

# TERMS AND CONDITIONS

## 1. Services

### 1.1 Monitoring and response

In consideration of the Fees, VitalCALL shall monitor the Equipment for Alarm Signals through the Central Monitoring Facility and respond to Alarm Signals received at the Central Monitoring Facility in accordance with its procedures and applicable Australian Standards ('Services'). VitalCALL will use due care and skill to provide the Services.

### 1.2 Customer Acknowledgements

By entering into this Agreement, the Customer acknowledges and agrees that:

- (1) The Customer has made sufficient enquiries on the Equipment and Services and understands the nature, purpose and limitations of the Equipment and the Services.
- (2) the Customer has been provided, and has received the User Manual, in relation to the use and operation of the Equipment, and will use and operate the Equipment in accordance with the instructions outlined in the User Manual and any directions from VitalCALL.
- (3) VitalCALL does not monitor the continuous connection of the Customer's telephone line or telecommunications network (including the Long Range Communication Link) to the Central Monitoring Facility. It is the Customer's responsibility to check and test the Equipment and other relevant devices on a regular basis to ensure that Alarm Signals are being received by the Central Monitoring Facility and to notify VitalCALL of any issue.
- (4) The performance of the Services depends upon and may be affected by equipment and telecommunication services (including the Long Range Communication Link) which are provided to the Customer and/or End User by telecommunications carriers and/or other third party providers. VitalCALL shall have no liability to the Customer for Services performance issues which are attributable to equipment (including the Equipment) and/or services not supplied by VitalCALL; in particular, the Customer, acknowledges and agrees that VitalCALL will not be able to provide the Services until such time as the Long Range Communication Link, telephone line communication and/or digital mobile communication or network is restored; and that the technology underpinning the Long Range Communication Link and Equipment may change from time to time, and may require the purchase of additional products and services, including replacement of, or upgrades to the Equipment, at the cost of the Customer, to enable the ongoing provision of the Services.
- (5) The Customer is solely liable for the costs, fees and charges of all power, telephone, data allowance, data usage, connections and any other telecommunications equipment and/or services required for the performance of the Equipment and/or the Services (including the Long Range Communication Link) and, for ensuring that all such costs, fees and charges are paid in a timely manner to the Customer's telecommunications service provider.
- (6) The performance of the Services may be affected by environmental conditions (separately or in any combination) such as weather (including, without storms and lightning), temperature, geographical location, humidity, dust, dirt, the location of the Equipment, the location and layout of the Customer's or End User's premises, position of furniture, building materials used in the premises, metallic objects or features

(including, without limitation, concealed pipes), other electrical or electro-magnetic appliances; VitalCALL is not liable in any way to the Customer for any defect, fault, or malfunction of, or interruption to the Services caused by or contributed to by such environmental conditions.

- (7) VitalCALL does not provide Services in regard to third party equipment and does not supply Equipment exclusive of Services.
- (8) the Customer has provided, and will promptly update, VitalCALL with all relevant and accurate information regarding the Customer and/or End User, the Customer's and/or End User's current address where the Equipment is located, the Nominee and all Emergency Contacts to enable VitalCALL to provide the Services to the Customer; in particular, the Customer acknowledges that VitalCALL will not be liable in any way to the Customer for any loss or damage (including any injuries sustained by the Customer or death) if the Customer has not informed VitalCALL of a change of residence and as a result, emergency services are called out to an incorrect or outdated place of residence

### **1.3 Competition and Consumer Act 2010 (Cth)**

Nothing in this Agreement is intended to exclude, restrict or modify the application of the provisions of any statute, including the *Competition and Consumer Act 2010* (Cth), where to do so would contravene that statute or cause any part of this Agreement to be void. If the Customer is a Consumer, the following additional provisions apply:

- (1) VitalCALL's goods and services come with guarantees that cannot be excluded under the Australian Consumer Law.
- (2) The Australian Consumer Law specifies one or more remedies for a breach of a guarantee, with the precise remedy depending on the circumstances. The benefits to the consumer given by a guarantee under the Australian Consumer Law is in addition to other rights and remedies of the consumer under other applicable laws relating to the Equipment or Service.
- (3) If the Customer is a Consumer, to the extent permitted by law the liability of Chubb for breach of a guarantee conferred by the Australian Consumer Law (other than those conferred by sections 51 to 53 inclusive of the Australian Consumer Law) is limited:
  - (1) in the case of Equipment not ordinarily acquired for personal, domestic or household use or consumption, to any one of the following:
    1. the replacement of the Equipment or the supply of equivalent Equipment;
    2. the repair of the Equipment;
    3. payment of the cost of replacing the Equipment or of acquiring equivalent Equipment; or
    4. the payment of the cost of having the Equipment repaired; and
  - (2) in the case of Services not ordinarily acquired for personal, domestic or household use or consumption, to any one of the following:
    1. the supplying of the Services again; or
    2. the payment of the cost of having the Services supplied again.
- (2) For major failures with the service, the Customer is entitled:
  - (a) to cancel the Agreement with VitalCALL; and
  - (b) to a refund for the unused portion, or to compensation for its reduced value.
- (3) The Customer is also entitled to choose a refund or replacement for a major failure with goods. If a failure with the goods or a service does not amount to a major failure, the Customer is entitled to have the failure rectified in a reasonable time. If this is not done, the Customer is entitled to a refund for the goods and to cancel the Agreement for the service and obtain a refund of any unused portion. The Customer is also entitled to be compensated for any other reasonably foreseeable loss or damage from a failure

in the goods or services.

The benefits to the Customer given by hereunder are in addition to any other rights and remedies of the Customer may have under this Agreement or otherwise at law.

