



## **Standard Form of Agreement**

Living Networks Enterprises Pty Ltd

ABN: 35 124 553 180

38 Oxford Close

Leederville WA 6007

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## **1 Our Agreement**

### **1.1 Standard Form of Agreement**

- 1.1.1 Part 23 of the Telecommunications Act (1997) permits us to supply telecommunications Services to you on the terms and conditions of a “Standard Form of Agreement”. Our Customer Agreement (this document) is our “Standard Form of Agreement”.
- 1.1.2 Our Customer Agreement sets out the standard terms and conditions under which we supply our products Services and products to our customers.

### **1.2 Our agreement**

- 1.2.1 If your Application has been approved according to our Credit Assessment Policies we will provide you with your selected Service and any applicable Equipment under a binding agreement (“our Agreement”) consisting of:
- a) the terms set out in an Application form you Sign;
  - b) the Pricing Schedule; and
  - c) this Customer Agreement; and
  - d) any applicable Service Description, service features material or warranty information published by us.
- 1.2.2 If there is any inconsistency between any of the terms contained in the abovementioned documents then to the extent of any inconsistency the documents are to be read in priority in the order in which they are presented above.

### **1.3 Period of our agreement**

- 1.3.1 This agreement shall commence on the date your Application is accepted by us and shall continue until termination, either by us giving notice to you, you giving notice to us, or the law deems this agreement no longer applies and substitutes this agreement with a standard form of agreement.
- 1.3.2 The provision of Service commences when you are first connected, or when your Service is Transferred to us from another Service Provider.

### **1.4 Copies of our agreement**

- 1.4.1 This document may be found online at <http://www.livingnetworks.net.au/sfoa.html> and a copy is available on request from us.
- 1.4.2 A summary of the SFOA can be found at <http://www.livingnetworks.net.au/summary.html>.

- 1.4.3 If you have a disability that impedes your ability to read these documents or have difficulty reading or understanding English, you may call our customer service centre for assistance.

## **1.5 Changes to our agreement**

- 1.5.1 Without notice we may vary, alter, replace or revoke any term or condition at any time.
- 1.5.2 Where we do so, we will update any relevant document and place this on our Website. We recommend that you check this site regularly to ensure that you are aware of and comply with the most recent version.

## **2 Charges**

### **2.1 Pricing Schedule (Plan Brochure)**

- 2.1.1 We provide our Services under Plans. Our Plans typically have upfront and periodic fees, usage charges, discounts, promotions and may have a minimum term.
- 2.1.2 Certain Plans and promotions have specific terms and conditions and may be restricted to certain types of customers such as new, existing, special needs or pensioners. Plan fees and charges are specified in our Pricing Schedule.
- 2.1.3 You acknowledge that before entering into this agreement you have received and understood the Pricing Schedule associated with your Service.
- 2.1.4 Your Plan may be varied, or its term extended or renewed as agreed between you and us from time to time. If you do not contact us at expiration of your minimum Plan term we will assume you require your Service to continue under the same terms and conditions on a rolling monthly basis until you notify us otherwise.
- 2.1.5 If your Service is disconnected or Transferred from us you must pay us all outstanding amounts under our agreement. Once we have received payment, we will refund to you any amount(s), which we may still hold.

### **2.2 3<sup>rd</sup> Party Arrangements**

- 2.2.1 We may pay commission to agents acting on our behalf.
- 2.2.2 The Fees and Charges billed to you may include 3<sup>rd</sup> Party Services that you have agreed that we may pass on to you. In these cases we do not promise to maintain a schedule of these or ensure you are aware of these prior to purchase.

### **2.3 Variations to Fees and Charges**

- 2.3.1 You acknowledge that our Fees and Charges may vary as a result of a variation of a Supplier's charges to us.
- 2.3.2 We may amend our Fees and Charges from time to time and will provide you with reasonable notice.
- 2.3.3 In circumstances of price increases, you may cancel your Service without incurring a Plan Cancellation Fee by giving notice to us within 42 days after the date we give you notice of the proposed variation.
- 2.3.4 For the avoidance of doubt, you do not have the right to cancel your Service without incurring a Plan Cancellation Fee where there has only been pricing variations in 3<sup>rd</sup> Party Services or variations caused by changes to taxation law or changes in international calling rates.

### **2.4 GST**

- 2.4.1 If applicable, you must pay to us any GST that we are liable to pay on any GST Supply made by us under this agreement, at the same time and in the same manner that you are obliged to pay for the

GST Supply. If you do not make a payment of GST as required under this agreement, we are not obliged to take any steps to minimise your liability in respect of the late GST.

## **2.5 Recovery of costs**

- 2.5.1 Where we incur costs in processing or investigating certain matters for you including Service usage, failures, changes and Transfers or where third parties charge us in relation to the Service we will charge these costs to you.
- 2.5.2 Where we incur costs due to your breaches of our terms and conditions or failures of your Equipment or otherwise due to causes not attributable to us we will be entitled to pass these on to you.
- 2.5.3 Where we take debt recovery action against you, we will charge you our recovery costs. These include all costs arising out of your default including, but not limited to, bank, legal (on a full indemnity basis), accounting and mercantile agent fees and any cost or interest incurred by us. Debt recovery action is only taken as a last resort.

## **2.6 Promotions**

- 2.6.1 From time to time we may make promotions available in connection with your Service. These promotions may be notified in a general advertisement or specifically offered to you and may be subject to certain conditions.
- 2.6.2 You may be required to accept a promotion.
- 2.6.3 If you validly accept a promotion, the terms of that promotion will apply until the expiry of the promotion.

