

RETAIL TERMS AND CONDITIONS – Personal Emergency Response Products and Services

1 TERM

This Agreement commences on the Date of Agreement shown in the Customer Service Agreement and continues until terminated in accordance with the terms and conditions herein.

2 COOLING OFF PERIOD

2.1 This Agreement may be subject to a cooling off period in accordance with the applicable legislation regarding uninvited direct sales, as this term is defined in the *Fair Trading Act 1986*.

2.2 Where a cooling off period applies:

- (a) VitalCall will not accept any payment during the cooling off period; and
- (b) The Customer may cancel this Agreement within this period without penalty by giving VitalCall notice verbally or in writing.

2.3 If the Customer cancels this Agreement during the cooling off period:

- (a) 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 ten (10) days of cancellation. 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;
- (b) and money was paid by the Customer during that period, VitalCall will immediately repay any money they Customer has already paid under the Agreement;
- (c) if requested by the Customer, VitalCall will reinstate the Customer's property to its previous condition if Services have been supplied and have altered and/or damaged the Customer's property;
- (d) and loss or damage to the Equipment has occurred while the Equipment was in the Customer's possession (except for reasonable wear tear or due to circumstances beyond the Customer's control), the Customer must compensate VitalCall for that loss or damage. This liability expires on the day that is 10 working days from the date of cancellation.

3 VITALCALL'S OBLIGATIONS

3.1 Supply of PERS Equipment and other products

- (a) **PERS Equipment Purchase option.** If the Customer elects to purchase the PERS Equipment from VitalCall, title to and ownership of the PERS Equipment shall pass to the Customer upon receipt by VitalCall of payment in full of the Equipment Fee. Risk in the PERS Equipment shall pass to the Customer upon delivery to the Customer in accordance with the Agreement.
- (b) **PERS Equipment Hire option.** If the Customer elects to hire the PERS Equipment from VitalCall, the Customer acknowledges that the PERS Equipment remains at all time the exclusive property of VitalCall, unless otherwise paid for by the Customer. If the PERS Equipment comprises a 3G unit, the Customer agrees to use the SIM card provided by VitalCall, and that the SIM card will also remain the property of VitalCall and must be returned with the PERS Equipment.
- (c) **PERS Equipment accessories.** The Customer may purchase additional accessories for the PERS Equipment from VitalCall. The PERS Equipment accessories are supplied on the same basis as set out in clause 3.1(a) above.

3.2 Delivery, installation and relocation of PERS Equipment

- (a) In consideration of the Installation Fee (if applicable), VitalCall will deliver and install the PERS Equipment at the Customer's residence and connect the PERS Equipment to the Central Monitoring Facility. The Customer (including anyone on behalf of the Customer) must not disconnect or move the PERS Equipment or change its location in any way after it has been installed by VitalCall. If the Customer disconnects, moves or relocates the PERS Equipment for any reason, the Customer must contact VitalCall who will arrange for a representative to attend the Customer's residence to re-install the PERS Equipment. VitalCall may charge a Fee to reconnect, re-install or relocate the PERS Equipment.
- (b) For the avoidance of doubt, VitalCall does not guarantee, and the Customer acknowledges that the Services may not work as intended, if:
 - 1) the PERS Equipment has not been installed, connected and tested in accordance with clause 3.2(a); or
 - 2) 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.

3.3 Supply of Services

VitalCall agrees to supply the Services and the Customer agrees to pay the Monitoring Fees for the Services in accordance with the terms and conditions of this Agreement.

3.4 Scope of Services

- (a) VitalCall will respond to Alarm Signals and Voice Signals (as applicable) received at the Central Monitoring Facility in accordance with its procedures and applicable New Zealand Standards.
- (b) VitalCall does not monitor the continuous connection of the Customer's telephone line or telecommunications network to the Central Monitoring Facility. It is the Customer's responsibility to check and test the PERS Equipment and other devices in the manner set out in the User Manual on a regular basis to ensure that signals are being received by the Central Monitoring Facility.

3.5 General VitalCall supplies PERS Equipment together with the Services. VitalCall does not provide the Services for third party equipment and does not supply PERS Equipment without the Services.