- (4) If a defect in Equipment or Service appears during the Warranty Period or any longer period during which Chubb is required to remedy the defect under the Australian Consumer Law, then:
  - (a) the Consumer is entitled to submit a warranty claim to Chubb for assessment;
  - (b) if the Consumer returns Equipment to Chubb, the Consumer must ensure it is properly packaged so that no damage occurs during transit; and. Any postage and packaging expenses required to return the Equipment to Chubb will be at the Consumer's cost.
  - (c) the Consumer must use its reasonable efforts to provide the original or a copy of the proof of purchase and an explanation of the defect.
  
- (5) If Chubb elects to repair the Equipment:
  - (a) Equipment may be replaced by refurbished goods of the same type rather than being repaired;
  - (b) refurbished parts may be used to repair the Equipment; and
  - (c) if the Equipment are capable of retaining user-generated data, the repair of the Equipment may result in the loss of the data.

## **2. Customer's Obligations**

### **2.1 Supply and ownership of Equipment**

- (1) A corporate Customer, will be supplied with Equipment, which it shall then supply to the Equipment to the End User. The Customer retains ownership and possession of the Equipment.
- (2) If a Customer, particularly a retail Customer, elects to purchase the Equipment, the title to and ownership of the Equipment shall pass to the Customer upon receipt by VitalCALL of payment in full of the fees associated. Risk shall pass to the Customer upon delivery, in accordance with this Agreement.
- (3) If a Customer elects to hire the Equipment from VitalCALL, the Customer acknowledges and agrees that the Equipment, at all times, remains the exclusive property of VitalCALL, unless purchased.
- (4) Additional accessories may be purchased by the Customer, which are supplied on the same terms as outlined in this clause 2.1.

### **2.2 Equipment Functionality**

The Customer must ensure the Equipment is:

- (1) correctly installed and is always effectively functioning; and
- (2) regularly and properly serviced and maintained; and
- (3) tested on a regular (and at least monthly) basis.

### **2.3 Nominee – Retail Customers Only**

- (1) The Customer must appoint a Nominee to act as the Customer's agent for the purposes of this Agreement, including (without limitation) if the Customer is unavailable, ill or incapacitated for any reason.
- (2) The Customer acknowledges and agrees that VitalCALL may accept and act on the instructions of the Nominee from time to time for all matters relating to this Agreement as if the Nominee were the Customer, including if VitalCALL is not able to contact the Customer or if the Customer is otherwise not able to provide VitalCALL with instructions for any reason.
- (3) The Customer acknowledges and agrees that VitalCALL is entitled to accept, rely and act on the instructions of the Nominee as if they were instructions from the Customer, and shall release and indemnify VitalCALL from and against all losses, liabilities, claims, demands, suits and causes of action arising from or in any way related to VitalCALL acting on the Nominee's instructions. This clause will survive the termination of the Agreement for any reason.

## **2.4 End User Support**

The Customer must train and support the End User to operate, test and maintain the Equipment.

## **2.5 Use of PERS Equipment – Retail Customers Only**

### **(1) VitalCALL's Obligations for the Delivery and Initial Installation of PERS Equipment**

- (i) In consideration of the Installation Fee, VitalCALL will deliver and install the PERS Equipment at the retail Customer's residence and connect the PERS Equipment to the Central Monitoring Facility (**Initial Installation**). The Customer (including anyone on behalf of the Customer) must not disconnect or move the PERS Equipment after the Initial Installation.
- (ii) If the Customer disconnects, moves or relocates the PERS Equipment for any reason from its original tested position after the Initial Installation, the Customer must contact VitalCALL who may require a VitalCALL Representative to attend the Customer's residence to re-install and test the PERS Equipment. VitalCALL charges a Fee to reconnect, re-install or relocate the PERS Equipment.

### **(2) Relocation of PERS Equipment after Initial Installation**

- (i) With VitalCALL's prior approval, the Customer is permitted to relocate the PERS Equipment after the Initial Installation, only for the following circumstances:
  - AA. change of residence; or
  - BB. temporary relocation of residence.
- (ii) If VitalCALL has provided its approval for relocation, then strictly in accordance with the Setup Guide, the Customer (including anyone on behalf of the Customer) is required to:
  - AA. install the PERS Equipment at the new location; and
  - BB. contact VitalCALL to test the PERS Equipment to ensure functionality and connection to the Central Monitoring Facility. The VitalCALL Representative will verify and confirm that the PERS Equipment is sufficiently configured.
- (iii) For the avoidance of doubt, VitalCALL does not guarantee and the Customer acknowledges that the Services may not work as intended, if:
  - AA. the PERS Equipment has not been installed and tested correctly, in accordance with the Setup Guide; and

- BB. the PERS Equipment has been moved or its location or setup is changed in any way without VitalCALL being contacted to attend and reconnect, re-install, retest or relocate the PERS Equipment.

