

## **GSM Lift Telephone & Monitoring Service Agreement – 01/09/2014**

Please review the terms and conditions set out below which will govern the contractual relationship between us and you. Where a Service for which you have subscribed for is subject to specific terms and conditions or in any other material, the specific terms and conditions (as amended from time to time) shall form part of this Agreement. If there is any inconsistency between these GSM Lift Telephone Terms and Conditions and any other terms and conditions, then these terms and conditions will take precedence.

Please read the following terms and conditions carefully. If you do not comply with them, we may restrict, suspend or prohibit your use or access to our Services.

### **1. Interpretation**

“Add-Ons” means supply of specific additional services, which may be available for additional purchase pursuant to an applicable Pricing Plan.

“Activation” and “Activate” means the use of our Services.

“Agents” means any contractors, providers, dealers or agents appointed by us to perform any of our obligations under this Agreement or provide any other Services on behalf of us.

“Agreement” means these terms and conditions between us and you, together with any other terms and conditions published by us (in each case as amended from time to time)

“Bar” means suspending access to Services and may be either an out-bar, restricting use of the Device for making calls and accessing the Services, or an in-bar, restricting use of the Device for receiving calls and accessing the Services, or both.

“Connection Pack” is a Mobile Phone Number and SIM card which will connect you to the Vodafone/EML Group network.

“Customer Services” means the EML Group customer Services team.

“Device” means a mobile Device or other mobile telecommunications Device as supplied by EML Group.

“Mobile Phone Number” means the Device Phone Number which is allocated to you by us.

“Mobile Service Provider” means a provider of mobile telecommunications Services to the public in New Zealand.

“Network Operator” is any entity with whom we have entered into an interconnection agreement or arrangement (directly or indirectly) providing for the passing of customer generated or customer destined communications between us and that entity.

“On Account” means the subscription for Services by you pursuant to a fixed term contract.

“Payment” means invoiced On Account paid in advance.

“Services” means the mobile telecommunications network Services and related products and Services that are made available to you by EML Group or our Agents from time to time.

“SIM card” is the subscriber identity module needed to operate your Device and through which you are connected to our network, and includes without limitation any SIM card issued to you by us.

"Website" means our website at [www.emlgroup.co.nz](http://www.emlgroup.co.nz).

“we” or “us” means EML Group and any of our associated companies including “our” has a corresponding meaning.

“you” means the customer under this Agreement and “your” has a corresponding meaning.

## 2. Commencement of Agreement

This Agreement begins upon your signing of an application form and the installation of onsite Equipment.

## 3. Coverage and Services

(a) While we will do our best to provide quality Services, because of the nature of mobile telecommunications it is impossible to provide a fault-free Service and the quality and coverage of the Services depends partly on Device and the installed location, partly on our network and partly on other providers and telecommunications networks to which our network is connected or connects.

(b) Coverage and Services can be adversely affected by radio interference, atmospheric conditions, geographic factors, network congestion, maintenance, outages on other networks’ and providers’ sites or other operational or technical difficulties, which means that you may not receive some or all of the Services in certain areas or at certain times. Coverage and Services can also change with network expansion or reconfiguration.

(c) The integrity or quality of the data or information sent via the Services (including TXT or other files) may be affected or compromised due to the configuration of our network, the use of the internet, or the configuration or limitations of the intended recipient's, Mobile Device or other Device.

(d) You may not make 0900 calls, collect calls, special number calls, or any calls where charges are not immediately available. Any calls of this nature will be charged to your Account.

## 4. Using our Services

(a) Subject to the Services you have subscribed for, you cannot make local, national and international calls, send TXT messages, use data and access voicemail and other Services other than voice calls and SMS messages activated by the installed Equipment.

(b) Voice messaging is part of the Services we provide to our call centre. Calls through the Services to our call centre are confidential.

(c) The Services may be changed, modified, advanced, suspended or removed by us. If any of our Services require new or upgraded Devices or Equipment as supplied by us, will be our costs. Damages by a third party, will be your responsibility and costs for obtaining that new or replacement Device or Equipment.

(d) You agree to follow our instructions about the use of the Services and ensure that everyone you are responsible for also meets your responsibilities when using your Device. You agree to keep us protected against any legal action taken against us and to meet any losses (including solicitor-client costs) we may incur as a result of such use of the Services. You are responsible if anyone else, whether authorized by you or not, uses or misuses your Device or our Services provided pursuant to your subscription.

