SOLITARY TECHNOLOGY
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1. About our Consumer and Small Business Customer Terms

Who do the "Consumer and Small Business Customer Terms" apply to?

1.1 These Consumer and Small Business Customer Terms (**Consumer and Small Business Terms**) apply to consumer and small business customers:

(a) You will be a consumer customer if:

i. your Solitary Technology service is of a kind that is ordinarily acquired for personal, domestic or household use; and

ii. the primary purpose for using the service is for personal, domestic or household use.

(b) You will be a small business customer if:

i. you are a business or non-profit organisation (including a body corporate, sole trader, partnership, trust or registered charity);

ii. you did not have a genuine and reasonable opportunity to negotiate the terms of your agreement with us;

iii. you have, or will have, an annual spend that is less than, or reasonably expected by us to be, less than $40,000; and

iv. the primary purpose for using the service is for business use.

Variation of our Corporate Customer Terms

1.2 We may unilaterally vary our Consumer and Small Business Terms at any time.

Telecommunications legislation

1.3 Pursuant to the *Telecommunications Act 1997*, we may contract with our customers by way of a standard form of agreement or on an individual basis. These Consumer and Small Business Terms are our 'standard form of agreement' and they apply to all consumer and small business customers who acquire our service.

1.4 Pursuant to the *Telecommunications Act 1997*, we must advise you directly or publish an advertisement if we change our Consumer and Small Business Terms and that change would cause detriment to you.

1.5 If a change to our Consumer and Small Business Terms does not cause detriment to you, we may make the change without having to advise you directly or publish an advertisement.

2. Becoming a Solitary Technology Customer

Your application

2.1 When you apply for a Solitary Technology service, we consider:

(a) your credit history and ability to pay the charges for your service;

(b) the availability of the service networks in the area(s) in which you intend to use the service; and

(c) your eligibility for the service.

2.2 Notwithstanding the above, we may decline your request for a service in our sole discretion and are not required to provide you with the reasons for doing so.

Connecting your service

2.3 We will try to connect your service within a reasonable time.

3. The Solitary Technology Service

The Service

3.1 The Solitary Technology service provides you with access to a broadband Internet service which uses the nbn network to deliver internet connectivity to a compatible device within the service area of the nbn network.

3.2 The service is provided to you by Solitary Technology (ABN 98 692 730 037), and our contact details are set out on our website. We are authorised to provide you with a service using the nbn network as set out in clause 3.1. For the avoidance of doubt, we are solely responsible to you for the service, we are not affiliated with or related to nbn, and you do not have a contractual relationship with nbn for the supply of any products or services.

Connection and activation of your Solitary Technology service

3.3 To receive the service, you must comply with nbn's eligibility requirements.

3.4 Upon acceptance of your application by us, we will create an account for you.

3.5 Billing will commence from the date of activation irrespective of when the service is first used.

3.6 If your Solitary Technology service requires us to transfer an existing service from another nbn service provider, we will use reasonable endeavours to process the transfer within 24 hours of your request. Transfers may only occur during our standard business hours, unless otherwise agreed by you and us. We will confirm with you when your transfer has been successful or unsuccessful, including providing details when a transfer has failed.

3.7 You agree that Solitary Technology does not own nor control the transfer system and that once a transfer is submitted, we are not liable for any delays, unless we cause or contribute to those delays. We are also not liable for delays caused by your failure to provide correct transfer details.

4. Your use of the Solitary Technology Service

Permissible use of our service

4.1 You must:

(a) only use the service for your personal or your business purposes;

(b) comply with all laws concerning your use of the service; and

(c) provide Solitary Technology with all information reasonably requested in order to supply the service to you.

4.2 You must not, or allow anybody else to:

(a) resell, resupply or reproduce any part of the service;

(b) use the service to commit an offence;

(c) use the service for any improper, immoral, unauthorised or unlawful purpose;

(d) use the service in a manner that is indecent, obscene or otherwise offensive, menacing, threatening or abusive; or

(e) use the service in a way that interferes with, or threatens to interfere with, the efficiency of the service networks.

Your responsibility for use of our service

4.3 You are responsible for all use of the service, including all associated charges, whether or not such use is authorised by you.

4.4 You are responsible for use of the service, including all associated charges, in cases where a device has been used incorrectly or is faulty.

4.5 You are responsible for monitoring usage of your service and we do not agree to monitor your service for excessive or unusual use.

4.6 You acknowledge that we do not monitor, nor are we obligated to monitor, the contents of information or material available from the service networks or the internet. You agree that we are not liable for any loss suffered by you or any other person as a result of using information or material obtained using the service networks or the internet.

