

## Terms and Conditions for BLACK + WHITE Account Members

All services and products provided by B+W are subject to these terms and conditions ("Agreement"). Where a Service for which You have applied is subject to specific terms and conditions published on our Website, the specific terms and conditions (as amended from time to time) shall form part of this Agreement.

### 1. Interpretation

"Account Holder" means the B+W Member liable for all Charges payable under this Agreement.

"Authority" means the recurring variable credit/debit/charge card or bank direct debit authority provided by You for Payment of your account with Us;

"Agents" means any contractors, providers, dealers or agents appointed by B+W to perform any of B+W's obligations under this Agreement.

"Agreement" means these terms and conditions (as amended from time to time) between Us and You.

"Application Form" means an application form completed by You verbally or in writing setting out your details, to connect to our Services.

"Bar" means suspending access to Services and may be either an out-bar, restricting use of the Mobile Device for making calls and accessing the Services, or an in-bar, restricting use of the Mobile Device for receiving calls and accessing the Services, or both.

"B+W Mail Service" means our email Service as specified in clause 36.

"Content" means all text, graphical and other visual content, as well as all audio content and other information contained in our Website.

"Charges" means all monthly access charges, services costs and airtime call charges payable in accordance with the Pricing Plan and any additional charges payable by You.

"Member Services" means the B+W Member Services team, which is contactable on 0800 892150 or 990 free from your Mobile Device.

"Default Rate" is the rate of 5% per month or any other rate notified to You on your account. It applies from the date payment by You is due to the date We receive your payment in full.

"Device" means any voice and/or data communication hardware device including a mobile device (such as a handset) and a desktop device (such as a PC)

"Fair Use Policy" has the meaning set out in paragraph 39 and is published on our Website and updated from time to time.

"Handset Recovery Fee" means the fee payable in the circumstance that you receive a Mobile Device free or at a discount, this fee is an amount equal to the discount received and will be added to your final bill should your account be terminated for any reason prior to the agreed duration starting on the date of Service activation or should your service not be Activated for any reason.

"Mobile Device" means a mobile phone or other telecommunications device.

"Network" means the telecommunications network and related infrastructure and equipment through which We operate.

"Network Operator" is any entity with whom We have entered into an interconnection agreement or arrangement (directly or indirectly) providing for the passing of member generated or member destined communications between Us and that entity.

"Options" means monthly tariff additions available only under selected B+W pricing plans.

"Other Agreement(s)" means any other terms and conditions that apply to You in relation to any products or services offered or supplied by Us.

"Payment" means crediting your B+W account by any means made available and directed by Us from time to time.

“Phone Number” means a mobile phone number which is either allocated to You by Us or which You Ported or seek to Port.

“Port” means to transfer the Phone Number from one Telecommunications Service Provider to another according to the approved industry process (and words such as Porting, Ported and Porting Process shall be construed accordingly).

“Pricing Plan(s)” are the prices applicable to the Services which form part of this Agreement and all Pricing Plans are published on our Website or made available on request.

“Re-direct” means a re-direction of all calls being made from a Mobile Device which may end access to all Services until the re-direction is lifted.

“Security Information” means any login, username, password, PIN (Personal Identification Number) or other personalised security information relating to your use of any of our products or services;

“Service(s)” means the telecommunications network services, internet, email, webmail, or electronic communications services, data transference and storage services, spam and virus protection services and related products and services that are made available to You by Us or our Agents from time to time.

“SIM Card” is the subscriber identity module needed to operate your Mobile Device and through which You are connected to our network, and includes any SIM Card issued to You by Us.

“SMS” means Short Message Service.

“Spam” means the sending of bulk, unsolicited messages to a large number of remote users normally for advertising purposes.

“Telecommunications Service Provider” means a provider of telecommunications services to the public in New Zealand.

“Term” means, subject to any early termination under this Agreement, the period (if any) specified in your Application Form or in any extension to or replacement for this Agreement.

“Trademarks” means all of our trademarks, whether registered or unregistered.

“Users” means identifiable individuals who use the Services.

“Webmail Service” means the service of enabling internet access on a WEB (Wireless Application Protocol) capable mobile Device in accordance with clause 42.

“Website” means [www.bw.co.nz](http://www.bw.co.nz) or other B+W sites as may be advised from time to time.