## **2.7 Billing and account payment**

- 2.7.1 You must pay us all Fees and Charges that are incurred in using your Service.
- 2.7.2 Usage Records and download times are controlled by the Service Provider and can vary from time to time. Accordingly, whilst we aim to, we are unable to guarantee that all Usage Records during a Billing Period will appear on the corresponding Tax Invoice. We will apply the Service provider's rules for whether usage or usage attempts are chargeable to you or not.
- 2.7.3 If you are a resident within a community or lifestyle village:
  - a) We may appoint the operator or owner of your village to act as our agent to bill and collect the Fees and Charges from you. If so, you must pay them in accordance with their policies and processes.
  - b) We may provide the Services to the operator or owner of your village whom may at their discretion on-pass these Services and the associated Fees and Charges to you. Is so, you are a user of the Services and we do not have a specific contractual relationship with you.
  - c) We will specify in your Application Form whether clause a) or b) above apply.
- 2.7.4 In the event that we bill you directly:
  - a) We will send to you by mail or email notification a Tax Invoice at the end of every Billing Period unless we agree with you otherwise. You must pay all outstanding amounts by the Due Date as shown on your Tax Invoice.
  - b) If you have more than one of our Services we will combine all of your charges on one monthly Tax Invoice to assist you with your account management, in accordance with industry guidelines.
  - c) Payments may be made to us through our available payment methods. Fees and Charges may apply for some available payment methods. We will apply payments made by you against outstanding Tax Invoices at our discretion.

- d) If you fail to pay a Tax Invoice by the Due Date then this may incur additional Fees and Charges.
- e) Where in our opinion you have a reasonable claim or dispute with an invoice, we will suspend our collection or recovery processes until a determination on your claim or dispute has been made.
- f) We may reissue any bill if any error is subsequently discovered. If you have overpaid as a result of a billing error, your account will be credited with the overpayment or, if you have stopped acquiring the Service from us, we will refund the overpayment promptly after your request and after deduction of any other amounts due by you to us.
- g) If we owe you monies we will make a reasonable attempt to refund these to you. If following 12 months of disconnection of your Service we have been unable to refund these you agree to forfeit them to us.

## **2.8 Account management**

- 2.8.1 We may set Credit Limits for you. If we do we will advise you whether the Credit Limit is a guideline for credit management action or an absolute limit. Your Credit Limits may be changed from time to time with reasonable notice provided to you. If you exceed this Credit Limit, we may restrict or suspend your Services.
- 2.8.2 Where we consider your use of the service to be unusual we can issue you with an interim bill at any time.
- 2.8.3 We can ask you to pay us a security bond or advance payment based upon our Credit Assessment Policies. Provision of Service to you may be subject receipt of this bond or advance. Security bonds are not held in an interest-bearing account and no interest is payable on security bonds. We will return a security bond to you within 10 days of cancellation of all of your Services, or upon completion of the terms of the security bond arrangement. If you pay us a security bond we can use it to pay any of your outstanding fees and charges at any time.
- 2.8.4 If you have made an advance payment it will be credited towards your next and subsequent Tax Invoices until the advance payment has been used in full.

## **2.9 Billing Disputes**

- 2.9.1 Billing disputes must be raised in accordance with this clause otherwise they will be considered invalid.
- 2.9.2 To raise a billing dispute, you must, within 12 months of the date of the bill, make a good faith request to us to investigate the specific charges or bill in dispute and provide details which show that a particular charge or bill is incorrect.
- 2.9.3 If in our investigation of your billing dispute we acknowledge the error we will reissue the Tax Invoice and credit your account or refund you if you have disconnected your Service with any overpayment (if applicable).
- 2.9.4 If our investigation determines your billing dispute to be invalid, you must pay any outstanding amount within five Business Days.

## **2.10 Financial Hardship**

- 2.10.1 We will offer you assistance if you are suffering Financial Hardship and are experiencing difficulties paying your bills.
- 2.10.2 We will seek evidence of your Financial Hardship such as, but not limited to: correspondence from your financial advisor, General Practitioner, case worker or guardian a bankruptcy notice or Part IX debt proposal.
- 2.10.3 We may enter into an agreement for repayment of any amounts due to us over time. If you fail to comply with this agreement, we will resume actions to collect the amounts due.

2.10.4 We will liaise directly with your financial counsellor or any 3<sup>rd</sup> party of your nomination with respect to your account provided you provide us with written notice authorising us to do so.

### **3 The Services**

#### **3.1 Application for Service**

3.1.1 You may make an Application for us to supply you the Service by:

- a) completing and submitting a paper or online Application form; or,
- b) telephone by asking our customer representative to complete the Application form on your behalf.

3.1.2 We will decide whether to accept your Application and to supply the Service to you based on:

- a) the particular terms for that Service;
- b) your eligibility for that Service;
- c) the availability of the Service to you;
- d) our credit requirements and assessment of you;
- e) the accuracy of the information provided to us by you; and
- f) your prior conduct or history in respect of any previous supply by us of any goods or services to you, including your compliance with the relevant terms and conditions under which we supplied those goods or services.

#### **3.2 The Service that we will provide**

3.2.1 Subject to our acceptance of your Application we will provide you with the Service that you have requested.

3.2.2 We will provide the Service in accordance with your Application and our Agreement.

3.2.3 Specific terms and conditions plus details of Service features and limitations are included within our Service Descriptions which are available on our website or through contacting us.

3.2.4 We may change the Service from time to time. Generally this will be to enhance the Service for your benefit. Where appropriate we will provide you with reasonable notice of the change via mail (usually with your bill), via email, or other reasonable means.

#### **3.3 Provisioning your Service**

3.3.1 Where we are required under Telecommunications Legislation to try to connect some Services within particular timeframes we will do so. For other Services we will try to connect the Service within a reasonable time.

3.3.2 We will require your reasonable cooperation to allow us to connect and supply the Service to you safely and efficiently.

#### **3.4 Variations of your Service**

Variations requested by you

3.4.1 If you request a variation to the Service and we, in our discretion, make that variation, then revised charges may apply to the varied Service as notified to you by us and charges may apply according to the Pricing Schedule.