### **(3) Self-Installation of PERS Equipment**

- (i) For the avoidance of any doubt, clauses 2.5(1) and 2.5(2) are not applicable if this clause 2.5(3) is utilised.
- (ii) This clause will only apply where VitalCALL has agreed with the Customer that the PERS Equipment may be self-installed by the Customer.
- (iii) Strictly in accordance with the Setup Guide, the Customer is required to:
  - AA. install the PERS Equipment; and
  - BB. test the PERS Equipment to ensure functionality and connection in conjunction with a VitalCALL Representative who will verify and confirm that the PERS Equipment is sufficiently configured and that the signal strength is sufficient based on where the PERS Equipment is located at the time of contacting the VitalCALL Representative (**Testing Process**).
- (iv) After the Testing Process has been completed accordance with clause 2.5(3)(iii) and the PERS Equipment has been configured, the Customer must not move the PERS Equipment or change its location in any way, without first:
  - AA. notifying VitalCALL; and
  - BB. a further Testing Process has been completed.
- (v) The Customer acknowledges that the Services may not work as intended if:
  - AA. the PERS Equipment is moved or its location is changed in any way;
  - BB. a VitalCALL Representative has not been contacted to check the PERS Equipment is configured correctly; and
  - CC. a further Testing Process has not been carried out.
- (vi) VitalCALL does not guarantee that the Services will work as intended if:
  - AA. The PERS Equipment has not been installed or tested in accordance with the Setup Guide; or
  - BB. The PERS Equipment has been moved without consulting a VitalCALL Representative and a further Testing Process has not been conducted in accordance with clause 2.5(3)(iii)AA of this Agreement.

## **2.6 Provisions applicable to the Mobile Pendant**

### **(i) VitalCALL's Obligations for the Delivery and Installation of Mobile Pendant**

In consideration of the Installation Fee, VitalCALL will deliver the Equipment at the Customer's residence. VitalCALL will connect the Mobile Pendant to the Central Monitoring Facility as outlined in the User Manual.

### **(ii) GPS functionality**

The Customer acknowledges that:

- AA. the Mobile Pendant uses GPS functionality to locate the Customer in a personal emergency;
- BB. GPS functionality may not always be available, accurate or uninterrupted in some locations and may not be error free; and

- CC. VitalCALL shall not be liable for any loss or damage sustained or incurred by the Customer in the course of VitalCALL using GPS functionality as a result of or in relation to the failure to receive or transmit any data or the receipt or transmission of incorrect data relating to or resulting from, whether directly or indirectly, any defect, limitation, error or malfunction in the telecommunications network.

## **2.7 Access and Use of Safe Zone Application**

- (1) VitalCALL offers, on an optional, opt in basis, access to its “SafeZone” application, which is available from both the Apple and Google stores. Full conditions associated with the use of the application are available for viewing prior to download.
- (2) SafeZone is designed to provide for emergency response, particularly if alone or working in hazardous areas via GPS tracking on the Customer/End User’s mobile phone and/or desktop device, and includes separate help, medical, emergency alerts and automatic fall triggers. It may also be paired with Bluetooth devices.
- (3) Fees and charges are applicable upon installation and sign up to the SafeZone application.
- (4) Use of SafeZone is supported by the VitalCALL monitoring team.
- (5) The Customer/End User acknowledges the following in regard to their use of SafeZone:
  - (a) that an event raised by the SafeZone application will not, in all cases, result in automatic notification to Emergency Services or their attendance at the Site and is dependent on telecommunication signal at the place and time of the incident;
  - (b) SafeZone relies on Google or Apple Maps to indicate the location of the user and the Customer/End user acknowledges the terms and conditions of use associated;
  - (c) Functionality of the SafeZone application is subject to device compatibility and/or condition;
  - (d) Location services must be enabled and on at all times for SafeZone to operate effectively;
  - (e) Updates and further downloads may be required from time to time;
  - (f) The Customer/End User is responsible for any network charges or fees incurred whilst using SafeZone;
    1. The End User’s device may not be used once an alert has been issued by SafeZone and until the monitoring centre has made contact; and
    2. If no contact has been made by the monitoring centre within 3 minutes of an alert then the End User should immediately contact emergency services directly.
  - (g) VitalCALL cannot and will not accept responsibility for any failure by SafeZone to issue an alert, including any resulting loss or damage sustained/incurred.

The Customer must train and support the End User to operate, test and maintain the Equipment.

## **2.8 Customer Warranty and Guarantee**

- (1) By entering into this Agreement the Customer agrees, warrants and guarantees that it has fully informed itself of and understands the nature and purpose of the Services, and the limitation of the Services. The Customer shall not make any claims, representations, or warranties in connection with the Services to any person (including any End User), or any other claims, representations, or warranties purportedly on behalf of VitalCALL, except if and to the extent expressly authorized in advance in writing by VitalCALL or otherwise strictly in accordance with this Agreement.

- (2) To the full extent permitted by law, the Customer acknowledges and agrees that the warranty provided hereunder does not cover:
  - (a) any defect, fault, damage or malfunction caused by the Customer's failure to regularly maintain and test the Equipment in accordance with the applicable Australian Standards and the manufacturer's recommendations;
  - (b) fair wear and tear;
  - (c) any defect, fault, damage or malfunction caused by the Customer's negligence, fault, neglect, abuse or incorrect installation, connection or use of the Equipment or as a result of vandalism, fire, water damage, power surge, lightning, electrical storm or any other circumstance outside of VitalCALL's control or that of the manufacturer;
  - (d) any defect, fault, damage or malfunction caused by the Customer's failure to replace or recharge consumables required for the use and operation of the Equipment (such as, without limitation, batteries); or
  - (e) any actual or attempted unauthorised repair, modification, removal or reinstallation of, interference with or work on, the Equipment by any person other than VitalCALL.
- (3) If the Customer is a Small Business, to the extent permitted by law the liability of Chubb is limited, in the case of Equipment supplied to:
  - (a) the replacement of the Equipments or the supply of equivalent Equipments;
  - (b) the repair of the Equipments;
  - (c) the payment of the cost of replacing the Equipments or of acquiring equivalent Equipments; or
  - (d) the payment of the cost of having the Equipments repaired; and
- (4) in the case of Services provided to a Small Business, warranties and liability is limited to any one of the following:
  - (a) the supplying of the Services again; or
  - (b) the payment of the cost of having the Services supplied again.
- (5) The form of remedy offered to a Small Business for is solely determined by Chubb and/or its insurers.

