



WEBSITE TERMS AND CONDITIONS

eSwitch PTY LTD (ACN ??? ??? ???) (eSwitch, us, our or we) provides you with this website (including any mobile site or other application that we may offer) and the services as set out in these terms and conditions, which together with any policies or guidelines eSwitch may present to you, form a binding agreement (**Terms**). In the Terms, **you** means you as the user of this website and any other person that accesses the website on your behalf.

By accessing and using the website, you accept and agree to these Terms. If you do not agree to any of these Terms, you must not access or use the website. These Terms may be revised or updated from time to time and notified as set out in the Terms and any updates are effective immediately on being published by us.

1. Services

eSwitch provides a cloud based remote switching management system (**System**).

2. Website

2.1 Authorisation

By accessing or using eSwitch' services, you warrant that you have full and due capacity and authority to accept these Terms and warrant and represent you have full legal authority to bind any entity you may be acting for or on behalf of to these Terms.

2.2 Account

Your use of the website requires you to register with us in the manner as we determine.

You will be provided with an account, restricted by a username and password, to access the website. You agree that you will provide current, complete and accurate details and information as may be required by the registration process and are responsible to maintain, keep current and update any registration data and other information you provide to us. You agree that you are solely responsible for maintaining the security and confidentiality of your password, identification and account and for any and all activity that occurs under your account and will notify eSwitch immediately of any unauthorised access or use of your account or password or any other breach of security. We will not be liable for any loss or damage of accounts or information arising from a failure to comply with this.

You accept the sole risk of unauthorised access to your account, and we will not be held liable for any loss you may incur as a result of any unauthorised access. You may also be held liable for losses incurred by eSwitch or any other user or visitor to the website due to unauthorised access to your password or account. You may not use anyone else's account at any time, without the prior permission of the account holder.

Use of the website requires a computer and internet access through an Internet Service Provider and a web browser. You agree to be responsible for any charges or service fees for computer or internet, which you incur in accessing your account through the website.

2.3 Content

You are solely responsible for controlling and managing all content, information or other materials input or accessed by you to or on the website (**Content**), including the performance of permitted tasks.

Upon contributing or providing Content of any kind to the website, you hereby grant eSwitch a limited, non-exclusive, royalty-free, license to host, reproduce, transmit, cache, store, exhibit, publish, display, distribute, perform, edit, adapt, modify, create derivative works from, and otherwise use the Content for the purpose for which it was given, as necessary to provide the website, or as required by law. You expressly agree that we are under no obligation to actively monitor, censor or directly control any Content that is stored or transmitted over the website. eSwitch cannot and does not warrant, verify or guarantee the quality, accuracy, safety or integrity of the Content that you, another user, or a third party may post or access through the website. eSwitch reserves the right to monitor, restrict access to, edit or remove any Content available on the website.

You represent, warrant and covenant to eSwitch that: (a) the Content or its use shall not violate, misappropriate or infringe any proprietary rights or any other personal, privacy or moral right arising under the laws of any jurisdiction of any person or entity, nor shall same constitute a libel or defamation of any person or entity; (b) the Content will not contain any harmful components, including, but not limited to, viruses, trap doors, hidden sequences, hot keys, or time bombs; (c) you have all right, power and authority necessary to enter into these Terms and use the Content as described herein; and (d) you shall comply with all applicable laws, rules and regulations (including, but not limited to, export control, decency, privacy and intellectual property laws).

eSwitch does not claim ownership of, and is not responsible for, any Content lost or damaged by you or any other users.

2.4 Prohibited Uses

You are prohibited from using the website:

- (a) for any unlawful purpose;
- (b) to solicit others to perform or participate in any unlawful acts;
- (c) to violate any international, federal, provincial or state regulations, rules, laws, or local ordinances;
- (d) to infringe upon or violate our intellectual property rights or the intellectual property rights of others;
- (e) to harass, abuse, threaten, insult, harm, defame, slander, disparage, intimidate, or discriminate, whether or not based on gender, sexual orientation, religion, ethnicity, race, age, national origin, or disability;
- (f) to submit false or misleading information;
- (g) to collect, track or provide unauthorised disclosure of personal information of others;

- (h) to spam, phishing, pharming, pretexting, spidering, crawling, or scraping;
- (i) to damage, interfere with or disrupt access to the website or the content or engage in any other conduct that will or may restrict or limit any other person from using or accessing the website or the content;
- (j) to circumvent, disable or otherwise interfere with security-related features of the website or features that prevent or restrict use or copying of any content or enforce limitations on the use of the website or the content within it;
- (k) for any obscene or immoral purpose;
- (l) other than in accordance with these Terms; or
- (m) to attempt any of the above acts or engage or permit another person to do any of the above acts.

We reserve the right to terminate your use of the System for violating prohibited uses.

3. System and Security

3.1 Cancellation

You may cancel your account at any time.

3.2 Accessibility

We may, from time to time perform maintenance upon the website or experience hardware, software or other problems related to the website, resulting in interrupted service, delays or errors on the website. We will attempt to provide prior notice of such interruptions, delays or errors but cannot guarantee that such notice will be provided. When the website is offline we will do our best to get it online as soon as possible.

eSwitch will not be held responsible for damage, events or losses directly or indirectly related to the website being offline.