- 3.4.2 You acknowledge that if you request a Service Downgrade that in completing your request we will suffer loss. Further you agree that we may charge you a fee in accordance with the Pricing Schedule which represents a genuine pre-estimate of the administrative costs we will incur as a result of the Service Downgrade and is not a penalty.

#### Variations made by us

- 3.4.3 We may at any time vary the Service if reasonably required for technical, operational or commercial reasons. If doing so is likely to have a significant detrimental impact on your use of the Service, then:
- a) we will give you notice in writing of the intended variation at least 21 days before the date on which the variation takes effect; and
  - b) you may cancel the service without incurring a Plan Cancellation Fee by giving notice to us within 42 days after the date of the relevant notice.

### **3.5 You are responsible for use of the Service**

- 3.5.1 While we will use our best endeavours in providing the Service, you use it at your own risk. Even if you lose or permit another person to use your Service, you are solely responsible for its use including:
- a) the calls made and messages sent;
  - b) the sites and content accessed;
  - c) the content or software downloaded and the effect it may have on your Equipment or Service;
  - d) the products and services purchased;
  - e) the information provided to others;
  - f) the installation or use of any Equipment or software whether provided by us or not;
  - g) the modification of any settings or data on your service or related services or Equipment whether instructed by us or not;
  - h) the personal supervision of any Users under the age of 18 who use the Service; and
  - i) the lawfulness of your activities when using the Service and accessing any sites and third party content.
- 3.5.2 If you allow another person to occupy the Premises and use the Service you are responsible for and must pay for any use of the Service, whether you authorise it or not.
- 3.5.3 If you do not disconnect the Service when you leave the Premises or transfer legal responsibility for the Service you must pay for any use of the Service by later occupants or others. Any person who uses the Service, or allows someone else to use it, after you have vacated the Premises, is jointly and severally liable with you for any charges relating to that use.

### **3.6 Force Majeure**

- 3.6.1 If caused by any event or circumstance reasonably beyond our control, including but not limited to; war, accident, civil commotion, riot, military action, sabotage, act of terrorism, vandalism, embargo, judicial action, labour dispute, an act of a government or a government authority, acts of God, earthquake, fire, flood, plague or other natural calamity, computer viruses, hacker attacks or failure of the internet or delay, or failure or default by any other supplier, we will not be liable for:
- a) any delay in installing any Service.
  - b) any delay in correcting any fault in any Service.
  - c) failure or incorrect operation of any Service, or
  - d) any other delay or default in performance under our Agreement.

### 3.7 Equipment and other required items

3.7.1 Unless agreed with us otherwise, you are responsible for:

- a) the purchase, installation, configuration, and maintenance of suitable Equipment and software to access the Service;
- b) using such Equipment and software in accordance with relevant legislation, guidelines and User guides;
- c) providing any required power supply; and
- d) any telecommunications costs to access the Service, where applicable.

3.7.2 Standards for software and Equipment are available by contacting us and from our Website.

3.7.3 You must only connect Equipment that complies with relevant technical standards and other relevant requirements. For these standards see the ACMA's Website at: <http://www.acma.gov.au>

#### Our Equipment

3.7.4 In order to use the Service, we may provide to you Equipment or cabling which we own or lease ("Our Equipment").

3.7.5 Where we provide Our Equipment to you in connection with the Service:

- a) ownership or title in Our Equipment is not transferred to you;
- b) risk in Our Equipment passes to you on delivery;
- c) you must comply with our reasonable directions relating to our rights of ownership of Our Equipment;
- d) you must only use Our Equipment in accordance with the manufacturer's specifications and our written directions;
- e) you are responsible for Our Equipment and must pay us for any loss or damage to Our Equipment, except to the extent that it is caused by us or for fair wear and tear;
- f) you must not part with possession of Our Equipment except to us and you must keep Our Equipment free from any encumbrance;
- g) you must allow us to inspect, test, service, modify, repair, remove or replace Our Equipment, or to recover it after the Service is cancelled;
- h) you must ensure that Our Equipment will not be altered, repaired, serviced, moved or disconnected except by service personnel approved by us;
- i) you must ensure that you have all necessary consents and approvals (including landlord approval where applicable) necessary or desirable for us to deliver, install and maintain Our Equipment at the Premises; and
- j) you must provide adequate and suitable space, power supply and environment for all Our Equipment located on the Premises.

#### Your Equipment

3.7.6 You must ensure that all Equipment you use in connection with the Service, other than Our Equipment ("Your Equipment") complies with all laws and relevant technical standards issued by a Regulatory Authority and all reasonable directions by us, including making any changes to Your Equipment to avoid any danger or interference it may cause.

3.7.7 We take no responsibility for Your Equipment. A manufacturer's warranty may be provided. If Your Equipment is in need of repair or upgrade you should take it back to the place of purchase, contact the

manufacturer for advice or contact us if you have any additional queries. We recommend you keep your proof of purchase in a safe place in case it is required for the servicing of Your Equipment.

- 3.7.8 Generally we will not provide Customer Support for Your Equipment however we will provide Customer Support for Supported Equipment.

#### Disconnection of Your Equipment

- 3.7.9 If you do not comply with any of your obligations under this clause we may disconnect Your Equipment from the Service or require you to do so. We will try to give you reasonable notice before disconnection but may do so immediately in an emergency.

#### Purchased Equipment

- 3.7.10 You may purchase Equipment from us for use in connection with the Service ("Purchased Equipment"). You must pay for that Equipment on your receipt of the invoice from us.
- 3.7.11 Title to Purchased Equipment passes to you when you pay for it, in full. Risk in the Purchased Equipment passes to you on delivery to your nominated delivery address.
- 3.7.12 We will use reasonable efforts to transfer to you any manufacturer's warranty in any Purchased Equipment, from the time title passes to you.
- 3.7.13 If you purchase the wrong Equipment, you may exchange it provided that it is returned to us undamaged and complete with all components and with the packaging intact, within 14 days of delivery to your nominated delivery address. Charges may apply as specified in the Pricing Schedule.