## **2.9 End User Details and Privacy**

- (1) All personal information requested and provided hereunder for the purposes of providing the End User with the Services on behalf of the Customer and administering this Agreement will be collected, used, safeguarded, disclosed and disposed of in accordance with VitalCALL's privacy policy. A current copy of VitalCALL's privacy policy (including how the Customer or End User may access or update the personal information VitalCALL holds regarding the Customer or End User) may be viewed on the VitalCALL website: [www.VitalCALL.com.au](http://www.VitalCALL.com.au) or obtained by contacting: VitalCALL Privacy Officer, PO Box 6247 Silverwater Business Park 1811 or [au\\_privacy@chubbsfs.com](mailto:au_privacy@chubbsfs.com)
- (2) If the Customer does not provide VitalCALL with the information requested, it will affect or prevent VitalCALL's ability to effectively provide the Customer and the End Users with the Services, and VitalCALL may elect to terminate the Agreement, in whole or in part, immediately without further liability to the Customer. The Customer must actively cooperate with VitalCALL to ensure that all personal information of the Customer and of the End Users held by VitalCALL (including the Client Information Details) is accurate, up-to-date, complete, relevant and not misleading.

- (3) If the Customer has provided VitalCALL with personal information about another person (including the End User), the Customer must inform that person that personal information has been supplied to VitalCALL, the reason why it has been supplied and that they can contact VitalCALL to obtain access to or update or correct their personal information.
- (4) The Customer is solely liable for ensuring that its actual or proposed use of the Services and Equipment complies with all applicable laws and regulations, including, without limitation, those pertaining to surveillance and the privacy of individuals, and if required must ensure it has obtained the consent from all relevant persons, and displayed appropriate notices. Without limiting the foregoing, where required by applicable legislation the Customer must procure written consents from the End Users to enable the lawful performance of the Services by VitalCALL. The Customer must provide evidence of such consents to VitalCALL on request from VitalCALL.
- (5) if the Customer (Retail only) has applied to VitalCALL for credit, the Customer acknowledges and agrees that for purposes of this Agreement VitalCALL may collect, use, store, give, obtain and exchange personal information about the Customer's creditworthiness, credit history or credit capacity on terms which attract the operation of the *Privacy Act 1988* (Cth), and authorises VitalCALL to do so in accordance with VitalCALL's privacy policy.

## **2.10 Service Equipment and Customer Warranty**

The Customer must maintain and service the Equipment to ensure that it operates effectively. The Customer acknowledges that the Equipment has not been selected or supplied by VitalCALL and that VitalCALL has made no warranty or representation to the Customer regarding the Equipment. The Customer acknowledges and agrees that the Customer has satisfied itself that the Equipment is fit for its intended purpose.

## **2.11 Notification of events and changes**

- (1) Without prejudice to any other provision of this Agreement, the Customer must provide VitalCALL with all data, documents, specifications and information as may be requested by VitalCALL to enable VitalCALL to fulfil its obligations under this Agreement and must promptly notify VitalCALL in the following cases:
  - (a) if any defect, fault or malfunction in the Equipment is discovered at any time during the Term, including during or after testing;
  - (b) if the use, characteristics or layout of the premises where the Equipment is located change from that existing at the date of this Agreement;
  - (c) if any line of telecommunication (including without limitation, the Long Range Communication Link, telephone lines and/or digital mobile communication) is disconnected, severed or disabled for any reason, accidentally, negligently, maliciously or otherwise;
  - (d) if any variation otherwise occurs in the:
    - (i) Equipment (including type or location); or
    - (ii) Number of Monitored Units; or
    - (iii) End User details including Client Information Details; or
    - (iv) Long Range Communication Link.
- (2) The Customer acknowledges that compliance with the obligations contained in this clause is essential to ensure the performance of the Services is not disrupted. For the avoidance of doubt, VitalCALL will not be in breach of this Agreement if the performance of the Services is disrupted or in any way affected by the Customer's non-compliance with this clause 2.11.
- (3) The Customer is required to reasonably advise VitalCALL of the existence of any conditions which may affect its provision of Equipments or Services under this



Agreement, including, but not limited to, wires, cables, water, gas, electricity, phone or asbestos on Site and will confirm the location of such conditions with the VitalCALL technician before work commences.

### **3. Term**

#### **3.1 Term**

This Agreement commences on the Commencement Date and, unless specified in **Item 7, Schedule 1**, continues until terminated, in accordance with the terms and conditions herein..

#### **3.2 Automatic Renewal**

This Agreement is automatically renewed for twelve (12) months on the day before the day of expiry of this Agreement unless either party gives the other party sixty (60) days' Notice of its intention for this Agreement not to automatically renew in accordance with this clause 3.2.

### **4. Fees**

#### **4.1 Invoices**

VitalCALL shall send a tax invoice for the Fees to the Customer each Billing Period. The Customer must pay each tax invoice within 30 days of the tax invoice using the Payment Method.

#### **4.2 Establishment Fee**

The Customer must pay to VitalCALL the Establishment Fee within (14) fourteen days from the date of this Agreement. VitalCALL shall provide the Customer with a tax invoice for the Establishment Fee.

#### **4.3 Monitoring Fee**

For each Billing Period the Customer must pay VitalCALL the Monitoring Fee multiplied by the Number of Monitored Units.

For retail Customers – the Monitoring Fee may be refunded in part, in alignment with any unused portion in the relevant Billing Period, other than where Monitoring Fees are paid monthly and Termination occurs prior to the expiry of the relevant Billing Period

#### **4.4 Report Fee**

The Customer must pay VitalCALL the Report Fee pursuant with any Notice each time VitalCALL makes a report for the Customer. VitalCALL shall provide the Customer with a tax invoice for the Report Fee.