“We”, “B+W” or “Us” means M2 New Zealand Limited, Level 3, 139 Carlton Gore Road, Auckland and “our” has a corresponding meaning.

“You” means the Account Holder under this Agreement and “your” has a corresponding meaning.

## **2. Commencement and Term**

(a) This Agreement begins when We set up your connection to our Services to be available for your Use and shall continue until terminated in accordance with these terms and conditions.

(b) You can terminate this Agreement at any time, without paying additional termination charges unless otherwise agreed, providing You give Us at least 30 days’ prior notice using the procedure advised by Member Services. If you tell us you are Porting you will be liable for all charges until the new provider makes a valid Port request to us. If they Port you prior to the end of your 30 day notice period an Express Termination Charge will apply. If you have received a free or discounted Mobile Device a Handset Recovery Fee will apply in some circumstances.

(c) If You would like to terminate this Agreement sooner than the 30 days notice, You will be required to pay our “Express Termination Charge” of \$100.00 incl GST. You will need to contact Member Services and will be required to use the procedure advised by Member Services. This cancels your Service within 2 days after the request date.

## **3. Coverage and Services**

- (a) The Services may be changed, modified, advanced, suspended or removed by Us at our discretion. We will try to notify You before doing this. If any of our new or modified services require new or upgraded mobile devices or equipment, You will be responsible for obtaining a compatible mobile device or equipment.
- (b) The integrity or quality of the data messaging or information You send or receive via the Services (including picture messaging or data files) may be affected or compromised due to the configuration of our network, the use of the internet, or other device.
- (c) While We will do our best to provide quality Services, because of the nature of mobile telecommunications, it is impossible and We do not warrant to provide a fault-free or un-interrupted service.
- (d) Coverage and Services can be adversely affected by environmental, geographical, technical, load and other conditions outside of our control, which means that You may not receive some or all of the Services in certain areas or at certain times.
- (e) Coverage and Services can also change with network expansion or reconfiguration.
- (f) You agree not to use your Mobile Device for Voice over Internet protocol and Messaging over Internet Protocol unless we specifically advise otherwise.
- (g) You agree to follow our instructions about the use of the Services and ensure that everyone who uses your Mobile Device also meets your responsibilities. You agree to keep Us protected against any legal action taken against Us and to meet any losses We may incur as a result of using the Services. You are responsible if anyone else uses or misuses your Mobile Device or our Services.
- (h) You agree not to use your Mobile Device or the Services for any abusive, illegal or fraudulent purpose.
- (i) We can require You to stop using any SIM Card or Mobile Device immediately if We believe it to be reasonable in the circumstances. You must not use any Mobile Device which masks or in any way alters the true origination or termination of any call or other transmission.
- (j) We either own or have rights to use the Services, Content, Trade Marks, any software supplied by Us, and any personal identifiers (including addresses), as well as other intellectual property rights in relation to other products or services which We make available to You (collectively our Intellectual Property) . You acknowledge our ownership of the Intellectual Property and that You will not misuse, resell, assert any claim or interest in or to our Intellectual Property. In particular You must not resell the whole or any part of the Services.
- (k) Failure to use your Mobile Device in accordance with these conditions may entitle Us to terminate, restrict or suspend your use of the Services without compensation.
- (l) When connected to the Services, your connection may have been programmed so that You are Barred from using other networks and from making international calls or 0900 calls. If You would like to have the Bar removed, You should use our notified procedures. We may agree to remove the Bar after making credit status checks and We may ask You to pay a non-interest bearing deposit or advance payment, and/or may impose a credit limit as security against any moneys You may owe Us in the future.

All Services are subject to our Fair Usage Policy (see clause 44).

#### **4. Security**

- (a) You must keep your Mobile Device and SIM Card in your possession at all times. You must keep all PIN codes secret. You are responsible for changing the PIN from the present number and setting your own PIN access for the "Voice Mail" Service and keeping that information confidential. You are responsible for all access into and out of the Voice Mail Service and for any Charges incurred as a result, whether or not You reset the PIN access. We limit the number and duration of messages that can be left on your Voice Mail Service. You are also responsible for setting your own password(s) for access to any email services made available to You through the Services and for keeping that information confidential.
- (b) If You lose your Mobile Device, You must contact Us immediately. You are responsible for all calls made or Services accessed from your Mobile Device up to the time You notify Us that You have lost possession using the process We have advised.