4.7 You acknowledge that you are using a public, unfiltered internet connection and should take all precautions for the security and filtering (if applicable) of your information

4.8 You are solely responsible for any loss or damage to your equipment, device or to any information or other data that may result from your use of the service

Excessive or unusual use

4.9 We may, but are not required to, suspend, cancel or limit your service if it is used in an excessive or unusual way. We may also suspend or cancel your service if it is used in an excessive or unusual way where we are required to do so pursuant to a lawful direction from a regulator, nbn, or where required by law.

4.10 You are liable for all charges incurred from excessive or unusual usage even in the case of suspension or termination of the service.

Faults

4.11 You may alert us to service faults by contacting us, however you acknowledge that we do not own, nor have control over, the service networks. We will provide you with as much information regarding faults, including the anticipated restoration time, as is available to us.

4.12 You acknowledge that:

(a) the service is provided ‘as is’ and without warranty of quality or availability, and is not free from faults;

(b) the use of the service is at your own risk;

(c) there may be interruptions, delays, omissions, inaccuracies with the service and it may not be available at some times;

(d) we do not warrant the currency, availability, accuracy, security or the quality of any information which you receive or can access using the service;

(e) you are responsible for any reliance on or use of the information which you receive or can access using the service; and

(f) the service can only be used in areas where the service network is available.

Fair Use policy

4.13 Our Fair Use Policy is intended to ensure that our customers do not use our service in a way that is excessive, unreasonable or fraudulent, or used in connection with a device or equipment that is not approved by us.

4.14 The services we make available to you are intended for personal use or use for your own business. Generally, legitimate use of our services for their intended purposes for which they are sold to you will not breach our Fair Use Policy.

4.15 You must not resell or commercially resupply our services.

4.16 You must not use the service in a way that is unreasonable. We consider unreasonable usage to occur when the service is used fraudulently or in a manner that causes significant network congestion.

4.17 If you are in breach of the Fair Use Policy, we will contact you to discuss how to change your use of the service so that it confirms to the Fair Use Policy.

4.18 If, after we have contacted you, and unreasonable use continues, we may, without further notice to you:

(a) Suspend or limit the service (or any feature of it) for any period Solitary Technology believes is reasonably necessary

(b) Terminate the service agreement and disconnect the service

4.19 In addition, you are required to comply with nbn fair use policies as updated on their website from time to time.

5. Billing and Payment

Charges

5.1 The charges for your service are set out in the Critical Information Summary (**CIS**) for your plan in the event of any inconsistency between these Consumer Terms and the CIS, the CIS will prevail to the extent of the inconsistency.

5.2 You are liable for all charges incurred by a service whether or not you authorised the usage.

Bills

5.3 We will issue you one bill each month on or around the anniversary of your service. We may issue you an interim bill where your charges are considerably higher than in previous months and we reasonably believe such usage poses a credit risk.

5.4 Each bill will include, for each service on your account:

(a) an access fee, charged in advance;

(b) additional data fees and fees for services not included in your plan, charged in arrears; and

(c) any fees for special or unusual charges, such as those incurred from a third-party such as nbn, charged in arrears.

5.5 You must pay each bill by the date indicated on the invoice.

5.6 Part payments will be allocated to the debt incurred earliest in time.

5.7 We aim to include all charges relating to the most recent billing period on your bill. We may, however, include charges from previous billing periods where there has been a delay in receiving your call records from our service providers.

5.8 Our records are sufficient proof that a charge is payable by you unless the records are shown to be incorrect.

5.9 Where you believe that charges in a bill are incorrect, you must notify us within 12 months of the bill being issued.

5.10 You must pay our bills via EFT or credit card, we do not accept cash or cheque.

Credit limit

5.11 We may impose a credit limit in the case of a new service, or in circumstances where you have paid your bill more than 15 days late for two consecutive months. If you exceed the credit limit, we may suspend your service until all outstanding charges are paid.

Late payments

5.12 If you do not pay your bill on time, we will send notifications via SMS or email alerting you to the non-payment of your bill. Continued failure to pay your bill in full may result in a late payment fee of $10 and suspension, restriction or cancellation of your account in accordance with the terms below on suspension or cancellation of your service.

Credit card payments

5.13 We do not charge any credit card processing fees if you pay your bill via credit card.

Adjustments

5.14 We can round charges up or down to the nearest whole cent (0.5 is rounded up).

5.15 We can pay you any amounts we owe you by deducting them from any amounts you owe us. You must pay us without any set-off, counter claim or deduction.

5.16 Where you have paid us for a service in advance or your account is in credit and the service is cancelled, we will refund you any overpayment following the issue and payment of your final bill.

