

# Emerg Solutions Pty Ltd

## Terms of Use

By using and accessing the BART Solution, you agree to these Terms of Use and disclosure of private and sensitive information for the purposes outlined in our Privacy Policy show below:

### Definitions

In these Terms of Use:

- a. BART Solution means the BART Smart Phone Application, the Members Area, Dashboard and Turnout accessible from the BART Web Site ([www.bart.emerg.com.au](http://www.bart.emerg.com.au)) developed and operated by the Emerg Solutions Pty Ltd (known as 'Emerg') to provide value add or back up services to messages sent to fire and emergency stations, units, branches, flotillas , groups and individuals from control centres;
- b. Push Notification Service means the service where Emerg sends a Push Notification Request to Apple, Google or Microsoft who then send the actual Push Notification to your smartphone, tablet or other mobile device (regardless of whether the application is open) at the same time as the actual message is sent to the BART Smart Phone Application by Emerg. The Push Notification Service operates through Apple, Google and Microsoft which includes a default Quality of Service (QoS) component that performs a store-and-forward function. If Push Notification Service attempts to deliver a notification but the device is offline, the notification is stored for a limited period of time, and delivered to the device when it becomes available. Only one recent notification for a particular app is stored. If multiple notifications are sent while the device is offline, each new notification causes the prior notification to be discarded. This behaviour of keeping only the newest notification is referred to as *coalescing* notifications. If the device remains offline for a long time, any notifications that were being stored for it are discarded. **Important:** Delivery of Push Notifications is a "best effort", not guaranteed. It is not intended to deliver data to the BART Smart Phone Application, only to *notify* the user that there is new data available.
- c. We, our or us means the Emerg includes their directors, employees, officers and agents; and
- d. You or your means the application user who, by using the application, accepts these Terms of Use.

## **Important information**

BART benefits emergency service personnel at a community level, helping you to respond to emergencies faster, use resources more effectively and coordinate activities both within your own district and other adjoining areas throughout Victoria. However, BART depends on many factors:

- (1) Your mobile device: age, version, operating system, personal setting, etc.
- (2) The mobile data network you are connected to
- (3) The communication feed whether official or un-official
- (4) The Wi-Fi communications your mobile devices utilises
- (5) The Push Notification Services provided by Apple, Google and Microsoft.
- (6) Power, feed and communication outages
- (7) Third party solutions in your mobile phone such as Google maps, GPS, voice to text, etc.
- (8) Members of your team not using the solution correctly or not understanding the solution,
- (9) The supported mobile devices are in the list provided

## **Application content**

All text, graphics, video, information, designs, data and other content available through or arising from BART is provided to you from the Agency you are associated with and not from Emerg solutions Pty Ltd You understand and agree that the content is from not Emerg Solution Pty Ltd and that your use of the content is solely at your own risk.

You understand and acknowledge that the internet is not a secure medium and communications to and from this application may be intercepted or altered in transit. To the extent permitted by law, we make no representation or warranty, either express or implied, that this application will be free from viruses or any other security threats that may damage any mobile device used to access this application.

We reserve the right to amend, delete, add to, or otherwise revise any content contained in this application at any time on reasonable notice, including these Terms of Use. It is your responsibility to monitor any such change made by Emerg to the extent permitted by law, your only remedy is to immediately cease accessing and using this application.

## **Copyright**

Unless stated otherwise, copyright and other intellectual property rights in all content contained in or available the BART Applications is owned by Emerg used under licence. We

grant you a non-exclusive, non-transferable, revocable licence to access and use the application.

You:

- a. May only make limited copies of the content in accordance with the Copyright Act, including copies for research, study, criticism, review or news reporting; and
- b. Must not reproduce, adapt, modify, communicate to the public or otherwise use any content (in particular for commercial purposes) without our prior written permission.

All trademarks appearing on this application belong to their respective owners.

## **Liability**

This application and its content are provided entirely “as is”. Except where to do so would cause any part of these Terms of Us to be illegal, void or unenforceable, we:

- a. Exclude all conditions and warranties implied into these Terms of Use;
- b. To the fullest extent permitted by applicable law, are not liable to you or anyone else for any loss or damage, however caused (including negligence)m which may be directly or indirectly suffered in connection with the use or performance of the application of any content (including any cost, loss, liability or expense arising from death, personal injury or damage to property); and
- c. Exclude liability (whether that liability arises under contract, tort (including negligence) or statute) for any direct, indirect, punitive, incidental, special or consequential loss or damage (including without limitation loss of revenue and loss of, or damage to, data) suffered or incurred in connection with the use or performance of the application or any content.