(c) Failure to enter the correct PIN three times in a row will automatically block the SIM Card and You will need the PUK code. You will need to contact Member Services and follow our procedure relating to release of the PUK code. Continued blocking of your Mobile Device may destroy the SIM Card and You will be required to purchase another SIM Card.

(d) We are not responsible for any harm suffered resulting from any virus or manipulating program infiltrating your Mobile Device (whether via the Services or otherwise). You are responsible for any Charges applied to your account for any services activated by the virus or manipulating program.

## 5. Charges, Billing & Payment

(a) We will send You a monthly statement of Charges by email. Charges begin and continue once You have access to our Network. You will pay Us in advance your monthly base rate for the Services based upon the Pricing Plan selected. You will be charged in arrears for the use of any Services over and above your monthly base rate at the time of the next billing cycle. You must advise Us of any change of address. The total amount of the statement must be paid by the Due Date specified. You must pay the Charges no matter who incurs them or how they were incurred. Some Services are charged in arrears depending on when charges are advised by other Network Operators and providers. We have the right to charge You interest at the Default Rate for amounts not paid by the Due Date and We have the right to recover from You the costs of any enforcement and recovery which We may incur in collecting money You owe Us or in exercising any of our legal rights.

(b) You must advise Us as soon as possible of any mistake on your statement. If We agree that there has been a mistake, We will correct it. Otherwise, You must pay the amount specified in your statement by the Due Date.

(c) We can use any credit balance or security deposit in any of your accounts or use any money We owe You to cover your outstanding Charges. We may charge a reasonable account administration fee in relation to accounts We regard as being dormant or for providing statements or for dealing with unused credit balances. Subject to those rights, We will refund any unused credit or security deposits at the end of this Agreement.

(d) We can, at our discretion, from time to time impose credit limits for your use of the Services. You must observe any credit limits We set. We may restrict your use of the Services without further notice to You if You exceed the credit limits We have set. However, You will continue to be liable for all Charges incurred in excess of any credit limit in place.

(e) Every person or legal entity named as a customer on the Application Form must meet all the customer's responsibilities under this Agreement.

(f) Each call is charged at the rate applicable when the call is commenced. There may be additional Charges for data and other services. We will not be liable for any cost You incur or loss You suffer by your assumption that a particular number is on a particular network.

(g) You are responsible for all Charges and for calls made using the SIM Card(s) issued to You until We deactivate the SIM Card(s). Please contact Member Services immediately if You damage your SIM Card so that it can be restricted or deactivated. We may charge You a replacement fee unless We are at fault.

(h) If You require technical support, or administration services in addition to the Services, We may charge You for the costs of those services. For notification of our current charges please call Member Services.

(i) If You use the roaming services then You will incur all or any of the following charges from the Network Operator(s) in the relevant roaming country, in addition to our charges:

- Charges for connection to their network;
- Charges for calls and other messages sent or received or downloading content by your Mobile Device or SIM Card, at rates determined by the Network Operator; and
- Any other charges which the Network Operator(s) may impose from time to time for Using their services.

Please note that:

- Minute or other entitlements which may come with your Pricing Plan will not apply when roaming; and
- The above roaming charges will vary from Network Operator to Network Operator and will change from time to time.

Please contact Member Services or visit our Website for further information.

(j) Payment of your account shall be made using the payment method from time to time directed by Us. At the time of entry into this Agreement We direct that You make payment by recurring variable charge/credit/debit card payment or bank direct debit and You have provided Us with an Authority to debit your credit/charge card. Payment will continue to be made in accordance with the Authority until this Agreement is terminated and all outstanding fees and Charges have been paid. You are responsible for updating your Authority details should they change including but not limited to being issued a new card. Any change(s) as above must first be notified and approved by Us. You will need to contact Member Services to facilitate this. Your failure to comply with the whole or any part of this clause entitles Us to terminate this Agreement without notice.

(k) B+W have contracted with Black + White Services Limited ("BWSL") for that company to oversee and manage your account with Us. This includes BWSL providing customer and member support services as well as facilitating the payment of all Charges owed by You to Us. You acknowledge and agree that in order for BWSL to complete its role it shall be entitled to access of all of your account and other relevant information as it relates to your use of the Services and that BWSL shall be deemed an Agent of B+W for this and any other applicable purpose.