GST

5.17 If GST is imposed on any supply we make to you, and the consideration payable for the supply under any our Consumer Terms or CIS is not expressed to be inclusive of GST, you must pay us on demand, an additional amount calculated by multiplying the value of that GST-exclusive consideration (without deduction or set-off) by the prevailing GST rate. We will issue a tax invoice to you for any supply on which GST is imposed.

Bill format

5.18 We will send your bill via email

5.19 We will use our best endeavours to deliver your email bill to the email address you nominate. If we cannot deliver your email bill to that email address, we will contact you to request that you update your email address.

5.20 Provided that we use our best endeavours to deliver your email bill to you or notify you that your online bill is available, the bill remains payable on the date indicated regardless of whether or not you receive, read or access your bill or any notices from us regarding your bill.

5.21 It is your responsibility to:

(a) keep your contact details and billing email address up to date at all times and notify us of any changes;

(b) ensure you have sufficient space in your billing email mailbox to receive your bill or billing notices;

(c) contact us if you do not receive your bill or billing notices after first checking your junk or spam mailbox;

(d) keep your email account and devices secure to protect the privacy and confidentiality of the credit and calling information contained in the bills.

Dishonoured Payments

5.22 A dishonoured payment fee of $10 will be charged if collection of payment from a bank account fails.

Financial Hardship

5.23 If you are experiencing financial hardship, you may contact us or refer to the Financial Hardship Policy on our website.

6. Suspension or Termination of Your Service

Cancellation of your service by you

6.1 You may cancel your service at any time by advising giving Solitary Technology thirty (30) days written notice in writing or via phone. You will still be liable for the entire months' access fee for the month you cancelled your service and we will not provide you with a pro-rata refund.

6.2 Following cancellation of your service, we may still bill you for any charges unbilled as at the date of cancellation including, but not limited to:

(a) Additional data charges;

(b) charges for services not included in your service's plan inclusions;

(c) third-party service charges, for example missed appointment fees from nbn.

You are liable to pay those charges in accordance with these Consumer and Small Business Terms.

6.3 If you cancel your service before it has been activated, we can charge you our reasonable costs in preparing to provide the service to you.

6.4 Your service will be cancelled if you transfer your service to another provider. In this event, all charges up to and including the date of termination will become immediately due and payable.

6.5 You may cancel your service if we change our Consumer and Small Business Terms and the change represents a material adverse change to your service.

Suspension or cancellation of your service by us

6.6 We may cancel or suspend your service if:

(a) you breach these Consumer Terms and you do not remedy that breach within 14 days of being notified of the breach by us, except where you are in breach of clauses 4.2, 4.9 and 5.5 in which case we may suspend or terminate your service immediately on notice;

(b) your use of the service presents an unacceptably high credit risk to us, in which case we may suspend or terminate your service immediately on notice;

(c) we provide you with 30 days written notice of our intention to do so following the end of any minimum term;

(d) your behaviour towards us or our representatives has been abusive (verbally or otherwise), threatening or otherwise inappropriate;

(e) you have made multiple complaints without a reasonable basis for doing so and continue to do so after we have asked you to stop;

(f) we have incomplete or incorrect information about you that we are required by law to record and you refuse to provide the information upon request;

(g) we are required to do so at the direction of our service network suppliers;

(h) we are permitted to, or required by, law;

(i) there is an emergency;

(j) providing the service to you becomes, or we reasonably believe may become, illegal;

(k) you become bankrupt or insolvent or appear likely to do so;

(l) an administrator, receiver or scheme administrator is appointed to you, and that administrator, receiver or scheme administrator does not accept personal liability for the ongoing supply of services by us within 5 business days our request that they do so; or

(m) you are in breach of clauses 9.1 in which case we may suspend or terminate your service immediately and without notice.

6.7 We may, but are not required to, suspend or limit your service if, in our reasonable opinion, the charges on your account are unusually high or if we reasonably consider that your account poses an unacceptably high credit risk to us. In making our decision, we may have regard to:

(a) your previous average daily use;

(b) the total of your unbilled charges;

(c) any unusual usage patterns.

When considering whether you pose an unacceptably high credit risk to us, we will consider:

(d) any outstanding debt currently on your account;

(e) your payment history;

(f) your communications with us when we have discussed, or attempted to discuss, your account with you, including your response to any notices sent to you by us; and

(g) your willingness and commitment to paying your account.

6.8 We will endeavour to provide as much notice as practicable where we cancel or suspend your service pursuant to clauses 6.6(b) to (j) and 6.7.

6.9 We may suspend or restrict your service(s) during the period before we cancel your service.

Effect of cancellation or suspension

6.10 In the event of cancellation, you are liable for all charges incurred up to and including the date of cancellation.

6.11 You remain liable to pay for your service in the event of suspension of the service.

6.12 Following cancellation of your service we will refund any monies held in credit on your account after all charges incurred up to the date of cancellation have been paid.