(e) You agree not to use your Device or the Services for any abusive, illegal or fraudulent purpose.

(f) You acknowledge that we do not support Voice over Internet Protocol ("VoIP") and that we can provide no assurance that currently available access levels may be maintained.

(g) We can stop using any SIM card or Device immediately if we believe that it could cause any interference, you have used it to spam other users, or if it is not approved by us for use on our network or in connection with any of our Services. You must not use any other Mobile Device which masks or in any way alters the true origination or termination of any call or other transmission.

(h) Using or agreeing to use the Services does not give you any rights in any part of the Services. You must not resell or resupply, in any way whatsoever, the whole or any part of the Services.

(i) You agree that if you do not use the Services in accordance with this Agreement we may restrict or suspend your use of the Services in accordance with paragraph 17.

## 5. Fair Use Policy

All our Services are subject to the Fair Use Policy.

## 6. Security

(a) You must keep your Device secure at all times. We recommend that you restrict access to the Device, the SIM card, or the Services, to ensure that only you are able to access and use the Services, and no one else. You must keep all access to Devices secure at all times.

(b) If your Service or SIM card becomes defective or compromised by being removed from the Device, or is otherwise not in your possession you must contact Customer Services immediately so that we can prevent further calls being made from it or other charges being incurred. This is important as all charges for calls made, messages or other content sent, or Services accessed using that SIM card will be debited from your Account up to the time you advise us of its loss or theft. We are not liable for any loss to you as a result of the loss of, theft of, damage to, or unauthorized use of, your Device or SIM card.

(c) Some Services are available via the internet or other systems operated by third parties and, although we will endeavor to maintain the security of information, we cannot guarantee that information you receive or supply when using the Services will be secure at all times. You acknowledge that we are unable to exercise control over, and make no representations or warranties concerning, the security or content of data or information passing over our network, any systems operated by third parties, and the internet.

(d) We will not be responsible for any harm you suffer from a virus or other manipulating program which infiltrates your Mobile Device, whether it was transmitted via the Services or otherwise. In accordance with paragraph 6(b) you remain responsible for all charges for the use of any Services activated by such a virus or program.

## 7. Charges and Billing

(a) Charges for Services are set out in the Application Form. We reserve the right to vary these charges from time to time and will notify you accordingly.

(b) We are not responsible for any Services being cut off where your Account goes into default due to no payment.

(c) Calls to 123 and any other Service number for other Network Operators, 701 and calls to 111 are not available.

(d) Calls to access a Voicemail Service are not available.

(e) All monetary credit on your Account is specific to your Device and is non-transferable to any other Device.

(f) If you need technical support or administration Services that are outside the normal Device operation may occur charge to you for this. We will give you an estimate of the costs so you can decide whether or not to proceed. You must tell us that you accept any charges before we will supply the technical support or administration Services.

## 8. Add-Ons

(a) No Add-Ons are available with this Service

## 9. Consumer Guarantees Act and Limitation of Liability

(a) You may have the benefit of statutory guarantees under the Consumer Guarantees Act 1993. Unless you acquire, or hold yourself out as acquiring, the Services for the purposes of a business, nothing in these terms and conditions will limit or exclude your rights under that Act.

(b) Where you do acquire, or hold yourself out as acquiring, our Services for the purposes of a business, then you agree that the Consumer Guarantees Act statutory guarantees do not apply to your connection or to our Services and we exclude any liability of any kind (whether in contract, tort, equity or otherwise) to you or anyone claiming through you, including but not limited to, relating to any loss of profits or revenue, loss of data, lost business or missed opportunities, wasted expenditure or savings

you might have had, or any form of indirect or consequential loss whatsoever, arising from your connection to our network or the content or supply of any Services.

The failure, interruption or delay in the supply of any Services or any part of them or any negligence in this regard.

The fitness of all or any of the Services for any particular purpose.

The inaccurate transmission of any call.

Your use of the Device (whether authorised or not).

Any other matter which relates to this Agreement.