## 6. Pricing Plans

(a) You may choose to change from one Pricing Plan to another. If You change your Pricing Plan You are responsible for checking any special terms and conditions there may be for the different Pricing Plans or if there is any fee for changing your Pricing Plan. Please contact Member Services or visit our Website to obtain information about Pricing Plans.

(b) The included minute entitlement and any other entitlement or allotment in any Pricing Plan (including entitlements available under Options) as applicable:

- Expire at the end of your billing cycle and may not be carried over from month to month;
- Applies only to your applicable domestic airtime call rate and excludes (except where an Option specifies otherwise) tariffs applicable to such items as international calls, video calling, the non-cellular portion of 0900 calls, special numbers, 0800 or 0508 calls, and operator/directory assisted service;
- Cannot be redeemed for cash, phone equipment, Express Termination Charges or other Charges and cannot be transferred or assigned;
- Expires on termination and any unused included minutes will be forfeited on disconnection;
- Cannot be used if your Mobile Device is subject to Bar or Re-direction or if You have exceeded your credit limit; and
- Is subject to any other conditions contained in a particular Pricing Plan.

(c) The included dollars entitlement in any Pricing Plan:

- May not be carried over from month to month; but
- Can be applied against any Charges apart from any monthly access fee.

(d) There is a minimum one minute charge for each voice call. After that your call gets charged by the second. If You call an 0900 or special number You will be charged the rate as published by the service provider of that number, plus your normal airtime rate.

(e) The charges for data and other additional services shall be as set by B+W from time to time. Please contact Member Services or visit our Website for current details of the charges.

(f) You may purchase only one Option from within each Option category per month.

(g) If You are a new customer, The pricing plan You purchase will be pro-rated from the date of the purchase until the bill cycle date and after that will align with your bill cycle.

(h) Once purchased, an Option(s) will recur and be charged every month unless You notify Us that You want it removed.

(i) If You notify Us that You want an Option removed, the removal will be effected on the next bill cycle date.

(j) If You transfer from one pricing plan to another, your active Option(s) will remain in place and You're pricing plan included Usage will be pro-rated until the end of the bill cycle for the pricing plan You are

leaving and the pricing plan You change to. You can transfer from one pricing plan to another once with in a bill cycle.

## **7. Access to Account and your Information**

(a) You are required to set a PIN to ensure restricted access to your information. Please contact Member Services if You need to change this PIN only the Account Holder can change the PIN. You are responsible for all Charges incurred but those who have your PIN whether You have authorised them to use it or not.

(b) We will be entitled to allow anyone using your PIN to request information or act on your behalf. If You give Us any instructions, We may need time to verify them before We act on them.

## **8. Credit References and Provision of Related Services**

(a) You authorise Us at any time to check your credit status with any credit reference agency as We see fit and to pass on credit information about You to any credit reference agency.

(b) If You fail to provide credit referees when requested, or We are dissatisfied with the information regarding your credit status, We can decline your application or terminate your connection to our Network.

## **9. Consumer Guarantees Act and Limitation of Liability**

(a) You may have the benefit of statutory guarantees under the Consumer Guarantees Act 1993. Unless You use, or hold yourself out as using, the Services for the purposes of a business, nothing in these terms and conditions will limit or exclude your rights under that Act.

(b) Where You do use, or hold yourself out as using, our Services for the purposes of a business, then the Consumer Guarantees Act 1993 does not apply and We exclude any liability of any kind (whether in contract, tort, equity or otherwise) to You or anyone claiming through You, relating to any loss of profits or revenue, loss of data, lost business or missed opportunities, wasted expenditure or savings You might have had, or any form of indirect or consequential loss whatsoever, arising from You entering into this Agreement, your use of the Services and/or any Mobile Device.

(c) If You are a consumer customer, except where We cause direct damage to your property due to our negligence (and subject to paragraph 9(a) and the liability cap in paragraph 9 (d)), to the extent allowed by law We have no other liability to You or any other person in respect of this Agreement.

(d) If for any reason the exclusions in paragraph 9 (b) and (c) do not apply, then our liability to You, or anyone claiming through You, will be limited at all times to \$1,000 or the total amount of all Payments made by You in the 6 month period immediately prior to the date of your claim, whichever is the lesser sum. This limitation applies to each claim or series of related claims made by You. For the purposes of paragraphs 9 (b), (c) and (d), "We" and "our" include our officers, employees and agents, as well as all Network Operators.