#### Premises

- 3.7.14 In order to provide the Service to you, we may need access to the Premises. You agree to provide us safe and prompt access to the Premises:
- a) to install any Equipment for a Service you have requested;
  - b) to inspect, test, maintain, modify, repair or replace any Equipment; and
  - c) to recover Our Equipment after the Service is cancelled.
- 3.7.15 If you do not own the Premises, you must obtain the owner's permission for us to access the Premises and install and maintain any Equipment. You promise to us that you have obtained that permission. You indemnify us against (and must pay us for) any claim the owner of the Premises makes against us relating to our entering the Premises or installing or maintaining any Equipment at the Premises.

## 3.8 Quality and Maintenance

#### Standard of services

- 3.8.1 We aim to provide a high quality, continuous, fault free service however, we do not promise to do so. Equipment, climatic, geographic and network issues may affect quality of service. We will work with the Service Provider where possible and relay to them the issues and problems raised by our customers.

#### Maintenance

- 3.8.2 We may conduct maintenance on any of our Service, Equipment or facilities. We will try to conduct scheduled maintenance outside normal business hours but may not always be able to do so. We may also suspend the supply of the Service in accordance.

#### Faults caused by You, Your Equipment or by other Suppliers

- 3.8.3 Before reporting a fault to us, you must take reasonable steps to ensure that the fault is not a fault in any of Your Equipment. We are not responsible for rectifying any fault in the Service where the fault arises in or is caused by another Supplier's Network or by Your Equipment.

- 3.8.4 If you report a fault in the Service and ask us to come to the Premises to repair it and, once at the Premises, we determine that the Service is not faulty or the fault is associated with Your Equipment rather than the Service, we may charge you an incorrect call-out fee and, if you request us to repair Your Equipment, our reasonable charges for such repair. We will advise you of the incorrect call-out fee before we attend the Premises.
- 3.8.5 We can charge you for repairing a fault if it is caused by something you do (or do not do), or by something some else using the Service does (or does not do), intentionally, recklessly or negligently.

#### Maintenance of Your Equipment

- 3.8.6 You are responsible for the proper functioning and security of Your Equipment. You must maintain and repair all of Your Equipment used in connection with the Service.

### **3.9 Monitoring of your Service**

- 3.9.1 We aim to monitor the use of your Service, however we do not promise to do so. If we identify excessive use or unusual activity we may temporarily restrict or suspend your Service. If we do so we will endeavour to contact you via your nominated primary contact details. We may require an advance payment before your Service is restored.
- 3.9.2 Use of your Service is your responsibility. You should not rely on us to contact you or to suspend your Service in the event of excessive or unusual activity.
- 3.9.3 We may at any time, without notice and at our absolute discretion, suspend or disconnect your access to part or all of the Service, or delete or deny you access to your data if we have reasonable cause to do so.
- 3.9.4 We may investigate any misuse of the Service by you, in conjunction with relevant law enforcement agencies. If your use of the Service results in loss to other Users or us, you may be liable to pay compensation.
- 3.9.5 You acknowledge that we may be required by law to intercept communications over your Service in accordance with a request or direction of a Regulatory Authority, an emergency services organisation or other competent authority.

### **3.10 Use of the Service**

- 3.10.1 The Service is provided to you on the basis that it is used for approved purposes. In particular you must:
- a) not use the Service in any manner involving illegal, malicious, deceptive or misleading activity;
  - b) not breach any standards, content requirements or codes set out by any relevant authority or industry body;
  - c) not use the Service in any way which interferes with the operations of the Service, anyone else's enjoyment of their Service or which upsets or offends any person;
  - d) not use the Service for commercial purposes or in any way distribute or resell the Service without our written permission;
  - e) obey all laws, regulations, guidelines and our reasonable instructions concerning your use of the Service;
  - f) give us all information and cooperation that we may need in relation to the Service; and
  - g) advise us of changes in your Personal Information such as account details, debit or credit card details and expiry dates and billing and Service addresses.
- 3.10.2 What constitutes inappropriate use will be determined by us, at our sole discretion.

### **3.11 Customer Requests for Service suspension, disconnection or reconnection**

Customer requests for Service disconnection

- 3.11.1 You can request disconnection of your Service at any time. Where your Service is on a Plan we will cancel that Plan and place you on your final Billing Run.
- 3.11.2 You may cancel the Service without liability at any time by giving us notice if we breach a material term of our Agreement and that breach is not capable of remedy; or we breach a material term of our Agreement and that breach is capable of remedy but we fail to remedy that breach within 14 days after you give us notice requiring us to do so.

Customer requests for Service suspension

- 3.11.3 You cannot request suspension of your Service.

Customer requests for Service reconnection

- 3.11.4 If we reconnect a Service that has been disconnected, you may have to pay us a fee for reconnection as specified in the Pricing Schedule.

### **3.12 Service Suspension or Disconnection by Us**

- 3.12.1 Under normal circumstances we can disconnect you from the Service Provider at any time after we give you 30 days notice of our intention to do so.
- 3.12.2 Should you fail to comply with what we consider to be an important term or condition of this agreement or should you fail to comply with a number of less important terms and conditions then we can suspend or disconnect your Service or reroute calls from your Service. We will generally provide you with notice of your failure and allow you a reasonable time to remedy it. However we may suspend or disconnect your Service without notice to you where:
  - a) you exceed the amount of your Credit Limit;
  - b) there has been, in our opinion, unusual activity on your Service;
  - c) you have not paid a Tax Invoice for what we consider to be an unreasonable period of time after the Due Date ;
  - d) you do something which we believe may damage the Service;
  - e) you are no longer approved by us under our assessment policies or otherwise to receive the Service;
  - f) an authority such as the ACMA or enforcement agency instructs us to do so;
  - g) we believe that you have used your Service to commit unauthorised, criminal or unlawful activity;
  - h) you vacate the premises in which you are provided the Service without notifying us beforehand;
  - i) there are technical problems with the Service or doing so is necessary to maintain, repair or restore any part of our service or a Service Provider's network used to supply the Service, or for other operational reasons;
  - j) we believe it is necessary to comply with our legal obligations;
  - k) we are entitled to do so under the specific terms and conditions of your Plan;
  - l) you attempt, threaten or cause harm to any staff, Equipment or network infrastructure of ours or any of the service providers;