4 CUSTOMER'S OBLIGATIONS

4.1 Payment of Fees

In consideration of the provision of Equipment and Services, the Customer must pay the applicable Fees to VitalCall as set out in this Agreement.

4.2 Testing

The Customer must carry out regular testing of the PERS Equipment and its connection at least monthly in the manner set out in the User Manual. To the extent permitted by law, VitalCall will not be liable for any fault in the PERS Equipment if monthly test calls are not conducted.

4.3 Caring for the Equipment

The Customer agrees:

- (a) to take reasonable care of the PERS Equipment and otherwise do all things reasonably required to maintain the PERS Equipment in good working condition in accordance with all operating and maintenance instructions;
- (b) to inform VitalCall as soon as possible if the Customer becomes aware of any failure of or damage to the PERS Equipment;
- (c) to pay for the cost of any repairs to or replacement of the Equipment if the damage or fault was caused by any negligence, deliberate damage, misuse or abuse;
- (d) to allow VitalCall to attend the Customer's residence at a convenient pre-arranged time between the hours of 7am – 6pm, Monday to Sunday for the purpose of installing, inspecting, repairing or removing the PERS Equipment;
- (e) unless clause 3.1(a) applies, to return the PERS Equipment to VitalCall Returns, Chubb New Zealand, 3 Fischer Crescent, Mount Wellington, Auckland 1060 in good working order and condition within thirty (30) days of VitalCall's request, and to take reasonable care to ensure that the PERS Equipment will be delivered and not damaged in transit;
- (f) that unless clause 3.1(a) applies, VitalCall may charge the Customer the replacement cost of the PERS Equipment if the Equipment (or any part of it) is damaged, missing or not returned to VitalCall within thirty days (30) days.

4.4 Customer acknowledgements – Equipment

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

- (a) the Customer understands how to use and operate the PERS Equipment;
- (b) the Customer has received and read a copy of the User Manual;
- (c) if the Customer has selected the PERS Equipment Hire option, the PERS Equipment (including, if applicable, any SIM card supplied by VitalCall) remains the property of VitalCall;
- (d) being an electronic and telecommunications device, the PERS Equipment is sensitive and may not always function reliably, consistently or continuously;
- (e) where the Equipment comprises a wireless mobile unit (3G, 4G or higher), the Services may be interrupted and may not be error free, and the functioning of the Equipment and the Services may be affected by the cellular network coverage at the Customer's residence outside of the knowledge and control of VitalCall;
- (f) the performance of the PERS Equipment and/or the Services can be affected by equipment, utilities and services (including any change or disruption to such equipment, utilities and services) which are provided to the Customer by telecommunications carriers or other third party providers. Without limiting any provision herein, VitalCall shall have no liability to the Customer for PERS Equipment or Services performance issues which are attributable to 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 telephone line communication and/or digital mobile communication or network is restored;
- (g) 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 PERS Equipment and the Services and, and for ensuring that all such costs, fees and charges are paid in a timely manner to the Customer's telecommunications service provider and other service providers as the PERS Equipment will not function if the Customer's telecommunications services are suspended or disconnected for any reason;
- (h) VitalCall cannot guarantee the performance of the PERS Equipment or availability of the Services when used with Voice Over Internet Protocol (VOIP) services. The Customer acknowledges that VitalCall does not recommend using the Equipment with VOIP or other

non-analogue telephone lines and the Customer will notify VitalCall if VOIP or any non-analogue services are installed at the Customer's residence; and

- (i) the performance of the PERS Equipment and/or the Services may be affected by environmental conditions (separately or in any combination) such as weather (including, without limitation, storms and lightning), temperature, geographical location, humidity, dust, dirt, the Customer's premises layout, electrical wiring, building materials used in the premises, the position of furniture 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, damage or malfunction of the PERS Equipment or Services caused by or contributed to by such environmental conditions.

4.5 Customer acknowledgements – Services

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

- (a) The Customer understands the nature, purpose and limitations of the PERS Equipment and the Services; and
- (b) The Customer has provided, and will promptly update, VitalCall with all relevant and accurate information regarding the Customer, the Nominee and all Emergency Contacts to enable VitalCall to provide the Services to the Customer.