#### **4.5 Administration Fee**

The Customer must pay VitalCALL the Administration Fee each time VitalCALL amends the Number of Monitored Units. VitalCALL shall provide the Customer with a tax invoice for the Administration Fee.

#### **4.6 Fee Variation**

Without limitation and to the extent permitted by law, VitalCALL may vary the Monitoring Fee, the Administration Fee or the Report Fee by giving the Customer a minimum of (30) thirty days' Notice.

#### **4.7 Payment of emergency services**

Any expenses charged by emergency services (including without limitation police, the fire brigade and any ambulance service) notified by VitalCALL in accordance with this Agreement must be paid by the Customer in all circumstances including, without limitation, in the event of a false alarm.

#### **4.8 GST**

Where any supply of products or services under this Agreement is or becomes subject to GST, an amount equal to GST paid or payable for that supply will be added to the amount exclusive of GST paid or payable for that supply under this Agreement.

### **5. Cooling Off**

**5.1** The Agreement, where the Customer is a Consumer, may be subject to a cooling off period in accordance with the applicable legislation regarding unsolicited consumer agreements, as this term is defined in the *Competition and Consumer Act 2010* (Cth).

**5.2** Where a cooling off period applies:

- (a) VitalCALL will not accept any payment during the cooling off period;
- (b) VitalCALL will not provide any Services during the cooling off period;
- (c) VitalCALL will not supply any Equipment exceeding five hundred Australian Dollars (\$500) in value during the cooling off period;
- (d) The Customer may cancel this Agreement within this period without penalty by giving VitalCALL notice verbally or in writing. The Customer may use the notice in the prescribed form contained in the Agreement.

**5.3** If the Customer cancels this Agreement during the cooling off period and Equipment was supplied during that period, the Customer agrees to provide VitalCALL with reasonable access to the Customer's residence during Standard Hours to remove the Equipment within thirty (30) days of cancellation or the Equipment will be required to be returned to VitalCALL as stated in clause 2.4 **Error! Reference source not found.** (at VitalCALL's election). Failure to provide VitalCALL with such access or to otherwise return the Equipment to VitalCALL will result in the Customer being liable for payment of the Equipment Fee

### **6. VitalCALL's Liability**

#### **6.1 Australian Consumer Law**

- (1) To the full extent permitted by law and to the extent otherwise provided under clause 1 of this Agreement, subject to the consumer guarantees and other provisions of the Australian Consumer Law (if applicable), the Customer acknowledges and agrees that VitalCALL will have no liability for any statements, representations, guarantees, conditions or warranties that are implied or not expressly contained in this Agreement.
- (2) To the full extent permitted by law, where VitalCALL breaches its obligations under this Agreement, VitalCALL shall at its election act in accordance with clause 1.3.

#### **6.2 Limitation of Liability**

Notwithstanding anything to the contrary herein and to the full extent permitted by law, the total liability of VitalCALL to the Customer under this Agreement, whether in contract, tort (including negligence) or otherwise, shall be limited to \$50,000 (fifty thousand) (retail Customer) or \$100,000.00 (one hundred thousand Australian Dollars) (corporate Customer) in the aggregate. This clause does not limit the liability of VitalCALL for any injury to, or death of a person, caused directly by the gross negligence of VitalCALL.

#### **6.3 Exclusion of Consequential/Indirect Loss and Damages**

Notwithstanding anything else in this Agreement, but subject to non-excludable laws, VitalCALL shall not be liable to the Customer for:

- (1) any indirect, consequential, special or economic loss, cost, liability, damage, or expense howsoever arising; or
- (2) any loss of profit, loss of use, loss of income, loss of rental or other benefit, loss of production, loss of actual or potential business opportunity or loss to reputation.

#### **6.4 Emergency service personnel**

Without limiting clause 6.3, VitalCALL will not be liable for any direct or indirect loss or damage (including, without limitation, damage to property) caused as a result of emergency services personnel entering the Customer's or End User's premises. The Customer agrees to indemnify VitalCALL in respect of all costs, actions, demands and liabilities arising as a result of such loss or damage.

#### **6.5 Reasonable limitations**

The Customer acknowledges and agrees that it is reasonable for VitalCALL to limit its liability under this Agreement and that the Fees charged by VitalCALL are based solely on the nature and value of the Services supplied.

### **7. Termination**

#### **7.1 Default**

Either party (the 'innocent party') may terminate this Agreement by giving thirty (30) days' prior Notice to the other party (the 'defaulting party'), if the defaulting party:

- (1) is or becomes bankrupt or insolvent, enters into liquidation, receivership or voluntary administration or makes any arrangement with its creditors or takes advantage of any statute for the relief of insolvent debtors;
- (2) ceases to carry on all or substantially all of its business or operations;
- (3) fails to pay any amount due and payable in accordance with the Agreement;
- (4) is in breach of any other provision of this Agreement, where that breach:
  - (a) if capable of being remedied, is not remedied within the period specified in a Notice from the innocent party; or
  - (b) is not capable of being remedied.

#### **7.2 Termination by VitalCALL**

- (1) VitalCALL may terminate this Agreement by providing thirty (30) days' prior written notice in writing to the Customer, if:
  - (a) any Fee remains unpaid for a period of thirty (30) days after VitalCALL sends the Customer a letter requesting payment of an overdue Fee; or
  - (b) VitalCALL has been unable to contact the Customer or the Nominee for more than sixty (60) days; or
  - (c) the Customer has failed to test the Equipment for more than sixty (60) days; or
  - (d) if the Customer misuses or neglects the Equipment, or fails to maintain the Equipment in accordance with the User Manual and reasonable instructions from VitalCALL; or

- (e) the Customer changes the Customer's address and VitalCALL is unable to provide the Services at the Customer's new address; or
- (f) as otherwise permitted by any other provision of this Agreement.