- m) you breach a material term our Agreement and that breach is not capable of remedy or where such breach is capable of remedy, it is not remedied within fourteen (14) days after we give you notice requiring you to do so;
- n) you become bankrupt or insolvent or appear likely to do so and we reasonably believe that it is unlikely that we will receive or retain amounts due and payable by you under our Agreement;
- o) you vacate the Premises or you die, or in the case of partnership, on dissolution or on the filing of an Application to dissolve the partnership and we reasonably believe that it is unlikely that we will receive or retain amounts due and payable by you under our Agreement;
- p) a Supplier terminates its agreement with us, or ceases to supply services to us, and we are not able to provide the Service using services of an alternate Supplier on terms reasonably acceptable to us; or
- q) there is an emergency.

3.12.3 In the following additional circumstances we may suspend or disconnect your Service(s) or reroute calls from your Service(s) but we will provide you with reasonable notice prior to doing so:

- a) you do anything which we believe may damage the Equipment or network infrastructure of any of the service providers;
- b) you have used the Service, in our opinion, other than in accordance with this agreement;
- c) you do not comply with our Service Descriptions.

3.12.4 Whilst your Service is suspended or disconnected we will continue to charge you any applicable fees and charges. We will only do so where the suspension or disconnection is due to your failure to comply with your obligations under this agreement, or is performed at your request.

3.12.5 We are not liable to you or any person(s) claiming through you for any loss or damage arising from suspension of your Service.

### **3.13 Consequences of Plan Cancellation**

3.13.1 On disconnection of your Service for any reason:

- a) the Plan related to that Service will be cancelled;
- b) any monthly Plan charges such as access fees, which have been charged in advance, will be recalculated and any applicable adjustment will appear on your next bill.
- c) where you disconnect 1 or more Services included in a bundled offer(s), entitlement to any discounts under such offers may be forfeited.
- d) you will, at your cost, immediately stop using and return to us, or allow us to remove, any of Our Equipment, Equipment you have purchased but not fully paid for, or other material of ours (including any software) on the Premises or in your possession or control;
- e) unless our Agreement expressly states otherwise, each person's accrued rights and obligations are not affected;
- f) you must immediately stop using the Service; and
- g) the parts of our Agreement which are by their nature intended to survive cancellation will continue unaffected.

3.13.2 Where your Service has been disconnected and Plan cancelled prior to the expiration of an applicable minimum term then you will be liable for any remaining access fees on your Plan plus a Plan Cancellation Fee.

3.13.3 We will only charge a Plan Cancellation Fee in circumstances where you have failed to comply with an important term or condition of our agreement. In such circumstances you acknowledge and agree that

we have suffered a loss as a result of this service disconnection and our Plan Cancellation Fee represents a genuine administrative cost to us and is not a penalty.

### **3.14 Telephone Numbers and Public Addressing Identifiers**

3.14.1 The Telecommunications Number Plan 1997 (Cth) sets out rules for issuing, transferring and changing telephone numbers. You and we must comply with the Telecommunications Number Plan.

3.14.2 In addition to telephone numbers, the Service may use other identifiers such as an IP address or domain name ("Public Addressing Identifiers"). You must comply with the requirements of any Regulatory Authority or other body which administers Public Addressing Identifiers.

3.14.3 You are entitled to continue to use any telephone number we issue to you, except in Circumstances where the Telecommunications Number Plan allows us to recover the number from you.

3.14.4 You acknowledge and agree that:

- a) we do not control the allocation of Public Addressing Identifiers;
- b) we are not liable to you if we are required to change, withdraw, suspend or re-assign any Public Addressing Identifier as a result of any direction given by a Regulatory Authority or other body which administers Public Addressing Identifiers; and
- c) on cancellation of the Service, your right to use a Public Addressing Identifier may cease.

### **3.15 You may Transfer your Service Number**

3.15.1 You may Transfer your Service number to another Service Provider. If you do so you acknowledge and understand that:

- a) charges may apply as a consequence of a Transfer from us to another Service Provider;
- b) any outstanding fees and charges which remain are your responsibility;
- c) the Transfer may result in disconnection of any related Services such as Voicemail, paging and Data Services, silent numbers or other services;
- d) it is your responsibility to ensure that any Equipment or software used by you in connection with your Service works with your new Service Provider; and
- e) if after the Transfer of your Service from us, you continue to use other Services you agree to pay us for any fees and charges incurred for those.

3.15.2 In the event that you Transfer from us prior to the expiration of the minimum term of your Plan you will be liable for any outstanding fees and charges including Plan payout and Plan Cancellation Fees.

3.15.3 Unless we agree with you otherwise we do not accept the Transfer of PSTN service numbers to us.

### **3.16 We will provide customer support**

3.16.1 Unless we agree with you otherwise we will provide you with customer support such as Website functions and information, call centre and help desk support and interactive voice response services.

3.16.2 Generally, we will only supply business hours call centre customer service and support.

3.16.3 You acknowledge that any calls you make to our call centre may be monitored or recorded for quality and/or training purposes and you consent to us monitoring or recording such calls.

3.16.4 If you experience any fault with the Service, you may report that fault to us by telephoning (or any such other number notified to you by us from time to time) or by sending an email to us.

3.16.5 You acknowledge that whilst we will use our best endeavours we may not be able to resolve all problems encountered.

