

STANDARD TERMS AND CONDITIONS

1. THESE TERMS AND CONDITIONS

- I. In these terms and conditions “Tussock Networks”, “Tussock”, “we”, “our” or “us” refers to Tussock Networks Limited, its successors, assigns or any other person acting on behalf of and with the authority of Tussock Networks Limited
- II. “You” or “your” means any person(s) acting on your behalf and with your authority requesting services from us
- III. “Service” or “Services” refers to all goods, products and services provided by us
- IV. By requesting services from us, you agree to be bound by these terms and conditions and any other terms and conditions that may exist or apply from time to time. If there is any conflict or inconsistency between these standard terms and conditions and any terms and conditions applying to specific services then, unless otherwise expressly stated, the terms and conditions applying to the specific services will prevail
- V. These terms and conditions apply to you if you are a business or residential customer of Tussock Networks Limited

2. CHANGES TO TERMS AND CONDITIONS

- I. A copy of our terms and conditions is available on our website or may be emailed to you. We may change these terms and conditions from time to time by changing, removing or adding. It is your responsibility to check these terms and conditions regularly for any modifications or updates
- II. Should any alteration of the terms and conditions substantially alter our agreed service levels or significantly impact the price you pay for those services, we will use best endeavours to provide at least ten (10) business days’ notice to you and wherever possible will provide at least one (1) months’ notice
- III. Your continued use of our services after any change to the terms and conditions indicates your acceptance of those changes

3. CHARGES AND CHANGES TO SERVICES

- I. You agree that you will pay us for all services that we provide to you, on time, regardless of your use of such services
- II. We may make changes to our services from time to time in accordance with these terms and conditions
- III. If you request a change to your services, it is your responsibility to check whether any specific terms and conditions apply to such new services.
- IV. You must pay the fee for any services by the due date shown on your invoice. Your invoice will be sent to you by email to your preferred contact email address. The accepted method(s) of payment will be set out in our invoice to you
- V. If your payment is overdue, we may suspend or restrict provision of services to you and we may charge you a late payment fee. You will pay for any costs we incur in attempting to recover any overdue amounts from you. Please let us know before the due date if you think that there is a mistake on your invoice
- VI. You cannot claim a refund for any unused services and you cannot accumulate any unused portion of any services
- VII. We reserve the right to impose a credit limit on your account at any time. You agree that any credit limit imposed by us may be changed at our discretion with immediate effect. If at any time you exceed this credit limit, we will be entitled to suspend our supply of the services to you

4. CREDIT REFERENCES

- I. We may require you to provide credit references and other credit information from time to time and you authorise us to check your credit status with any credit reference agency. If you are unhappy with the result of any credit reference check you must take this up directly with the credit reference agency

- II. We may decline your application or terminate your connection at our discretion. Subject to applicable privacy laws, we do not have disclose the reasons for our decision
- III. You may have to pay us a deposit before you can use, or continue to use, our services. We will notify you when this is required

5. YOUR RESPONSIBILITIES

- I. You will;
 - a. ensure that all information that you provide to us is true and correct
 - b. notify us immediately of any change of your address, phone number or preferred contact email address
 - c. protect your electronic devices against any virus, malware or unauthorised access
 - d. not transmit or store any information that contains any form of virus or malware
 - e. use our services for lawful purposes only and to follow any instructions that we may issue from time to time
 - f. not use our services in any way or act in any way which may be abusive, offensive or a nuisance to someone else, including us or any of our agents
 - g. ensure that any electronic device under your control is secure. You will be liable for any charges incurred by us as a result of any third party obtaining unauthorised access to any device which connects to our services
 - h. not forge email or create or use a false identity for the purpose of misleading others
 - i. keep your passwords secure and confidential and notify us immediately if you believe that someone else has discovered your password or is using the services that we provide to you fraudulently. We will not be liable for any unauthorised use of your services and may charge a fee if you request an investigation of the use of your services
 - j. comply with any Acceptable Use Policy or any other policy that we may enforce from time to time
- II. Using our services in ways that we deem inappropriate, abusive, illegal, or similar is strictly prohibited. If you use the services in such a way then we may suspend or terminate your service without notice. If we incur costs as a result of your misuse of our services, we may pass these costs on to you at our discretion, and legal action may be taken against you. Further, we reserve the right to remove any material from our servers which we consider to breach the terms of this agreement or any law
- III. If we consider it necessary for the purpose of us providing you any service, you will allow us or our agents to come onto your property to work on our network or anything connected to it. People we send will carry proof of identity and we will always try to contact you before we do this. If, for any reason, we are unable to gain access to your property we may not be able to provide you with the relevant services