(2) VitalCALL may terminate this Agreement with immediate effect if, at any time during the Agreement, VitalCALL becomes unable to provide the Services to the Customer due to reasons or circumstances beyond VitalCALL's control.

### **7.3 Termination for Convenience**

Either party may terminate this Agreement for convenience by giving the other party ninety (90) days' prior Notice.

### **7.4 Accrued Rights**

The expiration or earlier termination of this Agreement for any reason shall not affect either party's rights which accrued prior to the expiration or earlier termination of this Agreement.

### **7.5 Return of Equipment upon Termination**

- (1) Within thirty (30) days of the expiry or termination of this Agreement for any reason, unless clause **Error! Reference source not found.** applies the Customer must return the Equipment to VitalCALL Returns, PO Box 218, Salisbury QLD 4107. The Equipment must be in good working order and condition.
- (2) Any Equipment which is digitally held on a personal device should be removed and software associated deleted at the time of expiry or termination and/or access will be discontinued by VitalCALL.
- (3) VitalCALL may charge the Customer the cost of replacement for any Equipment not returned in accordance with this clause.

## **8. Complaints and Disputes**

- 8.1** If a retail Customer has a complaint about an invoice or payment, the retail Customer may contact VitalCALL by calling 1800 264 652 and VitalCALL will endeavour to resolve the Customer's complaint within three (3) working days. If the Customer is not satisfied with the resolution, or if VitalCALL has not resolved the Customer's complaint within that time, the Customer may escalate the complaint by calling 1300 360 808 and VitalCALL customer service will either resolve or escalate the complaint for resolution by a supervisor.
- 8.2** If the retail Customer has a complaint about the Service or Equipment (except for billing and payment disputes), the retail Customer may contact VitalCALL by calling 1300 360 808 and VitalCALL will endeavour to resolve the complaint within five (5) working days. If the Customer is not satisfied with the resolution, or if VitalCALL has not resolved the Customer's complaint within that time, the Customer may escalate the complaint by calling 1300 360 808 and requesting to speak with a supervisor
- 8.3** Any complaint or dispute by a corporate or Small Business Customer may be directed to your account manager.

## **9. Other Representations**

Except as expressly provided in this Agreement, VitalCALL makes no representation to the Customer or any other person as to the suitability of the Services for the Customer's or End User's purpose.

## **10. Force Majeure**

**10.1** Neither party shall be in breach of this Agreement or be liable to the other party if it fails to perform or delays the performance of an obligation as a result of an event beyond its reasonable control, including, but not limited to, electrical shortages, telecommunication outages, power failure, computer failure, strikes, industrial disputes, fire, flood, storm, cyclone, act of God, war, insurrection, vandalism, sabotage, invasion, riot, national emergency, piracy, hijack, acts of terrorism, embargoes or restraints, extreme weather or traffic conditions, epidemic or pandemic, temporary closure of roads or ports, legislation, regulation, order or other act of any government or governmental agency.

**10.2** If a party is wholly or partially unable to perform its obligations under this Agreement because of Force Majeure then, as soon as reasonably practicable after the Force Majeure event arises, that party must notify the other party of the particulars of the Force Majeure event, including why the notifying Party is unable to perform its obligations and intended steps to mitigate and/or manage the effect of the Force Majeure Event.

## **11. Assignment**

### **11.1 Customer assignment rights**

The Customer may not assign its rights under this Agreement without the prior written consent of VitalCALL. VitalCALL may consent or deny its consent in its absolute discretion.

### **11.2 VitalCALL assignment rights**

VitalCALL may at any time assign or novate any part of its rights and obligations under this Agreement to a reputable and competent organisation (including a related entity) by giving the Customer (30) thirty days' Notice.

### **11.3 Subcontracting**

VitalCALL may subcontract its rights and obligations under this Agreement without restriction.

## **12. Intellectual Property**

VitalCALL is the owner or authorised licensee of all Intellectual Property Rights in the Equipment and the Services. VitalCALL retains all rights, title and interest subsisting in the Intellectual Property Rights. VitalCALL grants to the Customer a royalty-free, non-exclusive, non-transferrable, revocable licence to use the Intellectual Property Rights solely to the extent necessary for the purpose of using the Equipment and/or the Services in accordance with the Agreement. The Customer must not in any way modify, adapt or reverse-engineer the Equipment and/or the Services.

## **13. General**

### **13.1 No employment, partnership or agency relationship**

VitalCALL's relationship with the Customer will be that of an independent contractor. Nothing in this Agreement will be construed as creating a relationship of employment, agency, joint venture or partnership between the parties.

### **13.2 Entire agreement**

This Agreement comprises the entire agreement between the parties in relation to the Services and supersedes any prior representations, negotiations, writings, memoranda and agreements.

### **13.3 Severability**

Any provision of this Agreement that is illegal, void or unenforceable shall not form part of this Agreement to the extent of that illegality, voidness or unenforceability. The remaining provisions of this Agreement shall not be invalidated by an illegal, void or unenforceable provision.

### **13.4 Variation**

This Agreement may be varied only by the signed written agreement of both parties prior to the expiration of this Agreement.

### **13.5 No waiver**

Delay, failure or omission by a party at any time to enforce or require strict or timely compliance with any provision of this Agreement shall not affect or impair that provision in any way or the rights and remedies that the party may have in respect of that provision.