If, despite the above provisions, a court determines that we are liable to you, that liability will be limited (at our election) to resupplying the affected service or content to you. You must indemnify us and hold us harmless against all loss, actions, proceedings, costs, expenses (including legal fees), claims and damages arising from any claim by a third party arising directly or indirectly out of or in connection with:

- a. Any breach by you of these Terms and Conditions; or
- b. Any suit, claim or demand brought or made against us by or due to the conduct, act or omission of:
  - i. You; or
  - ii. Any person accessing the application through your smartphone, iPad or other mobile device.

## Intellectual Property

- a. Emerg Intellectual Property: All Intellectual Property in and to pertaining the BART (including any development, modification, adaptation, enhancement or improvement of the BART) and other Intellectual Property used by Emerg connection with the BART solution, our websites, our Apps or our Services is owned by or licensed to us. Apart from the permitted use under these Terms of Use, you acquire no right, title or interest in or to our Intellectual Property by virtue of these Terms of Use. The BART Solution is a web based application and apart from accessing the BART on our websites, or through our Apps none of its source or object codes will be made available to you.
  - b. Infringement: Without limiting any other provision of these Terms of Use, if the BART solution infringes or is alleged to infringe the Intellectual Property rights of any third party, we may at our discretion, modify or re-work the BART so that such infringement is removed; procure the right for you to continue enjoying the benefit of the BART in accordance with these Terms of Use; or terminate these Terms of Use upon immediate written notice to you without liability.
  - c. In these Terms of Use, “**Intellectual Property**” means intellectual property and proprietary rights including:
    - (a) trademarks;
    - (b) discoveries, inventions, improvements, know-how, trade secrets, confidential information, technical data, business data or formulae;
    - (c) computer programs or databases;
    - (d) business processes, methodologies or systems;
    - (e) logos, marks, reputation, goodwill, trading name;
    - (f) drawings, designs or design rights;
    - (g) copyright or any material in which copyright exists;
    - (h) moral rights; and
    - (i) any similar industrial or intellectual property rights, whether registered or unregistered, recorded or unrecorded, stored or incorporated in any medium of any nature or description.
- iii. Warranties and Limitation of Liability
- a. Non-excludable Terms: Nothing in these Terms of Use excludes, restricts or modifies the application of any legislation which by law of any jurisdiction cannot be excluded, restricted or modified. In particular, without limiting the foregoing, where you are considered a “consumer” within the meaning of the Australian Consumer Law (ACL) we give the guarantees to the extent required by the ACL (Consumer Guarantees) with respect to our goods and Services.
  - b. No Express Warranty: Subject to this clause, we provide no warranty that:
    - (a) your use of the BART or our goods or Services will not infringe the Intellectual Property rights of third parties;
    - (b) that BART will operate in combination with other software or any particular equipment, or other systems, or will integrate smoothly with third party applications; or