4.6 Nominee

- (a) The Customer appoints the 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.
- (b) 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.
- (c) 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.

5 SPECIAL CONDITIONS

5.1 Provisions applicable to all Services

- (a) Any amounts charged by any emergency services notified by VitalCall under this Agreement must be paid by the Customer (including, without limitation, any accidental or false alarm) unless otherwise agreed between the parties.
- (b) The Customer acknowledges that emergency services operate according to their own procedures, protocols and performance standards, which may change from time to time, and which are fully outside of VitalCall's control.

6 CONSUMER GUARANTEES ACT 1993

- 6.1** Nothing in this Agreement is intended to exclude, restrict or modify the application of the provisions of any statute, including the *Consumer Guarantees Act 1993 (Consumer Act)*, where to do so would contravene that statute or cause any part of this Agreement to be void.

- 6.2** If the Customer is a "consumer" as defined in the Consumer Act, the following additional provisions apply:
- (a) The goods supplied by VitalCall under this Agreement come with guarantees that cannot be excluded under the Consumer Act. The Customer is entitled to a replacement or refund for a failure of substantial character and for compensation for any other reasonably foreseeable loss or damage. The Customer is 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 failure of substantial character.
 - (b) The services supplied by VitalCall under this Agreement come with guarantees that cannot be excluded under the Consumer Act. The Customer is entitled to a refund or the re-supply of the services for a breach, and to compensation for any other reasonably foreseeable loss or damage.
- The benefits to the Customer given by VitalCall hereunder are in addition to any other rights and remedies of the Customer may have under this Agreement or otherwise at law.
- 6.3** If a defect in the Equipment develops within the applicable warranty, the Customer must contact VitalCall as soon as possible and submit a warranty claim verbally or in writing. Subject to clause 6.7, VitalCall agrees to repair or replace, at its option, the defective Equipment at no cost to the Customer. When returning the Equipment, the Customer must ensure it is properly packaged so that no damage occurs during transit and include the original or a copy of the proof of purchase and an explanation of the problem.
- 6.4** VitalCall may require access to the Customer's premises to diagnose and/or rectify a defect in the Equipment. In such event, the Customer shall procure access to the premises for VitalCall at a mutually agreed time during Standard Hours, and VitalCall will not be liable to the Customer for any claims made for injury, loss or damage to any person, resulting from VitalCall's failure to provide the warranty work if the Customer fails to give VitalCall access to the premises where the Equipment is located at the agreed time, or failing agreement, within a reasonable time not exceeding seven (7) days. If, after the expiry of the warranty, the Customer requests VitalCall to diagnose and rectify a defect, fault or malfunction in the Equipment, subject to applicable law, VitalCall may charge the Customer a fee for such diagnosis, rectification or advice at its then current standard rates available upon request to VitalCall from time to time.
- 6.5** Pursuant to the warranty in clause 6.2, 6.3 and 6.4, where VitalCall repairs the Equipment:
- (a) VitalCall may substitute the Equipment with equivalent equipment where necessary for the provision or continuation of the Services;
 - (b) Equipment presented for repair may be replaced by refurbished goods of the same type rather than being repaired. Refurbished parts may be used to repair the Equipment; and
 - (c) if the Equipment is capable of retaining user-generated data, the repair of the Equipment may result in the loss of the data.
- 6.6** The foregoing warranty is provided by VitalCall, a division of Chubb New Zealand. Registered office: 3 Fisher Crescent, Mount Wellington, Auckland 1060 New Zealand. Phone: 0800 20 30 40. Website: <http://www.vitalcall.co.nz>
- 6.7** 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 New Zealand 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.

7 VARIATIONS

7.1 Increase in Monitoring Fee

- (a) The Monitoring Fee is revised annually. VitalCall may increase the Monitoring Fee each year by giving the Customer at least thirty (30) days' prior notice in writing.
- (b) To the extent permitted by law, if the direct or indirect cost to VitalCall of providing the Services increases at any time after the commencement of this Agreement, VitalCall may increase the Monitoring Fee by the same proportion as the increase in the cost to VitalCall, by giving the Customer thirty (30) days' prior notice in writing.
- (c) If the Customer receives a notice increasing the Monitoring Fee and the Customer does not wish to pay the higher Monitoring Fee, the Customer (or the Customer's Nominee) may terminate this Agreement in accordance with clause 13.3(b).