### **13.6 Governing law**

This Agreement is governed by and construed in accordance with the laws for the time being in force in the state of New South Wales and the parties submit to the exclusive jurisdiction of the courts of that state.

### **13.7 Dispute Resolution**

If a dispute arises between the parties in relation to this Agreement, its performance or interpretation, then within a reasonable period of a party notifying the other party of a dispute, senior representatives from each party must meet and use all reasonable endeavours to resolve the dispute amicably and in good faith by joint discussions and negotiations. If discussions between the nominated senior representatives fail to resolve the dispute within twenty-one (21) days of the notification of a dispute (or any longer period agreed by the parties), either party may refer the dispute to a court of competent jurisdiction in the State of New South Wales.

### **13.8 Notices**

Any notice, including any other communication, required to be given or sent to either party under this Agreement must be in writing and given to the relevant Contact Officer. A notice shall be deemed to have been given:

- (1) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the address notified by each party to the other from time to time; or
- (2) if sent by prepaid mail, on the expiration of five (5) business days after the date on which it was sent; or
- (3) if sent by email, at the time the email is transmitted to the recipient's server or, if there is a failure of the recipient's server to receive emails, then the next business day (at the place of receipt) after the email has been transmitted by the sender's email system.

### **13.9 Survival of clauses**

**Clauses 5 and 8** of this Agreement, and any other provision where necessary for and incidental to the operation of such provision, survive the termination or expiry of this Agreement or the completion of the Services and may be enforced at any time.

### 13.10 Independent Professional Advice

The Customer acknowledges and warrants that prior to entering into this Agreement it has been given the opportunity and relied on its own independent professional advice (including without limitation legal advice and financial advice).

### 13.11 Set-off

VitalCALL may set-off against any payment due by VitalCALL to the Customer any amount owed to VitalCALL by the Customer arising under this Agreement.

### 13.12 Counterparts

This Agreement may be executed in any number of counterparts.

### 13.13 International Trade Compliance

As a subsidiary of a US group of companies, VitalCALL is required to comply with the export control laws and sanctions of the United States of America. VitalCALL may terminate or suspend this Agreement with immediate effect and without further liability if:

- (1) the Customer is or at any times becomes a denied or restricted party under such laws or sanctions;
- (2) VitalCALL determines in its sole discretion that the Customer is in breach of such laws or sanctions, whether directly or indirectly; or
- (3) the existence or performance of the Agreement is or at any time becomes inconsistent with such laws and sanctions.

### 13.14 Modern Slavery

- (1) The term "**Modern Slavery**" means an offence against any applicable Commonwealth or state legislation relating to slavery or modern slavery and includes the meaning given to "modern slavery" in the Modern Slavery Act 2018 (Cth)
- (2) "**carries on business in Australia**" has the meaning given to that term in the *Modern Slavery Act 2018* (Cth).
- (3) If any party to the Agreement has obligations to supply any goods and/or services and *carries on business in Australia*, then in performing those obligations the party will, and must ensure any of its subcontractors used to perform those obligations will:
  - (i) comply with all applicable laws relating to *Modern Slavery*; and
  - (ii) take reasonable steps to ensure that there are no *Modern Slavery* practices in the supply chain or business of *Customer* or those subcontractors.
- (4) The parties also each represent and warrant, to the extent that the Modern Slavery laws apply to the relevant party, that neither it nor its Personnel or its Related Bodies Corporate:
  - (i) have been convicted of any offence involving Modern Slavery;
  - (ii) to the best of its knowledge, having made reasonable enquiries, have been or are the subject of any investigation, inquiry or enforcement proceedings by any Government Agency regarding any offence or alleged offence of, or in connection with Modern Slavery;
  - (iii) Have not engaged in acts of Modern Slavery; and
  - (iv) comply with the legislative requirements of the Modern Slavery Act, including in regard to its business operations, processes and procedures and its affiliates/supply chain, to the extent applicable."

## 14. Interpretation

## 14.1 Definitions

<b>Administration Fee</b>	means the fee specified in <b>Item 4(d) of Schedule 1</b> .
<b>Agreement</b>	means this agreement as may be amended from time to time in accordance with the provisions therein, including any schedule, appendix, exhibit or attachment thereto.
<b>Alarm Signal</b>	means a signal received by and sent from an Equipment to the Central Monitoring Facility (including test, accidental and emergency activation) to indicate an alarm condition has occurred.
<b>Billing Period</b>	means the period between payments for the Monitoring Fee i.e. monthly, quarterly, half yearly or yearly, specified in <b>Item 5 of Schedule 1</b> .
<b>Central Monitoring Facility</b>	means a facility which contains the monitoring equipment and a user information system for the receipt of Alarm Signals from the local unit and is staffed 24 hours, every day of the year by personnel who can initiate and verify the appropriate responses.
<b>Client Information Details</b>	means the information provided by the Customer to VitalCALL which specifies each End User's personal details and contact details.
<b>Commencement Date</b>	means the date specified in <b>Item 2 of Schedule 1</b> .
<b>Consumer</b>	Means, as defined in the <i>Competition and Consumer Act 2010</i> (Cth), any "consumer, in accordance with section 3 of the ACL.
<b>Contact Officer</b>	means the relevant party contact person specified in <b>Item 3 of Schedule 1</b> .
<b>Contract</b>	means either a Consumer contract or "Small Business" contract", as applicable in the circumstances
<b>Customer</b>	means the Consumer or Small Business or any business specified in <b>Item 1 of Schedule 1</b> ,
<b>Customer Service Agreement</b>	means the form completed at the installation by the Customer or the Customer's Nominee and the Payer (If applicable) which forms part of this Agreement and contains the Customer's contact details and other information relevant to the provision of Services by VitalCALL.
<b>Emergency Contact</b>	means the person or persons whom the Customer nominates as an emergency contact in the Customer Service Agreement as amended from time to time.
<b>End User</b>	means the relevant person(s) nominated by the Customer to use the Equipment.
<b>Equipment</b>	means the equipment that receives Alarm Signals and communicates with the Central Monitoring Facility, including but not limited to the PERS Equipment, Mobile Pendant and accessories associated. The Equipment receives an Alarm Signal from the trigger, processes and transmits the Alarm Signal from the Central Monitoring Facility via a Long Range Communication Link, and provides audible and visual indications to the End User.
<b>Equipment Fee</b>	Means the fees charged by VitalCALL, to Consumers, for the purchase of Equipment and/or accessories.