- (d) that BART will provide any function other than expressly described on our website with respect to BART.
- c. Limitation of Liability: Without limiting the generality of this clause, and to the extent permitted by law, we, our directors, officers, employees, contractors or suppliers shall not be liable for any loss or damage whatsoever (including, without limitation, indirect, incidental, special and/or consequential damages, loss of profits or opportunities, or loss of business information) arising out or in connection with, or resulting from:
- (a) the death of, or any illness, disability or personal injury suffered by, any person, or property damage;
  - (b) any use or access of, or any inability to use or access, BART, our website, our App, any third party link, any BART Account or any Content;
  - (c) any use, storage, or disclosure of video or images taken on your device while using, or in connection with, any features of BART;
  - (d) any unauthorised access to or alterations of your transmissions, data or Content;
  - (e) any statements or conduct of any user of our website, our app, or our Services, including any information and/or advice and any defamatory statements or offensive conduct; or
  - (f) these Terms of Use, including any claims arising out of the use or not being able to use or any defect in BART, our goods or the Services, any claims directly or indirectly arising out of any reliance on the content of our website (including your Content), any claims arising out of the unauthorised access to your Content or your BART Account whether at common law, under contract, tort (including negligence), in equity, pursuant to statute or otherwise;
- d. Permissible Limitation on Non-excluded Terms: Where by law we are unable to exclude any guarantee, warranty, representation, condition or other term or to limit our liability as set out above, but are entitled to limit it, then our liability to you under such terms is limited, at our discretion, to the repair or replacement of goods, or payment of the cost of repairing or replacing the goods or in the case of services, to the supply the services again or paying the cost of having the services supplied again or, if this is not permitted by law, then to the fullest extent permitted by applicable law.
- e. Force Majeure: If the performance of these Terms of Use or any obligations under these Terms of Use is prevented, restricted, or interfered with by reason of an act of God, fire, lightning, explosions, flood, subsidence, terrorist act, insurrection or civil disorder or military operations, communications infrastructure failure, government or quasi-government restraint, expropriation, prohibition, intervention, direction or embargo, inability or delay in obtaining governmental or quasi-governmental approvals, consents, permits, licences or authorities, strikes, lock-outs or other industrial disputes of any kind and, any other cause whether similar or not to the foregoing, outside of our control (**Force Majeure**), the performance of our obligations will be suspended and we may, amongst other things, suspend your BART Account. We will

take reasonable steps to remove the Force Majeure as soon as reasonably possible, or to minimise its duration or effect, however, if the Force Majeure is not removed within 30 days, we may cancel your BART Account and terminate these Terms of Use.

- iv. Third Parties
  - a. Third Parties' Websites: We may include links to Third Party Websites on BART. We are not responsible for and do not endorse any features, content, advertising, products or other materials on or available from Third Party Sites.
  - b. Use of Third Party Website: You should review any applicable terms and/or privacy policy of a Third Party Website before using it or providing any information. You are responsible for evaluating whether you would like to access or use a Third Party Website. You agree and acknowledge that you access and use Third Party Sites entirely at your own risk and we will not be responsible or liable, directly or indirectly, for any damage or loss caused or alleged to be caused by or in connection with the access and use of the Third Party Sites.
  - c. Advertisements: Unless we expressly state otherwise, we have no association with our advertisers and do not endorse any of their products or services. We will not be responsible or liable for any content, products or services on the advertisements found on our website.

## **Term and Termination**

1. Term: These Terms of Use commence on the date of registration of your BART Account (**Commencement Date**) and continue until your BART Account is cancelled in accordance with this clause.
2. Cancellation by Us: We may by notice to you restrict, suspend or cancel your BART Account and terminate these Terms of Use at any time, without notice, if you are in breach of these Terms of Use or in accordance with this clause point 5.
3. Cancellation of Your Account:
  - (a) As a BART Member, you may cancel your BART Account and terminate these Terms of Use for any reason, at any time, by providing 30 days' written notice to us;
  - (b) As a BART Group, you may cancel your BART Group Account and terminate these Terms of Use for any reason, at any time after the date that is one (1) year after the Commencement Date, by providing three (3) months' written notice to us.
4. Consequences of Cancellation: Upon cancellation of your BART Account, these Terms of Use (including all licences granted under these Terms of Use) terminate and you will lose access to BART and the Services, and the Content of your BART Account will be permanently erased.

## **General**

5. Entire Agreement: These Terms of Use and any conditions imposed by applicable law constitute the entire agreement of between you and us with respect to this subject matter and supersede and replace all prior agreements and understandings between you and us relating to that subject matter.
6. Variation: We may vary these Terms of Use at any time and we will provide you with notice of the amendments. Any variation of these Terms will take effect on the date specified on the notice. If you do not wish to accept the amendments, please notify us before the date the amendments take effect and we will terminate your BART Account. If you continue to use our Services after the amendments come into effect, you will be deemed to have accepted the amendments.
7. Assignment: You may not assign or transfer your rights or obligations under these Terms of Use unless with our prior written consent, which may not be unreasonably withheld. We may assign or novate any of our rights or obligations without notice.
8. Notices: Any notice or other communication to or by a party under these Terms of Use:
  - (a) must be made in writing and signed by the sender or a person authorised by the sender; and
  - (b) may be served by delivery in person or made by post, fax or email.
9. Severance: If any provision of these Terms of Use is held invalid, unenforceable or illegal for any reason, these Terms of Use will otherwise remain in full force apart from such provision which will be deemed deleted.