6. PRIVACY

- I. During the provision of services to you, you agree that we may collect information about you. This may be obtained from you or may be generated from your use of our services. You may decide not to provide us with certain personal information but this may mean that we cannot provide the services to you. We will handle all of your information in accordance with the Privacy Act 1993
- II. We may monitor or record calls made you us for training purposes, to improve service quality or to aid in dispute resolution
- III. You can at any time make a written request to see any personal information that we hold or to ask us to correct any mistakes in that information
- IV. You agree that we can use any collected information for a range of lawful purposes connected with our business operations and can pass it on to our employees, contractors, agents and suppliers. You agree that we may send you marketing messages, electronic or otherwise, about our special offers, products and services which may be of interest to you. You agree that the electronic marketing message we send you need not

- include an unsubscribe facility if they relate to the services you receive or relate to any invoice or payment which may be due
- V. We may provide your personal information to third party network operators where we have arrangements with such operators for the provision of our services or where your information is being transferred to/from such an operator or for the purposes of investigating an alleged fraud or other offence
 - VI. If you contact us through the preferred contact email address you register with us when you create your account, or any email address that we provide to you as part of the services, we will take this to mean you are the account holder and have authority on the account. Please keep access to your preferred email account(s) secure
 - VII. We may be obliged to provide your personal information to a public service agency if that agency requests such information for its investigations

7. ENDING THE AGREEMENT

- I. Except where you have agreed to use our services for a fixed term, you may terminate the agreement by giving one (1) months' notice. Charges will stop one month after we receive your notice unless agreed otherwise
- II. If your services are provided under a fixed term contract, you may have to pay an early disconnection fee. You may also be liable for charges in relation to any equipment that has been provided to you by us for the use of your services. On expiry of any fixed term, unless notified to the contrary your services will continue on a monthly basis
- III. In addition to our rights under clause 7(II) above, we may terminate our agreement with you immediately without notifying you if we believe you have not met your obligations under our terms and conditions. We may also suspend or terminate our agreement with you without notifying you in advance where;
 - a. your use or our services is unusual or excessive
 - b. you are, or are likely to become, insolvent or bankrupt or a receiver or manager is appointed over any of your assets or a resolution for liquidation is proposed or passed in respect of you
 - c. our services are not available to you (for any reason)
- IV. Upon termination, all payments due by you to us will be immediately due and payable, and you agree to pay all such amounts immediately upon demand
- V. No refund is given on monthly fees paid in advance, where you terminate a service part way through the period for which you have paid
- VI. Certain rights and obligations will continue after the termination of this agreement. These include, but are not limited to, the payment of outstanding amounts and the return of any of our equipment you may have
- VII. We may end our agreement with you for any other reason by giving you at least one month's notice
- VIII. Upon termination, all payments due by you to us will be immediately due and payable, and you agree to pay all such amounts immediately upon demand