3.16.6 Usernames, passcodes or passwords may from time to time be issued or selected by you, the account holder, and in some cases, authorised Users of your Service. You must not disclose to any person Usernames, passcodes or passwords and we take no responsibility should you or the Users do so.

### **3.17 Customer Service Guarantee Waiver**

3.17.1 By submitting your Application to us you will be deemed to have waived your rights and protection afforded by the Customer Service Guarantee, unless you notify us within 7 days of submitting your Application that you no longer wish to waive those rights. If you notify us within that 7 day period, we may refuse to accept your Application and decline to provide the Service.

3.17.2 The protections and rights you agree to waive are:

- a) The provision of written information: The CSG requires carriage Service providers to, at least every two years, give written information to each customer about the performance standards that apply to supply of specified Services, the obligations of the provider under those standards, the customer's entitlements to damages under the Act for contravention of the performance standards; and on request, provide information to the customer about a performance standard.
- b) Guaranteed maximum connection periods: The CSG prescribes maximum timeframes within which connection to Services should occur.
- c) Guaranteed maximum rectification periods: The CSG prescribes maximum timeframes within which rectification of Service faults should occur.
- d) Making and changing appointments: The CSG requires carriage Service providers to make appointments with customers at times that are convenient for the customer, make appointments with customers that are either for a particular time of the day or to nominate a five hour period during which the appointment will occur, and change appointments by giving at least 24 hours notice or by obtaining the agreement of the customer to the change.

3.17.3 By agreeing to waive your protection and rights afforded by the Customer Service Guarantee you will not be able to claim compensation from us for any failure by us to meet the prescribed performance standards.

### **3.18 Pre-selection and over-ride**

3.18.1 Our Services are provided under the strict requirement that you will not pre-select another carrier or use an override code (such as 1414) for calls.

### **3.19 Emergency Services**

3.19.1 Our voice Services are delivered over the internet using Voice Over Internet Protocol technology.

3.19.2 You acknowledge and agree that:

- a) Our voice services support access to emergency call Services (000 or other emergency service telephone numbers).
- b) Whilst we will endeavour to provide fail-over services, in the event of a power outage at your location or interruption of your internet services, your voice Service may not be available;
- c) We are not liable to you for any loss or damage you suffer or for any costs, expenses or charges you incur arising from any inability to access emergency call services using the our voice Service and which is not a direct result of our fault or negligence;
- d) Your full address details set out in your Application will be provided when notifying emergency call services organisations of your location in the event of an emergency. It is your responsibility to ensure that this information is current and to contact us if this information changes by calling Customer Support; and
- e) You may be required to reset the Equipment at your location in the event of a power failure or power outage.

## **3.20 3<sup>rd</sup> Party Content Services**

- 3.20.1 Your Service may allow you to access a range of 3<sup>rd</sup> Party Content. Unless stated otherwise by us, content purchased or viewed via your Service is not provided or endorsed by us, and is purchased or viewed at your own risk.
- 3.20.2 We may have an agreement with some suppliers of 3<sup>rd</sup> Party Content to bill you for content purchased from them, and we may receive fees and/or commissions from them for doing so. You should conduct your own enquiries on the third party content supplier conditions of supply and charges before accessing third party content. We will not necessarily pass onto you all promotions offered by third party content suppliers. Where a third party content supplier's terms differ from ours, our terms prevail.
- 3.20.3 We may impose a limit on the value of third party content purchased through your Service. If we do, we will provide you with reasonable notice of any change to the limit.
- 3.20.4 We accept no liability for any loss or damage as a result of a delay in receiving third party content or third party content not being secure or not being of suitable quality. 3<sup>rd</sup> Party Content may be suspended, changed or terminated without notice.
- 3.20.5 3<sup>rd</sup> Party Content purchased through your Service may only be used by you for personal and non-commercial purposes and not otherwise copied, published, republished, redistributed, re-communicated or commercially exploited in any form or by any method whatsoever.
- 3.20.6 You should not rely on any 3<sup>rd</sup> Party Content without independent advice. We will not be liable (to the extent permitted by law) for any loss, or damage suffered or incurred, directly or indirectly, as a result of reliance upon any information received.
- 3.20.7 Material obtained through your Service may be considered offensive and may not be suitable for minors and others. While we offer our customers support in filtering their Internet Services and encourage third party content providers to use appropriate labelling of content, we cannot control what content customers access. Accordingly we will not be liable for third party content customers may find offensive or explicit.
- 3.20.8 You may be provided with storage space on the 3<sup>rd</sup> Party Content Providers' Websites. We are not responsible in any way for this space.
- 3.20.9 Your access to content is subject to you having access to Services that support the delivery of that content.

## **4 Personal Information**

### **4.1 Collection of Personal Information**

- 4.1.1 We will collect, use and disclose Personal Information about you for the purposes of:
- a) verifying your identity;
  - b) assisting you to subscribe to our Services
  - c) providing the services you require from us;
  - d) administering and managing those Services, including billing, account management and debt collection;
  - e) conducting appropriate checks for credit-worthiness and for fraud;
  - f) determining whether to provide to you (or to cease or limit the provision to you of) personal or commercial credit and the ongoing credit management of your account;

- g) researching and developing our services;
- h) business Planning; and
- i) informing you of our Services, products and promotions.

4.1.2 If you choose not to provide all or part of the Personal Information we request, we may not be able to provide you with the Services requested by you, or we may refuse to provide, or limit the provision to you of, any Service or personal or commercial credit requested by you.

4.1.3 By providing Personal Information to us and acquiring the Service, you acknowledge and consent to the collection, use and disclosure of your Personal Information as set out in this clause and in accordance with our privacy policy. A copy of our privacy policy is available at our offices or on our Website.