(c) As a customer, except where we cause direct damage to your property due to our negligence to the extent allowed by law we have no other liability to you or any other person in respect

#### 10. SIMcard

(a) Any SIMcard we issue to you remains our property. You must return it to us in good condition when your connection ends. We may charge you a fee if you fail to return the SIMcard within 30 days after disconnection.

(b) You may not use our SIMcard in M2M Equipment.

#### 11. Provision of Hardware and Additional Services

(a) We do not make any warranty as to the accuracy, completeness or currency of any content or material which you may access or have provided to you, using our Services. Where services are provided by a third party we accept no responsibility or liability for their quality or the nature of their content.

(b) Content or material which you may access or have provided to you, using our Services, is not for your personal use. You may not forward copy, reproduce, re-sell or distribute such content or material to any third party or interfere with it in any way. You acknowledge that this obligation is also expressly for the benefit of our Agents and may be relied upon and enforced by them.

(c) You agree that you are responsible for ensuring that we have the right to send all data and information that is sent when using the Services. You acknowledge that we may alter any data or information that is sent when using the Services in order to enable delivery of that data or information to the recipient.

#### 12. Mobile Phone Numbers

(a) Device Phone Numbers are allocated by us or another Mobile Service Provider and do not belong to you. Your Device Phone Number will remain active until the end of the period which relate to the specific Pricing Plan. In order to keep your number active, you must keep your Account current.

(b) We may be required by law, under contracts with other Network Operators or for other reasons to change your Device Phone Number(s). We will do our best to give you notice of any change required. We may give notice by any means of communication including, but not limited to, email, leaving a voice message and/or by text. We will not be liable for any costs which you, or anyone else, may incur as a result of such change.

(c) If you or we disconnect your connection(s) to the Services due to non payment of Account, we may re-allocate the Device Phone Number(s) to another customer.

### 13. Privacy

(a) EML Group's use of your personal information (if any is collected) is governed by this Agreement and the EML Group Privacy Policy

(b) You agree that we and our Agents can retain information about you and the way in which you are using the Services. This information may be obtained from you or we will obtain it from our records. You may ask to see personal information we have about you and ask us to correct any information that is not correct.

(c) You agree that we and our Agents can use and hold this information and share it with one another, or with any EML Group company and with those employees who need to use your information in the context of our business, for a range of lawful purposes connected with our business operations including:

Providing you with the Services.

Sending you bills.

Maintaining and improving the quality of the Services.

Keeping you informed about our special offers, products and Services, and those of selected Agents and third parties, which may be of interest to you (unless you have advised us in writing that you do not want to receive this information).

(d) You agree that we and our Agents may send you marketing messages, electronic or otherwise, about our special offers, products and Services, and those of our selected Agents and third parties which may be of interest to you (unless you have advised us in writing that you do not want to receive this information). You agree too that the electronic marketing message we, our Agents and third parties send need not include an unsubscribe facility.

(e) Some of our Services, such as free reporting and selected user initiated Service queries, are available to you free of charge.

(f) To maintain and improve the Services, we can monitor and record Device transmissions made to us or we make to you.

(g) Personal information will not be shared with other Network Operators or Mobile Service Providers so you can make and receive calls, so we can transfer numbers from one Mobile Service Provider to another Mobile Service Provider and to monitor or investigate fraud or other offences. But we may provide your personal information to public sector agencies in order for them to investigate an offence.

(h) Subject to any rights you may have under the Privacy Act 1993, we will not be liable to you, or to anyone else, for:

The content or lack of confidentiality of any Services you use.

Any disclosure we make by law to a public sector agency.

#### 16. Directory Assistance and Listing

(a) No Directory Services are available in this agreement.

#### 14. Ending this Agreement and Suspending Services

(a) You may end this Agreement simply by advising us in writing.

(b) This Agreement will automatically end if your Account becomes Inactive due to non payment. Should this occur:

You will lose the use of your allocated Device Phone Number

You will lose any numbers or other details stored on the Device SIM card.

Any early termination charge may apply.

(c) Where your Account has become Inactive but you wish to resume the Device Service with us, you will need to purchase a new connection pack, which may include a new Device Phone Number. You will be deemed to have entered into a new agreement with us (on the current terms and conditions set out in this Agreement) on activation of your new connection (or any package that contains a new SIM card).

(d) We can suspend, Bar or restrict your use of any or all of the Services or disconnect your connection without telling you if:

You do not comply with the terms and conditions in this Agreement.