8. LIABILITY

- I. We are not liable to you if we are prevented from providing the services by reason of any act of God, act of state, riot, insurrection, civil commotion, strike, sanctions, boycott, embargo, adverse weather conditions or any other circumstance (including a network failure) beyond our reasonable control. If such an event occurs, we will use best endeavour to advise you of the existence of the event and the effect of such event on the provision of the services
- II. We exclude all liability we may have to you or anyone claiming through you whether in contract, tort, equity or otherwise relating to any indirect or consequential loss, damage or expense of any kind whatsoever arising under or in respect of any agreement including, without limitation, any economic loss, loss of use, loss of profits, loss of income, or increased or alternative costs, however caused. This exclusion applies to any claim you may have for any damages whatsoever and applies for the benefit of the following people;
 - a. Tussock Networks and any of its related companies;

- b. Our employees, contractors, officers and agents
 - c. Any network operator or other person whose services we use to provide services to you (or any of their employees, contractors, officers and agents)
- III. If, despite the exclusion set out above, we are held to be liable to you, then our liability is limited to a maximum of one (1) months service fee for any event (or series of related events) and to a maximum of \$5,000 in any 12 month period
- IV. For the avoidance of doubt, we shall not be liable to you for any indirect or consequential loss, damage or expense of any kind whatsoever arising under or in respect of any agreement. This includes, without limitation, any economic loss, loss of use, loss of profits, loss of income, or increased or alternative costs, however caused
- V. Except as specifically outlined herein, we make no warranties in relation to our service or the service of any other service provider (including that the services will be continuous or fault-free at all times) and we will have no liability if your use of the service or any other provider's service infringes any third party's intellectual property rights
- VI. You agree that if the services you acquire under this agreement are for the purposes of a business then the Consumer Guarantees Act 1993 does not apply

9. COMPLAINTS

- I. If you have a complaint concerning any aspect of your use of our services you must immediately notify us. Our contact details are made available on our website
- II. We will handle your complaint with care and in a fair and efficient manner in accordance with our complaints resolution policy

10. INTELLECTUAL PROPERTY

- I. Except as expressly set out in these terms and conditions or in any terms and conditions relating to specific services, you do not acquire any rights or interests in our intellectual property (which includes, without limitation, patents, trademarks and copyright). Our intellectual property (including modifications or additions to any current intellectual property which are created, made or discovered in the course of us providing the services to you) is and will remain the absolute property of us
- II. If we provide software, documentation, manuals or other materials (whether as hard or soft copies) to enable you to receive and use a service, we grant you a non-exclusive, non-transferable licence to use such software, documentation, manuals or materials for your own use. Any licence we grant under this clause will terminate when the relevant service is terminated
- III. If a service provides you with content or software licensed by third parties who require you to accept their terms of use, you must comply with those terms
- IV. Except as permitted by law or as expressly permitted under these terms and conditions or in any terms and conditions relating to specific services you must not, without prior written consent, copy, de-compile or modify intellectual property of ours or any third party or permit anyone else to do so

11. NOT AN ANONYMOUS SERVICE

- I. We do not and will not provide any form of anonymous service to any customer

12. MISCELLANEOUS

- I. You may not assign any of your rights or obligations under these terms and conditions or in any terms and conditions relating to specific services. We may assign our rights to a third party at any time, without your consent and without providing you with advance notice of such assignment
- II. Any contract or agreement we have with you to provide services is governed by and construed in accordance with New Zealand law and you accept the exclusive jurisdiction of the New Zealand Courts

- III. If a Court of competent jurisdiction rules that any part of these terms and conditions is unenforceable for any reason then such ruling will not affect the remaining provisions which will remain in full force and effect at all times
- IV. Any failure or delay by us in enforcing any provision of our terms and conditions will not be deemed to be a waiver of our rights with respect to that provision or any other provision of our terms and conditions
- V. We may appoint subcontractors to discharge any of our obligations under our terms and conditions provided that we will at all times remain primarily liable to you for those subcontractors' acts and omissions
- VI. These terms and conditions together with any terms and conditions relating to specific services or promotions (including pricing and service descriptions set out on our website) constitute the entire terms and conditions applicable to the agreement between you and us