## **Applicable law**

These terms of use and your use of this application are governed by the laws of Victoria, Australia, and you consent to the exclusive jurisdiction of the courts of Victoria, Australia.

This application may be accessed throughout Australia and overseas. We make no representation that the content available through this application complies with the laws (including intellectual property laws) of any country outside Australia. If you access this application from outside Australia, you do so at your own risk and you are responsible for ensuring compliance with all laws in the place where you are located.

## **Privacy**

In the course of your use of this application we may collect some information about you, including information about your location if you have chosen to activate location services. We will use this information for the purposes of operating the application. If you have any questions in relation to the handling of the information that we may collect about you or

would like access to that information, please refer to our privacy statement, which is included below.

## Disclaimer

Please continue to use the prime alerting system in addition to BART. We cannot be held liable to matters outside our control

## Supported Mobile devices

Whilst ensuring the system is compatible with the latest devices and operating systems, we understand the importance of offering compatibility with older devices, which still may be in use.

The following list confirms that the system is compatible with the most popular devices and operating systems, with minimal reduction of flexibility when taking advantage of newer technologies.

As part of ongoing support, we will continue to support updated devices from the model line as specified below. For example; in the table below we currently support Samsung galaxy S5, and we will continue to support any subsequent model from that line-up (Galaxy S6 for example).

The following is a list of supported smart devices (and if applicable software revisions):

### Android devices:

- Google Nexus 4
- HTC One
- Samsung Galaxy Note II
- Samsung Galaxy S III
- Google Nexus 7
- Samsung Galaxy Note 10.1
- Samsung Galaxy Tab 2
- Sony Xperia Z2

### Android Operating System (minimum):

- Android smartphone OS version 2.3.3 (Gingerbread)
- Android Tablet OS version 4.0 (Ice Cream Sandwich)

### Apple devices:

- Apple iPhone 3GS with iOS Version 7
- Apple iPod touch 4<sup>th</sup> Generation with iOS Version 7
- Apple iPad 2<sup>nd</sup> Generation with iOS version 7



- Apple iPad mini 1st Generation with iOS version 7

## **Windows devices**

- Windows Phone 8 smartphones Version Update 3

The support established for SAS will support the above hardware groups. That is to say that when a vendor releases a new generation of an supported phone/tablet or operating system for a device on the list, it will become a supported device for the application following a period of testing which will occur within 2 months of release. For example, if Apple comes out with "iPhone 7" and IOS 9, then subsequent to testing taking place, the device is deemed added to the supported list.

If, however, a vendor releases a new *range* of smart phones or tablets then a variation may be required to have that new range added to the supported list.

Likewise, where a vendor ceases support for a particular model, future versions of the application may not work correctly.

# Privacy Policy

## **1. We respect your privacy**

1.1. Emerg Solutions Pty Ltd respects your right to privacy and is committed to safeguarding the privacy of our customers and website visitors. We adhere to the National Privacy Principles established by the Privacy Act 1988 (Cth). This policy sets out how we collect and treat your personal information.

1.2. "Personal information" is information we hold which is identifiable as being about you.

## **2. Collection of personal information**

2.1. Emerg Solutions Pty Ltd will, from time to time, receive and store personal information you enter onto our website, provide to us directly or give to us in other forms.

2.2. You may provide basic information such as your name, phone number, address and email address to enable us to send information, provide updates and process your product or service order. We may collect additional information at other times, including but not limited to, when you provide feedback, when you provide information about your personal or business affairs, change your content or email preference, respond to surveys and/or promotions, provide financial or credit card information, or communicate with our customer support.

2.3. Additionally, we may also collect any other information you provide while interacting with us.

### **3. How we collect your personal information**

3.1. Emerg Solutions Pty Ltd collects personal information from you in a variety of ways, including when you interact with us electronically or in person, when you access our website and when we provide our services to you. We may receive personal information from third parties. If we do, we will protect it as set out in this Privacy Policy.

### **4. Use of your personal information**

4.1. Emerg Solutions Pty Ltd may use personal information collected from you to provide you with information, updates and our services. We may also make you aware of new and additional products, services and opportunities available to you. We may use your personal information to improve our products and services and better understand your needs.