7.2 Other variations

- (a) VitalCall may amend the terms and conditions of this Agreement by giving the Customer at least 30 days' prior notice in writing, setting out the changes to this Agreement. Subject to clause 7.2(b) below, the new terms and conditions will become effective and binding as between the Customer and VitalCall upon expiry of the 30-day notice period.
- (b) If the Customer does not agree to the changes, the Customer (or the Customer's Nominee) may terminate this Agreement in accordance with clause 13.3(b).

8 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.

9 CREDIT RELATED PERSONAL INFORMATION

Without limiting clause 10, if the Customer 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 2020*, and authorises VitalCall to do so in accordance with VitalCall's privacy policy.

10 PRIVACY

10.1 All personal information requested and provided hereunder for the purposes of providing the Customer with the Equipment and Services and administering this Agreement will be collected, used, safeguarded, disclosed and disposed of in accordance with the Privacy Statement which forms part of this Agreement and with VitalCall's privacy policy. A current copy of VitalCall's privacy policy (including how the Customer may access or update the personal information

VitalCall holds regarding the Customer) may be viewed on the VitalCall website: www.vitalcall.co.nz or obtained by contacting the VitalCall Privacy Officer at the following address:

VitalCall Privacy Officer
Locked Bag 2007,
North Ryde BC NSW 1670
Australia
or Privacy.Officer@chubb.com.au.

- 10.2** If the Customer does not provide VitalCall with the information requested, it will affect or prevent VitalCall's ability to effectively provide the Customer with the Services, and VitalCall may elect to terminate the Agreement immediately without further liability to the Customer. The Customer must actively cooperate with VitalCall to ensure that all personal information of the Customer held by VitalCall is accurate, up-to-date, complete, relevant and not misleading.
- 10.3** If the Customer has provided VitalCall with personal information about another person (including the Payer, the Nominee and the Customer's Emergency Contacts), 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.
- 10.4** VitalCall's privacy policy also contains information about how an individual may complain about a breach of the Information Privacy Principles (IPP) and any applicable IPP Code, and how VitalCall will deal such complaint.

11 FEES AND PAYMENT

- 11.1** The Customer must pay or, if applicable, must cause the Payer to pay, the Fees in accordance with, in the manner and within the time set forth in the Agreement, or reasonably required by VitalCall from time to time. The Customer remains solely liable for the payment of the Fees to VitalCall in accordance with this Agreement, even in circumstances where the Customer has nominated a Payer.
- 11.2** All Fees include GST unless otherwise stated.
- 11.3** Should the Customer (or the Payer on behalf of the Customer) fail to make payment by the due date for payment of a due and payable Fee, VitalCall may charge interest at the current Westpac Unsecured Personal Loan Rate applied on outstanding amounts calculated daily from the due date and until all outstanding amounts are received by VitalCall in full. Without prejudice to its rights under clause 13.1(a), VitalCall may also suspend the provision of the Services, until payment is received in clear funds.

12 LIABILITY

12.1 New Zealand Consumer Law

- (a) To the full extent permitted by law and subject to the consumer guarantees and other provisions of the Consumer Law or *Fair Trading Act 1986* (if applicable), the Customer acknowledges and agrees that VitalCall will have no liability for any statements, representations, guarantees, conditions or warranties that are not expressly contained in this Agreement.
- (b) To the full extent permitted by law, where VitalCall breaches its obligations under this Agreement, VitalCall shall at its election:
- (1) re-supply the Equipment and/or the Services; or
 - (2) refund or credit to the Customer the Fees paid for the defective Equipment and/or for the Services not performed or performed incorrectly; or

- (3) pay to have the Equipment and/or Services supplied again or for the replacement, repair or repayment of the Equipment, up to a maximum total value of the Fees paid by the Customer under this Agreement.