3.3 Backup

eSwitch will archive data and any other content on the website onto backup mechanisms on a regular basis for the purposes of recovery.

In the event of equipment failure or data corruption, eSwitch will restore from the last known good archive. eSwitch will not be liable for incomplete, out-of-date, corrupt or otherwise deficient data or any other content recovered from our backups.

3.4 Security

We have implemented commercially reasonable technical and organisational measures designed to secure your personal information and content from accidental loss and from unauthorised access, use, alteration, disclosure or destruction of data. This also includes physical security measures to guard against unauthorised access to systems where we store personal data.

However, you agree that you are required to use reasonable security precautions in light of your access to and use of the website. This includes encrypting any personally identifiable information (such as name, address, telephone number) transmitted to or from, or stored on, the website or storage devices you use.

eSwitch will not be liable for any unauthorised access, or loss of data or any other content, except to the extent as set out in these Terms.

3.5 Technical Support

eSwitch will provide you and any other users with email support only between **0900 to 1700** EST time on business days, to the address set out on the website.

No representations or guarantees are made regarding the response time in which support questions are answered. By utilizing the integrated **Request Assistance and Contact Us** forms your queries will be responded to in the most efficient manner.

4. Suspension and Termination

eSwitch may suspend or terminate your account and remove your access to the website in whole or in part at any time and for any reason without notice, including, if you breach any of these Terms; or there is a suspicion that your account has been used for unauthorised, unusual or illegal activity..

On termination of your account (i) you must cease using and return to eSwitch, or destroy, all copies of any eSwitch' materials in your possession or control, and (ii) your access to the website will be removed, your account will be deactivated or deleted and you will forfeit and relinquish all content in your account.

4.1 Warranties

The website is provided "as is" without warranty of any kind, express or implied. Except to the extent required by the law, eSwitch does not make any representations or warranties as to the website or its content, including but not limited to, warranties of merchantability and fitness for a particular purpose, title, non-infringement, security, informational content, system integration or accuracy and the express warranty of quiet enjoyment or as to the accuracy or suitability of information, descriptions, guidelines and images on the website including colour, design and texture samples, descriptions of any materials or products, services, offers, merchants or any other information shown on the website.

eSwitch does not represent or warrant that the website or its server(s), applications or functionalities are free of viruses or other harmful components, and you bear the entire risk of losses or damages that you may incur or suffer as a result of any use of or visit to the website.

eSwitch does not guarantee continuous, uninterrupted, error-free or secure access to the website, since the operation of the website may be interfered with by numerous factors outside of eSwitch's control.

4.2 Limitation of Liability

Except to the extent required by the law or as is expressly set out in the Terms, eSwitch specifically disclaims all or any liability arising from your access to or use of the website and its services and in no event will eSwitch, its subsidiaries, affiliates, officers, directors, shareholders, employees or agents be liable for any loss or damage of any kind, including indirect, incidental, consequential, punitive, or special damages or any loss of use, loss of profits or loss of data, whether in an action in contract, tort, strict liability or otherwise (including but not limited to negligence), arising out of or in any way connected with those matters (even if eSwitch has been advised of the possibility of such damages).

In any event, our total liability to you for damages, losses, and causes of action (whether in contract, tort, negligence or otherwise) will not exceed the amount paid by you to eSwitch, if

any, for accessing the website or our services, and provided that you notify us of any such claim within one year of it arising.

Our liability for breach of any condition or warranty implied by legislation is, at our option, limited to the supplying services again or payment of the cost of having services supplied again.

You release and forever discharge us, our affiliates, officers, employees or agents from all and any loss, damage or liability (including indirect, special or consequential) excluded under these Terms, including from any third party claim, except to the extent that any legislation applies and cannot be lawfully excluded.

5. Indemnification

You will indemnify and hold harmless eSwitch and its subsidiaries, affiliates, officers, directors, agents, shareholders, employees or agents from any claim, action, proceeding or demand (whether threatened, asserted or filed), and all related damages, losses, liabilities, cost and expenses (including reasonable legal fees), made by any third party due to or arising out of your breach of the Terms, your violation of any law or the rights of any party, your fraud, wilful or reckless conduct or any negligence, damages caused to the website by any content, information or any other materials submitted on the website, and any actual or alleged violation of any proprietary rights or non-proprietary rights (including, but not limited to, defamation, libel, rights of privacy or publicity) by any of the content, information or any other materials on the website.

You also agree to indemnify eSwitch from any and all damage you may cause us, our business, or the website due to your interaction with the website including without limitation your contributions and content, if any to the website, any negligent act or omission or wilful misconduct of yours, or any claim, suit or action bought against us as a result of your own acts or omissions.

This Clause contains continuing separate obligations and it survives termination.