<b>Establishment Fee</b>	means the fee specified (where applicable) in <b>Item 4(b) of Schedule 1</b> .
<b>Fee / Fees</b>	means the Installation or Establishment Fee, as applicable Administration Fee, , the Monitoring Fee and/or the Report Fee, and any other fee payable to VitalCALL by the Customer as agreed and/or advised to the Customer from time to time, in accordance with this Agreement.
<b>Global Positioning System (GPS)</b>	Means a satellite based radionavigation system which allows users to determine location of transmitting equipment.
<b>GST</b>	Any tax in the nature of a tax on or on the supply of goods, real property, services, or other things (or similar tax) levied, imposed or assessed by the Commonwealth of Australia or any State or Territory of Australia, which may operate at any time during the validity of this Agreement, other than any interest, fine, penalty, fee or other payment imposed on or in respect of such tax.
<b>Intellectual Property Rights</b>	means all current and future registered and unregistered rights in respect of copyright, designs, software, domain names, circuit layouts, trade names, trademarks, trade secrets, know-how, confidential information, patents, inventions and discoveries and all other intellectual property as defined in article 2 of the Convention Establishing the World Intellectual Property Organisation 1967 (as amended from time to time) subsisting anywhere in the world in respect of the Equipment, the Services and any documentation, record or material in any form or media (whether tangible or intangible) prepared or provided by VitalCALL under this Agreement, and applications for any of the foregoing.
<b>Installation Fee</b>	means the fee charged by VitalCALL for the installation and configuration of the Equipment by VitalCALL at the Customer's place of residence, in the instance that the Customer is also a Consumer.
<b>Installation Services</b>	means Equipment installed by the Customer (including anyone on behalf of the Customer) at the Customer's place of residence.
<b>Long Range Communication Link</b>	means the transmission medium between the Equipment and the Central Monitoring Facility.
<b>Mobile Pendant</b>	means the VitalCALL mobile personal emergency system that utilises GPS tracking to identify the Customer's geographical location in the event of an Alarm Signal triggered by the Customer.
<b>Monitoring Fee</b>	means the monthly fee specified in <b>Item 4(a) of Schedule 1</b> for providing the Services in accordance with this Agreement.
<b>Nominee</b>	means the person the Customer nominates as his or her agent under the Agreement in accordance with clause <b>Error! Reference source not found.</b>
<b>Notice</b>	means a notice provided by one party to the other party pursuant to <b>clause 11.8</b> of this Agreement.
<b>Number of Monitored Units</b>	means the number of End Users VitalCALL is providing the Services to under this Agreement from time to time.
<b>Payer</b>	Means a person other than the Customer who pays the Fees on behalf of the Customer.

<b>Payment Method</b>	means the agreed method of payment specified in <b>Item 6 of Schedule 1</b> .
<b>Personal Emergency Response System (PERS) Equipment</b>	means the VitalCALL personal emergency response unit which responds to triggering of an alarm and other signals and communicates with the Central Monitoring Facility via a base unit installed at the Customer's premises
<b>Report Fee</b>	means the fee specified in <b>Item 4(c) of Schedule 1</b> .
<b>Schedule</b>	means a schedule of this Agreement which forms part of this Agreement.
<b>Services</b>	means the services provided by VitalCALL to the Customer specified in <b>clause 2.1</b> of this Agreement.
<b>Setup Guide</b>	means the self-installation and relocation booklet provided by VitalCALL which forms part of this Agreement and describes the steps to be completed as part of the self-installation process.
<b>Small Business</b>	means a business employing up to 100 persons or generating turnover less than \$10 million a year.
<b>Standard Hours</b>	means between 9.00am and 5.00pm from Monday to Friday (excluding public holidays) at the place of residence of the Customer, subject to alteration by VitalCALL from time to time
<b>User Manual</b>	means the information booklet provided by VitalCALL which forms part of this Agreement and describes how the Services and Equipment operate.
<b>Voice Signals</b>	means voice communications (including test, accidental and emergency activation calls) from the Customer to VitalCALL using the Equipment.
<b>VitalCALL Representative</b>	means any VitalCALL employee, subcontractor or authorised representative.
<b>Warranty Period</b>	means 12 months following the date of agreement to these Terms and Conditions

## 14.2 General Interpretation

In this Agreement, unless a contrary intention is expressed:

- (2) words importing a gender include the others; words in the singular number include the plural and vice versa; and where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (3) "include" or "including" is not to be construed as a word of limitation;
- (4) headings have no effect on the interpretation of the provisions;
- (5) an obligation imposed by this Agreement on more than one person binds them jointly and severally; and
- (6) no rule of construction will apply in the interpretation of this Agreement to the disadvantage of one party on the basis that that party put forward or drafted this Agreement or any provision of this Agreement.
- (7) The word "including" (and related forms including "includes") means "including without limitation".

