before commencing any litigation. Either party may initiate mediation by giving written notice to the other party. If the parties cannot agree on a mediator within seven days of the notice, then the mediator will be selected independently. The parties shall continue to perform their obligations under this Agreement as far as possible as if no dispute had arisen pending the final settlement of any matter referred to mediation. Any dispute arising under these terms and conditions or in connection with the FaceMe services which are not resolved within 30 days following the delivery by one party to the other of a written notice describing the dispute shall be resolved by binding arbitration in Australia. The decision of the arbitrator shall be final and binding on the parties, and judgment thereon shall be entered in a court of competent jurisdiction.
- w. These terms and conditions do not provide any person or entity that is not a party with any remedy, claim, liability, reimbursement, or cause of action or creates any other third party beneficiary rights. If any of these terms and conditions are determined by an arbitrator or court of competent jurisdiction to be contrary to applicable law, then such provision shall be construed as nearly as possible to conform to applicable law and the other provisions shall remain in full force and effect.
- x. These terms and conditions
 - i. constitute the entire agreement between FaceMe, Exetel and you and supersedes all prior agreements between the parties regarding the subject matter contained herein, and
 - ii. may be modified or amended only in the manner expressly set forth herein.
- y. FaceMe and Exetel may at any time and from time to time assign its rights and delegate its duties without your prior consent. The Customer may not assign their rights to any other person without prior written consent. Our failure to exercise or enforce any right or provision of these terms and conditions shall not constitute a waiver of such right or provision unless acknowledged and agreed to by FaceMe in writing. Any waiver of any of these terms must be in writing and signed by one of our authorised Management Representatives.

FaceMe web Hosted application - Minimum Requirements

Supported Operating Systems:

- Microsoft® Windows® 7™*
- Microsoft® Windows® Vista™ *
- Microsoft Windows XP
- Mac **

* The system must fulfil Windows Vista/Windows 7 minimum requirements as specified by Microsoft.

**Only the features required by Mac users.

Supported Internet Browsers:

- Internet Explorer
- Mozilla Firefox
- Google Chrome
- Safari

Supported Flash Player:

- Flash Player 10xx
- Flash Player 11xx

FaceMe web Hosted application - Target Individual Service Activation Time

- 24 hours seconds if upstream provider available
- 48 hours if upstream provider unavailable