6. Intellectual Property

You acknowledge that eSwitch is the exclusive owner or licensee of, and retains all rights, title and interest to all intellectual property rights (whether registered or not), including all text, images, trademarks, graphics, photographs (that are a part of the website), user interfaces, designs, icons, logos, service marks, selection, arrangement or “look and feel” of all content, any distinctive brand elements, materials, code and programming, data or information developed or provided by eSwitch, and any know-how, works, designs, methodologies, equipment or processes used by eSwitch to provide the website and its services, and nothing in these Terms grants or gives you any intellectual property rights therein, which to avoid doubt are absolutely assigned to eSwitch (**eSwitch’s IP**).

You must not use or display any eSwitch names, logos or trademarks in a manner that states or implies we have endorsed or approved you, or any other goods or services. Except as expressly set out in these Terms, you have no right, license, title or interest in or to any eSwitch names, logos or trademarks and will not use, distribute, transfer, copy, download, display, modify, perform or create derivative works of them without the express prior written consent of eSwitch. You will not translate, reverse engineer, decompile or disassemble eSwitch’s IP.

You acknowledge that any contribution you make to or via the website does not in any way give you a right, title or interest in eSwitch's IP or the website and you warrant to us you have all necessary rights, including copyright, in the content you are contributing and have not granted any rights inconsistent with any rights granted under these Terms, it is not unlawful, defamatory, false or misleading, in violation of laws including privacy, harassment or discrimination, infringing rights, abusive, offensive, obscene or inappropriate, including by being vexatious, provocative, an endorsement or a solicitation and there is currently no claim or dispute with any party about any ownership or use of it. All material published on the website or otherwise is at our discretion and may be edited, removed or republished.

7. Confidentiality

Each party agrees that any information designated by the other as "confidential," or that the recipient should reasonably expect to be confidential in the circumstances will be collectively deemed confidential information, excluding information that was, or becomes, publicly known through no action of the recipient or is already in the legitimate possession of the recipient prior to its disclosure or is obtained by the recipient without a breach of any third party's obligations or violation of law or is independently developed by the recipient, and each party will keep it strictly confidential and not disclose it to any third party, except to the extent required by law or it ceases to be confidential information, and take all reasonable precaution to properly protect all confidential information.

This Clause contains continuing separate obligations and it survives termination.

8. Updates and Revisions

You acknowledge and agree that you will be bound by updates and revisions to these Terms. We recommend you periodically visit the website to familiarise yourself with Terms and review the website generally to familiarise yourself with updates or revisions. We are not obliged to notify you prior to any changes to the website or Terms. It is your responsibility to check the website and Terms from time to time.

9. Privacy Policy

Our Privacy Policy forms part of these Terms and governs the use of the website and the collection, use and disclosure of your personal information respectively and by agreeing to the Terms you are also agreeing to the Privacy Policy.

10. General

10.1 Assignment

You may not assign or transfer any of your rights, or delegate any obligations, under these Terms, without our prior written consent.

eSwitch may assign or otherwise transfer the benefit of these Terms to any third party that purchases or acquires the business which conducts the website.

10.2 Entire Agreement

Unless otherwise specified herein, these Terms are the entire understanding relating to its subject matter and supersedes all prior or contemporaneous oral or written agreements or representations concerning it.

10.3 Waivers

If either party fails to do anything it is entitled to under these Terms that does not amount to a waiver of that right. Any waiver or variation of a provision or right must be in writing and is effective only to the extent set out in the written waiver.

10.4 Notifications and Communications

eSwitch will send notices concerning accounts and services attached to your account via email to the email address provided with the user contact information. You agree that notice to this address via email is sufficient for all notifications for all accounts and services. You agree that eSwitch is not responsible and will not be liable for any outcome related to a notice not being received.

eSwitch may periodically send email messages to the email address provided with the user contact information containing promotions, specials or reminders about services offered. You acknowledge that the periodic messages contain information pertaining to an account or service you have with eSwitch.

10.5 Severability

If any clause or part of a clause is illegal, invalid or unenforceable, it is to be treated as removed, but the rest of this document is not affected and shall remain in full force and effect.

10.6 Governing Law

These Terms are interpreted under and governed by the laws and jurisdiction of the State of New South Wales in Australia, and you irrevocably submit to the non-exclusive jurisdiction of the courts of New South Wales. Any dispute will be settled in this jurisdiction.

10.7 Force Majeure

eSwitch will not be liable for any failure or delay in doing its professional duties resulting from circumstances beyond its physical control, including but not limited to acts of any governmental body, war, rebellion, sabotage, embargo, fire, flood, strike or other labor disturbances, interruption of or delay in transportation, unavailability of, interruption or delay in telecommunications or third party services (including DNS propagation), failure of third party software or hardware, or inability to obtain raw materials, supplies or power used in or equipment needed for provisioning of the System and services.

10.8 Interpretation

In these Terms, except where the context otherwise requires:

- (a) the singular includes plural and vice versa, and a gender includes other genders;
- (b) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (c) a reference to a party is to a party to these Terms, and includes the party's agents, officers, employees, executors, administrators, successors and permitted assigns and substitutes;
- (d) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (e) the meaning of general words is not limited by specific examples introduced by "including, for example" or similar expressions;

- (f) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of these Terms or any part of them.