12.2 Limitation of liability

To the full extent permitted by law, VitalCall's total liability under this Agreement, whether in contract, tort (including negligence) or otherwise, will be limited to \$50,000 (fifty thousand New Zealand Dollars) in the aggregate. For the avoidance of doubt, this clause does not limit VitalCall's liability for physical injury or death to any person caused by VitalCall's gross negligence.

12.3 Exclusion of indirect loss

Notwithstanding anything else in this Agreement and to the full extent permitted by law, VitalCall will not be liable to the Customer for:

- (a) any indirect, incidental or special or economic loss, cost, liability, damage or expense howsoever arising; or
- (b) any loss of profit, loss of use, loss of income, loss of rental or other benefit, loss of production, loss of contract, loss of actual or potential business opportunity or loss of reputation.

12.4 Emergency service personnel

Without limiting clause 12.3 above, 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 service personnel entering the Customer's residence. The Customer agrees to indemnify VitalCall in respect of all costs, actions, demands and liabilities arising as a result of such loss or damage.

12.5 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 value of the Services and the Equipment supplied.

13 TERMINATION

13.1 Termination by VitalCall

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 PERS 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.

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.

13.2 Termination by the Customer

The Customer may terminate this Agreement:

- (a) in accordance with clause 2.2(b), 7.1(c) or clause 7.2(b) above; or
- (b) by notice if VitalCall breaches the Agreement and does not rectify the breach within thirty (30) days of being requested in writing by the Customer to do so.

13.3 Termination for convenience

- (a) VitalCall may terminate this Agreement for convenience by providing thirty (30) days' prior notice in writing to the Customer.
- (b) The Customer (or the Nominee on the Customer's behalf) may terminate this Agreement for convenience at any time after the Installation Date.

13.4 Accrued Rights

The expiry or earlier termination of this Agreement will not affect either party's rights in law which may have accrued prior to the expiry or earlier termination of this Agreement. The Customer remains liable to pay the Fees for Equipment duly supplied and/or Services duly performed up to the day of termination.

13.5 Return of PERS Equipment

Within thirty (30) days of the expiry or termination of this Agreement for any reason, unless clause 3.1(a) applies the Customer must return the PERS Equipment to VitalCall Returns, Chubb New Zealand, 3 Fischer Crescent, Mount Wellington, Auckland 1060. The PERS Equipment must be in good working order and condition.

13.6 Failure to return PERS Equipment

If the Customer does not return the PERS Equipment to VitalCall in accordance with clause 13.5 above, VitalCall may charge the Customer the replacement cost of the PERS Equipment.

13.7 Reimbursement of Monitoring Fee

VitalCall will refund to the Customer or the Payer (as applicable), that part of the Monitoring Fee corresponding to any unused portion for the relevant Billing Period, except where the Customer has elected to pay the Monitoring Fee on a monthly basis and the Customer terminate this Agreement prior to the expiry of a Billing Period.

14 COMPLAINTS AND DISPUTES

14.1 Complaints – Billing and payment

If the Customer has a complaint about an invoice or payment, the Customer may contact VitalCall by calling 0800203040 and VitalCall will endeavour to resolve the Customer's complaint within five (5) 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 0800203040 and VitalCall customer service will either resolve or escalate the complaint for resolution by a supervisor.

14.2 Complaints – General

If the Customer has a complaint about the Service or PERS Equipment (except for billing and payment disputes), the Customer may contact VitalCall by calling 0800203040 and VitalCall will endeavour to resolve the complaint within five (5) 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 0800203040 and requesting to speak with a supervisor.

15 FORCE MAJEURE

Neither party will be in breach of this Agreement or be liable to the other party if it fails to perform or delays in 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, earthquake, volcanic eruption, fire (including bushfire), flood, tidal wave, lightning strike, storm, cyclone, hurricane, act of God, war (including civil war), insurrection, vandalism, sabotage, invasion, riot, national emergency, piracy, hijack, acts of terrorism, embargoes, blockades or restraints, extreme weather or traffic conditions, temporary closure of roads, legislation, regulation, order or other act of any government or governmental agency.