## **4.2 Sources of your Personal Information**

4.2.1 We may collect Personal Information about you for the purposes set out above:

when you provide information by phone or in Application forms, or when you submit your personal details through our web sites;

from our employees, agents, contractors, or Suppliers;

from a credit reporting agency, credit provider or fraud-checking agency;

from your representatives;

from other telecommunication and information service providers; and

from publicly available sources of information.

## **4.3 Disclosure of Your Personal Information**

4.3.1 We may disclose Personal Information about you for the purposes set out above to:

our employees, agents or contractors;

suppliers who need access to your Personal Information so as to enable us to supply the Service to you;

a credit reporting agency, credit provider or fraud-checking agency;

our professional advisers, including our accountants, auditors and lawyers;

your authorised representatives or your legal advisers when requested or authorised by you to do so; or

government and regulatory authorities and other organisations, as required or authorised by law.

## **4.4 Access to Personal Information**

4.4.1 If you are a natural person (i.e. an individual), you are entitled to access your Personal Information held by us, unless we are permitted or required by law to refuse such access.

## **5 Complaints**

5.1.1 You may attempt to resolve any dispute or complaint directly through our contact centre.

5.1.2 If you are still dissatisfied you can contact the Telecommunications Industry Ombudsman (TIO), who provide a free and independent dispute resolution service for small business and residential

consumers in Australia. The TIO is an office of last resort, so you must have tried to resolve your complaint with us before escalating it to the TIO.

Telecommunications Industry Ombudsman

Website [www.tio.com.au](http://www.tio.com.au)

Phone: 1800 062 058

Fax: 1800 630 614

Email: [tio@tio.com.au](mailto:tio@tio.com.au)

Address: PO Box 276 Collins Street West, MELBOURNE VIC 8007.

- 5.1.3 If have a complaint specifically in relation to 190 service advertising and message content, they should be directed to the Telephone Information Services Standards Council (TISSC). TISSC is an independent regulatory body that sets standards for these services through a Code of Practice and assesses complaints about the industry's compliance with that code. TISSC does not deal with billing disputes or complaints about phone Services that are not 190 premium rate Service numbers.

## 6 General terms

### 6.1 Our Liability to You

Personal injury and death

- 6.1.1 We accept liability for any loss, cost, liability or damage incurred by you (but excluding Consequential Loss) arising from personal injury or death to you or your Personnel to the extent it is caused or contributed to by our negligence in connection with our Agreement.

Property damage

- 6.1.2 We accept liability for our negligence in relation to supplying the Service if it causes damage to your property or Equipment but only by repairing or replacing the property or paying you the cost of doing so.

Interruption to the Service

- 6.1.3 We accept liability to you for Interruptions to the Service which are a result of our fault or negligence, to the extent of a refund or rebate for the period of the interruption and compensation for any reasonable loss incurred.

Quality of service

- 6.1.4 Certain laws imply terms into contracts for the supply of goods or services that cannot be excluded (eg, that services are provided with due care and skill and goods are reasonably fit for their purpose and of a certain quality). If those terms are implied into our Agreement and we breach them, we accept liability for the breach.
- 6.1.5 Otherwise, we exclude all conditions and warranties implied into our Agreement, and limit our liability for any non-excludable conditions and warranties to re-supplying, repairing or replacing the relevant goods or services where the goods or services are not of a kind ordinarily acquired for personal, domestic or household use or consumption and where it is fair and reasonable to do so.

Customer Service Guarantee

- 6.1.6 Unless waived by you, you may have certain rights and remedies under the Customer Service Guarantee, which establishes minimum connection and fault repair times and entitles you to specified amounts of damages if they are breached. We accept liability to you in accordance with, and subject to, the Customer Service Guarantee.

Suspending the service

6.1.7 We exclude any liability to you (whether based in contract, tort (including negligence), statute or otherwise) for suspending the Service where we do so in accordance with our Agreement.

#### Contributory Loss

6.1.8 Our liability for any loss, cost, liability or damage suffered or incurred by you under or in connection with our Agreement or the Service (whether based in contract, tort (including negligence), statute or otherwise) is reduced to the extent that your acts or omissions or your Equipment (or the acts, omissions or Equipment of a third person, including a Supplier) cause or contribute to that loss, cost, liability or damage.

#### Consequential Loss

6.1.9 We exclude any liability to you for any Consequential Loss suffered or incurred by you in connection with the supply or Interruption of any goods or services (including the Service) or with our Agreement (whether based in contract, tort (including negligence), statute or otherwise).

#### Force Majeure Event

6.1.10 We are not liable for failing to comply with any of our obligations under our Agreement if a Force Majeure Event occurs which prevents us from performing those obligations.

#### When we are not liable to you

6.1.11 We are only liable to you in the cases set out in this clause. Otherwise, we exclude any liability we might otherwise have to you in connection with our Agreement or the Service to the extent that such liability is not expressly accepted by us under this clause.

## 6.2 Your Liability to Us

#### Joint customers

6.2.1 If you and one or more others are the customer for a Service, each of you is jointly and individually responsible for all charges and other obligations relating to that Service.

#### Indemnity

6.2.2 You indemnify us against (and must pay us for) any loss, damage, cost or liability (including reasonable legal costs) we suffer or incur relating to:

the use (or attempted use) of the Service; or

Equipment used in connection with the Service.

6.2.3 You must ensure that any person who you allow to use the Service, or to whom you ask us to supply the Service directly, complies with our Agreement as if they were you.

## 6.3 Assignment and Subcontracting

6.3.1 You can assign or transfer legal responsibility for the Service if you obtain our prior written consent which may be withheld subject to completion of credit assessment.

6.3.2 Where we reasonably consider there will be no detriment to you, we can without your permission and without notice:

a) transfer our rights and obligations under our Agreement to our nominee;

b) temporarily or permanently delegate our obligations under our Agreement to our nominee; or

- c) novate our Agreement to our nominee by ending our Agreement and entering into a new agreement between you and our nominee, on terms similar to our Agreement.