6.13 We may require you to pay a reconnection charge of $10 per service before we reconnect a service that has been cancelled except where the service was cancelled due to our error or failure.

7. Liability

Our liability to you

7.1 Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and for compensation for other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.

7.2 We exclude all conditions and warranties implied into these Consumer and Small Business Terms. Where certain laws imply terms into contracts for the supply of goods and services that cannot be excluded, and we breach those terms, we accept liability for that breach. In this case, our liability is limited to the resupply, repair or replacement of the relevant goods or services, or paying you the cost of doing so, and only where the goods or services are of a kind ordinarily acquired for personal, domestic or household use or consumption.

7.3 As the service is provided to you for personal, household or domestic use, we do not accept liability for any business losses except where such liability cannot be excluded by law.

7.4 Our liability for your loss is reduced to the extent that your acts or omissions or those of any third party not under our control, or your equipment, cause or contribute to that loss, or where you failed to take reasonable steps to minimise your loss.

7.5 We are not liable for any loss caused by events outside our reasonable control.

Your liability to us

7.6 You are liable to us for any breach of this agreement, and must pay us for any loss or damage we suffer as a result of your use of the service, whether or not authorised by you.

7.7 Where an account is held in the name of two or more individuals, each person listed on the account will be jointly and severally liable for all costs and obligations arising out of these Consumer Terms and your use of the service.

8. Indemnity

8.1 You indemnify Solitary Technology against all claims, actions, damages, losses, liabilities, costs, charges, expenses, outgoing or payment which Solitary Technology pays, suffers or incurs, or is liable for in respect of your use of the service or network.

8.2 Clause 8.1 does not apply to any claim, action, damage, loss, liability, cost, charge, expense, outgoing or payment which Solitary Technology pays, suffers, incurs, or is liable for as a result of the wilful misconduct or reckless act or omission of Solitary Technology.

8.3 To the full extent permitted by law, you release nbn, its related bodies corporate, affiliates, directors, officers, agents, employees, contractors or representatives (Released parties) from any and all liability arising from or in connection with the nbn services, or your use of the nbn services.

8.4 Clause 8.3 does not apply to a claim by you for loss or damage suffered or incurred by you arising from or in connection with:

(a) Any damage to, or loss of, tangible property to the extent that such losses are caused or contributed to by nbn, its Related Bodies Corporate or any of their respective Personnel or third party suppliers; or

(b) The death or personal injury of any person to the extent caused or contributed to by:

a Negligent or wilful acts or omissions of nbn, its Related Bodies Corporate or any of their respective Personnel or third party suppliers; or

b Any equipment or network owned operated or controlled by nbn

8.5 To the full extent permitted by law, you release Opticomm Pty Ltd, its related bodies corporate, affiliates, directors, officers, agents, employees, contractors or representatives (Released parties) from any and all liability arising from or in connection with the Opticomm services, or your use of the Opticomm services.

8.6 You indemnify and hold harmless the Released Parties from any claim or demand, including reasonable legal fees arising out of:

(a) Content you submit, post, transmit or otherwise make available though the service;

(b) Any cancellation of, delay in supplying failure to supply or an error or defect in the supply of the service;

(c) Your use of the service; and

(d) Your breach of this Agreement

9. Supporting Victims of Domestic and Family Violence

9.1 We may cancel, suspend or restrict your service without notice if you are alleged to have committed domestic or family violence against an end-user of a service.

9.2 We may transfer the phone number(s) to the alleged victim if they are an authenticated end-user of the service.

10. Miscellaneous Terms

Assignment

10.1 We may transfer our rights and obligations under these Consumer and Small Business Customer Terms to anyone else provided that the party to whom we are transferring our obligations has the ability to provide your service and perform our obligations in a manner similar to us and in accordance with these Consumer and Small Business Customer Terms. We will provide you with reasonable notice before the transfer of your service occurs.

Governing law and jurisdiction

10.2 These Consumer and Small Business Customer Terms are governed by the laws of the Australian State or Territory where you lived at the time of entering into this agreement. You and we agree to submit to the non-exclusive jurisdiction of the courts of that State or Territory.

Waiver

10.3 If we fail or delay in exercising a right under these Consumer and Small Business Customer Terms it does not operate as a waiver of that right. A waiver will only be effective if agreed by us in writing.

Privacy

10.4 We collect, use and disclose personal information as set out in our Privacy Policy.

Term void or unenforceable

10.5 If any term or part thereof in these Consumer and Small Business Customer Terms is void or unenforceable, that term (or part thereof) is removed from these Consumer and Small Business Customer Terms. The remaining terms will continue to have full effect.