16 GENERAL PROVISIONS**16.1 Interpretation**

Unless a contrary intention appears, a reference in this Agreement to:

- (a) a document (including this Agreement) includes any variation or replacement of it;
- (b) the singular includes the plural and vice versa;
- (c) a reference to words of one gender includes all other genders
- (d) a particular person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
- (e) the section and sub-section headings in this Agreement are used for convenience only, are not substantive, and shall not be interpreted to define, describe, or otherwise limit the interpretation of the provision under the section headings or of the Agreement as a whole; and
- (f) the words "including", "for example" or "such as" when introducing an example, does not limit the meaning of the words to which the example relates to that example or examples of a similar kind.

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

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

16.4 No right under this Agreement will be deemed to be waived except by notice in writing signed by the party waiving the right and any failure or delay by a party to enforce any clause of this Agreement will not be construed as a waiver of that party's rights under this Agreement.

16.5 This Agreement is governed by and construed in accordance with the laws of New Zealand and the parties submit to the exclusive jurisdiction of the courts of New Zealand.

16.6 Either party may give the other notice under this Agreement by letter, e-mail or facsimile, addressed in the case of a letter at the address last known to the party giving the notice and otherwise as advised by each party to the other from time to time, and any such notice will be considered given when the letter, e-mail or facsimile would have been delivered in the ordinary course of post or transmission.

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

16.8 This Agreement is personal to the Customer. The Customer must not assign or novate its interests in this Agreement without VitalCall's prior written consent. 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 company) without the Customer's consent, but in such event VitalCall will endeavour to provide written notice of such assignment or novation to the Customer as soon as practicable after it has occurred.

16.9 If the Customer comprises two or more person, the obligations in this Agreement bind them jointly and severally.

VITALCALL RETAIL TERMS AND CONDITIONS KEYWORDS

Agreement means the contract between the Customer and VitalCall for the supply of the Equipment and Services as evidenced and detailed herein and comprises these terms and conditions, the Customer Service Agreement, the Direct Debit Request Service Agreement, the Setup Guide (if clause 3.2(b) applies) and the User Manual.

Alarm Signal means a signal sent from the PERS Equipment to VitalCall's Central Monitoring Facility to indicate that an alarm condition exists or for testing of the PERS Equipment.

Billing Period means the weekly, fortnightly, monthly, quarterly, half-yearly or yearly (as applicable) period for the payment of each Monitoring Fee.

Central Monitoring Facility means the VitalCall monitoring facility, which receives Alarm Signals and Voice Signals from the PERS Equipment.

Connection Date means the date the Equipment is installed at the Customer's premises.

Customer Service Agreement 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.

Emergency Contact means the person or persons whom the Customer nominates as an emergency contact in the Customer Service Agreement as amended from time to time.

Equipment means any one or more of:

- PERS Equipment
- PERS Equipment accessory

Equipment Fee means the fees charged by VitalCall for the purchase of the PERS Equipment and the PERS Equipment accessories (if applicable).

Fees mean the Installation Fee, the Equipment Fee, the Monitoring Fees and/or any other fee payable under this Agreement.

First Billing Date means the date that the Customer is first charged by VitalCall for the Equipment and/or Services.

Installation Date means the date on which VitalCall installs the PERS Equipment in accordance with clause 3.2.

Installation Fee means the fee charged by VitalCall for the installation and configuration of the PERS Equipment by VitalCall at the Customer's place of residence (if applicable).

Intellectual Property Rights 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.

Monitoring Fee means the periodic fee charged by VitalCall for providing the Services under this Agreement.

Nominee means the person the Customer nominates as his or her agent under the Agreement in accordance with clause 4.6.

Payer means a person other than the Customer who pays the Fees on behalf of the Customer.

PERS Equipment means the VitalCall personal emergency response system which responds to triggering of an alarm on a pendant worn by the Customer and other signals and communicates with the Central Monitoring Facility via a base unit installed at the Customer's premises.

Services means the services described in clause 3.4(a) of this Agreement.

Setup Guide 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.

Standard Hours 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.

User Manual means the information booklet provided by VitalCall which forms part of this Agreement and describes how the Services and Equipment operate.

Voice Signals means voice communications (including test, accidental and emergency activation calls) from the Customer to VitalCall using the PERS Equipment.