6.3.3 If we do any of the above the transfer or delegation or novation will take effect when the relevant document is signed. You irrevocably appoint us as your attorney to sign any necessary documents to enable the transfer, delegation or novation to take effect.

6.3.4 We may perform any of our obligations under our Agreement by arranging for them to be performed by another person.

## 6.4 Waiver and Severance

6.4.1 If we have a right arising out of a breach by you of our Agreement and we do not exercise that right, we do not waive that right, unless we do so in writing signed by us, or our right to insist on performance of that or any other obligation at any other time.

6.4.2 If a provision of our Agreement is void, voidable or unenforceable, it will be severed and the remainder of our Agreement will be unaffected.

## 6.5 Governing law

This agreement is governed by the laws of the State of Western Australia.

## 7 Meaning of words

Terms used within this agreement have the following meaning unless the context suggests otherwise.

**3rd Party Content** means products, content or information on or linked from our Website originating from or owned by parties other than us.

**3rd Party Services** means services performed by someone other than us.

**ACMA** means the Australian Communications and Media Authority.

**Application** means an application form you sign or otherwise request from us a Service for example via verbal instruction to a call centre operator or electronic indication through an internet application.

**Agreement** means the agreement for the provision of the Services between us comprising the items outlined in clause 1.2 of this agreement.

**Billing Period** means the period in which you are billed by us for Service. You will have 12 Billing Periods per year unless we agree otherwise.

**Billing Run** means the process of producing a bill for you. Each Billing Run corresponds to a Billing Period.

**Carrier** means a telecommunications Carrier licensed under the Telecommunications Act 1991 as a general Carrier.

**Credit Assessment Policies** means those rules we use to determine whether we wish to accept or decline to provide or continue to provide you with the Service. These policies may change from time to time without notice to you. Under these policies you must: be at least 18 years of age; be capable of entering into a legal contract; be alive; not be insolvent or bankrupt or subject to any proceedings to make you insolvent or bankrupt; where you are in a partnership, the partnership must not have been dissolved; where you are a company neither you nor any of your assets may have been assumed under the terms of a debt security instrument or under court order or otherwise appointed.

**Credit Limit** means a limit we may place on your use of a Service or on amounts you owe us at a point in time.

**Customer Service Guarantee** means the current minimum performance standard set by the ACMA under sections 115, 117 and 120 of the Telecommunications (Consumer Protection and Service Standards) Act 1999.

**Due Date** means the date the amount shown on your Tax Invoice is due to be paid to us. The Due Date is not less than 14 days after the Tax Invoice date.

**Equipment** means the item(s) required or otherwise used in conjunction with your Service such as wireless phones, fixed line phones, personal computers, software and modems purchased from us or otherwise.

**Fees and Charges** means fees and charges payable by you under your Plan and under this Agreement including any amounts of applicable GST.

**Financial Hardship** means a situation where a person can demonstrate to us that they are unable to meet their financial commitments. Factors that we will consider include:

- Loss of employment of you or a family member
- Illness, including physical incapacity, hospitalisation, or mental illness of you or a family member
- Family breakdown
- A death in the family

**GST** means the tax imposed by A New Tax System (Goods and Services Tax Imposition General) Act 1999 and any regulations thereto or such other Act and regulations of equivalent effect.

**GST Act** means A New Tax System (Goods and Service Tax) Act 1999.

**GST Supply** means a supply as defined in and which is subject to liability for GST under the GST Act.

**Internet Service** means connection to the global network of computers known as the internet.

**Passwords** means the Personal Information or security codes such as your customer Service account passcode or Website password used by us to confirm that an individual has authority to enquire or transact on your account.

**Personal Information** has the same meaning as defined within the Privacy Amendment (Private Sector) Act 2000.

**Plan** means your Plan for each of the Service(s), the terms and conditions of which may include a minimum term, monthly fees and call charges as amended from time to time.

**Pricing Schedule** means the schedule of our pricing which is provided to you at the time of connection, which we may vary from time to time in accordance with this Agreement and which is available through our call centre or our Website.

**Primary Contact** means the mobile or fixed line service number, email address or other specific contact designated by you and accepted by us to use as our primary means of contacting you in relation to your account.

**Priority Assistance** means services offered to persons who are diagnosed with a life threatening medical condition with a high risk of rapid deterioration to a life threatening situation and where access to a telephone would assist to remedy the life threatening situation.

**Regulatory Authority** means Australian Communications and Media Authority.

**Service** means any and all of the telecommunications services that we provide to you and also includes our customer support services.

**Service Description** means the document containing the description of a Service provided by us which may be varied from time to time by us. Each Service Description shall be governed by the terms of this agreement.

**Service Downgrade** means a variation to the Service which reduces the capacity, use or utility of that Service and results in a reduction in the periodic fees payable for the Service.

**Service Provider** means the ultimate provider of telecommunications Services to you where we act as an intermediary or otherwise obtain these Services to on-supply to you. The Service Provider may be a Carrier or Service Provider as defined in the Telecommunications Act 1991.

**Supported Equipment** means Equipment which we agree to assist you with trouble shooting and advice. Our list of Supported Equipment (including supported software) is available on our website.

**Sign** means to agree or consent to. Your indication of acceptance may be through electronic or written signature, verbally taken and may be reasonably inferred by us based on your actions.

**Tax Invoice** date means the date you are issued with a Tax Invoice containing a fee or charge.

**Transfer** means to port, move or swap your Service number from one Carrier or Service Provider to another as defined by the Telecommunications Numbering Plan 1997.

**Usage Record** means the record of a call or data transfer provided to us by the Service Provider.

**User** means someone who uses a Service, which may or may not be the account holder.

**Username** means the Username created by you when you registered for a particular Service.

**Website** means [www.livingnetworks.com.au](http://www.livingnetworks.com.au)

**We, our, us** means Living Networks Enterprises Pty Ltd ABN 35 124 553 180.