4.2. Emerg Solutions Pty Ltd may contact you by a variety of measures including, but not limited to telephone, email, sms or mail.

### **5. Disclosure of your personal information**

5.1. We may disclose your personal information to any of our employees, officers, insurers, professional advisers, agents, suppliers or subcontractors insofar as reasonably necessary for the purposes set out in this Policy. Personal information is only supplied to a third party when it is required for the delivery of our services.

5.2. We may from time to time need to disclose personal information to comply with a legal requirement, such as a law, regulation, court order, subpoena, warrant, in the course of a legal proceeding or in response to a law enforcement agency request.

5.3. We may also use your personal information to protect the copyright, trademarks, legal rights, property or safety of Emerg Solutions Pty Ltd, [www.bart.emerg.com.au](http://www.bart.emerg.com.au), its customers or third parties.

5.4. Information that we collect may from time to time be stored, processed in or transferred between parties located in countries outside of Australia.

5.5. If there is a change of control in our business or a sale or transfer of business assets, we reserve the right to transfer to the extent permissible at law our user databases, together with any personal information and non-personal information contained in those databases. This information may be disclosed to a potential purchaser under an agreement to maintain confidentiality. We would seek to only disclose information in good faith and where required by any of the above circumstances.

5.6. By providing us with personal information, you consent to the terms of this Privacy Policy and the types of disclosure covered by this Policy. Where we disclose your personal information to third parties, we will request that the third party follow this Policy regarding handling your personal information.

## **6. Security of your personal information**

6.1. Emerg Solutions Pty Ltd is committed to ensuring that the information you provide to us is secure. In order to prevent unauthorised access or disclosure, we have put in place suitable physical, electronic and managerial procedures to safeguard and secure information and protect it from misuse, interference, loss and unauthorised access, modification and disclosure.

6.2. The transmission and exchange of information is carried out at your own risk. We cannot guarantee the security of any information that you transmit to us, or receive from us. Although we take measures to safeguard against unauthorised disclosures of information, we cannot assure you that personal information that we collect will not be disclosed in a manner that is inconsistent with this Privacy Policy.

## **7. Access to your personal information**

7.1. You may request details of personal information that we hold about you in accordance with the provisions of the Privacy Act 1988 (Cth). A small administrative fee may be payable for the provision of information. If you would like a copy of the information which we hold about you or believe that any information we hold on you is inaccurate, out of date, incomplete, irrelevant or misleading, please email us at [bartreg@emerg.com.au](mailto:bartreg@emerg.com.au).

7.2. We reserve the right to refuse to provide you with information that we hold about you, in certain circumstances set out in the Privacy Act.

## **8. Complaints about privacy**

8.1. If you have any complaints about our privacy practices, please feel free to send in details of your complaints to 420 Burwood Hwy,, Wantirna South, VIC 3152, Australia. We take complaints very seriously and will respond shortly after receiving written notice of your complaint.

## **9. Changes to Privacy Policy**

9.1. Please be aware that we may change this Privacy Policy in the future. We may modify this Policy at any time, in our sole discretion and all modifications will be effective immediately upon our posting of the modifications on our website or notice board. Please check back from time to time to review our Privacy Policy.

## **10. Website**

10.1. When you visit our website; when you come to our website (www.bart.emerg.com.au) we may collect certain information such as browser type, operating system, website visited immediately before coming to our site, etc. This information is used in an aggregated manner to analyse how people use our site, such that we can improve our service.

10.2. Cookies; we may from time to time use cookies on our website. Cookies are very small files which a website uses to identify you when you come back to the site and to store details about your use of the site. Cookies are not malicious programs that access or damage your computer. Most web browsers automatically accept cookies but you can choose to reject cookies by changing your browser settings. However, this may prevent you from taking full advantage of our website.

10.3. Our website may from time to time use cookies to analyse website traffic and help us provide a better website visitor experience. In addition, cookies may be used to serve relevant ads to website visitors through third party services such as Google Adwords. These ads may appear on this website or other websites you visit.

10.4. Third party sites; our site may from time to time have links to other websites not owned or controlled by us. These links are meant for your convenience only. Links to third party websites do not constitute sponsorship or endorsement or approval

*Terms of Use were last updated on 22 February 2017*