You make abusive, offensive, malicious or nuisance calls or communications, or use any of our Services in an offensive way.

You are abusive or offensive to us, our dealers or Agents, or any other person.

We suspect you of using the Services for any illegal or fraudulent activity or in any way that infringes anyone's legal rights (such as copyright).

All of the Services are permanently or temporarily (for any reason) unavailable to you.

You continue to use the Services in breach of our communication to you after we have contacted you to discuss your inappropriate usage.

You do not comply with any other terms and conditions imposed by us in accordance with this Agreement.

You tamper with or modify any SIM card issued by us other than in accordance with instructions given to you by us.

(e) Without limiting the above, we can disconnect your connection:

If any of our licences to operate our network is ended or suspended or any interconnection agreement with any other Network Operator expires or is ended; or

For any other reason we believe that it is appropriate to do so.

(f) We can delete or prevent access to material on our server which we believe, in our reasonable opinion, breaches these terms, or which is the subject of an infringement notice under section 92 of the Copyright Act 1994.

We will not be liable to you for any loss of any kind, nor will we be required to provide any compensation to you for any unused monetary credit or other allowances.

#### 15. Rights and Responsibilities that Continue

Ending this Agreement does not affect any of the rights or responsibilities which are intended to continue or to come into existence after this Agreement ends, including (without limitation) any obligation you may have to return any EML Group Equipment you may have on loan from us or any of our dealers or Agents.

#### 16. Network Operators and Other Suppliers

We have certain obligations towards other Network Operators and our dealers, Agents and suppliers. Those persons (and their officers, employees, contractors and agents) will not be liable to you or anyone else for any claims, costs, damages, losses or other liabilities of any kind arising in any way from the Services we provide or from your use of those Services and our network, including (without limitation) your access to and use of any provider's site or Network Operator's networks. This paragraph creates an obligation that other Network Operators and/or our dealers, Agents and suppliers can enforce directly against you, whether as a defence or otherwise.

#### 17. Notices and Variations of Charges, Terms and Pricing Plans

(a) We may change this Agreement at any time. Changes will be posted on our Website. Please check this regularly for updates.



(b) We may vary the charges, entitlements and Services set out in a Pricing Plan at any time. We will give you at least 10 working days prior notice and where possible 1 month's notice of these changes. We will notify you of these changes by posting them on our Website. Please check our Website regularly for updates. For the avoidance of doubt, we will not notify you of price decreases or promotional offers which are limited time offers or have stated end dates.

(c) If we materially increase the charges in a Pricing Plan or materially reduce the elements of a Service you are using or change the terms and conditions of this Agreement so that it has a material detrimental effect on you we will give you at least 10 working days' prior notice and where possible, 1 months notice of these changes. We will notify you of any such changes by any means of direct communication including, but not limited to, email, leaving a voice message and/or by text.

#### 18. Transferring Responsibilities

We may transfer to someone else the whole of this Agreement and/or any interest in our network.

#### 19. New Zealand Law

This Agreement is governed by the laws of New Zealand and you submit to the jurisdiction of the New Zealand courts.

#### 20. Waiver

If we fail or delay to exercise any right or power under this Agreement, this will not be a waiver of that right or power. Any failure or delay will not prevent us from exercising that right or power in the future.

#### 21. Disputes

If you have any dispute with us or our Services, please refer that dispute, initially, to Customer Services. If Customer Services are unable to resolve your concerns the matter will be escalated to the EML Group General Manager.

#### 22. Force Majeure

We will not be liable for any delay or failure of the Services or for any loss or damage from such delay or failure to the extent that it was caused, in whole or part, by an act of God, war, terrorism, civil disobedience, riots, strike, industrial stoppage or unrest, fire, volcanic eruption, earthquake, shortage of suitable labour, materials, Equipment or energy or any other event beyond our control.

#### 23. Agents of EML Group

(a) We shall be entitled to subcontract or delegate the performance of any of our rights or obligations under this Agreement but any such subcontracting or delegation will not relieve us from liability for performance of any such obligation. Without limiting this, we may appoint an Agent to provide the Services.

(b) Our Agents can enforce those rights or obligations expressed to be for their benefit in accordance with the Contracts (Privacy) Act 1982.