(e) Without limiting paragraph 9, We disclaim any liability in relation to:

- (i) The acts or omissions of any third parties, in relation to any default by them in relation to the provision of, or access to, any of our products or Services;
- (ii) The content of any communication (whether voice, data or otherwise) which You send or receive using any of our products or Services; and
- (iii) Any corruption or loss of data or other content which You or anyone else may experience as a result of using our products or Services.

## **10. SIM Card**

Any SIM Card We issue to You remains our property. You must return it to Us in good condition when your connection ends. We may charge You a fee if You fail to return the SIM Card within 10 days after disconnection.

## **11. Provision of Hardware and Additional Services**

- (a) If You have acquired a Mobile Device or other accessories from Us or from one of our Agents, all claims in relation to those products are covered by the relevant manufacturer's warranty.
- (b) If your Mobile Device does not support all of the Services offered by Us, We are not under any obligation to take any action to enable You to access the Services. Non-approved Mobile Devices are not permitted to be used on the Network as this may damage the Network and/or a Network Operator's system and network.
- (c) We make no warranty as to the accuracy, completeness or currency of any content or material which You may access or have provided to You, using our Services. Where Services are provided by a third party We accept no responsibility or liability for their quality or the nature of their content.
- (d) Content or material, which You may access or have provided to You, using our Services, is for your personal and non-commercial use only. You may not forward, copy, reproduce, re-sell or distribute such content or material to any third party or interfere with it in any way. You must ensure compliance with the Unsolicited Electronic Messages Act 2007 as it relates to Spam.
- (e) You are responsible for ensuring that You have the right to send all data and information that You send when using the Services. You acknowledge that We may alter any data or information that You send when using the Services in order to enable delivery of that data or information to the recipient.

## 12. Phone Numbers and Number Portability

- (a) Phone Numbers are allocated to You by Us or another Telecommunications Service Provider and do not belong to You.
- (b) You may Port the Phone Number to another Telecommunications Service Provider. To do so, You must contact the Telecommunications Service Provider to whom You wish to Port and You will be responsible for completing their Porting requirements. We will comply with our obligations under the Terms for Local and Mobile Number Portability. You are responsible for all costs associated with Porting (including any applicable Express Termination Charges owed to Us).
- (c) We may be required by law, under contracts with other Network Operators or for other reasons to change the Phone Number(s). We will do our best to give You notice of any change required. We will not be liable for any costs which You, or anyone else, may incur as a result of the change.
- (d) If You or We disconnect your connection(s) to the Services, and You have not Ported or transferred the Phone Number(s) prior to disconnection, We may re-allocate the Phone Number(s) to another Member.

## 13. Privacy

- (a) You agree that We and our Agents can collect information about You and the way in which You are using the Services. This information may be obtained from You or We will obtain it from our records. You may ask to see personal information We have about You and ask Us to correct any incorrect information.
- (b) You agree that We and our Agents can use and hold this information and share it with one another, or with any B+W group company and with those employees who need to use your information in the context of our business, for a range of lawful purposes connected with our business operations including:
- Providing You and others with the Services;
  - Sending You bills;
  - Maintaining and improving the quality of the Services;
  - Directory purposes (see paragraph 14 below);
  - Checking your creditworthiness;
  - Keeping You informed about our special offers, products and Services, and those of selected Agents, which may be of interest to You (unless You have told Us that You do not want to receive this information).
- (c) You agree that We and our Agents may send You marketing messages, electronic or otherwise, about our special offers, products and Services, and those of our selected Agents. You agree too that the electronic marketing messages We and our Agents send need not include an unsubscribe facility.
- (d) Some personal information can be shared with other Network Operators so You can make and receive calls, so We can transfer numbers from one network to another and to monitor or investigate fraud or other offences. We may also provide your personal information to public sector agencies in order for them to investigate an offence.

(e) If You choose caller ID Restriction (CLIR), We will prevent your number being shown on any receiver. Your number may still be displayed to emergency or other services, when You send a text message and to Us. Where You do not choose CLIR, your number may be displayed to the person You have called.

(f) Subject to any rights You may have under Privacy Act 1993, We will not be liable to You, or to anyone else, for:

- The content or lack of confidentiality of any Services You use;
- Any disclosure We make by law to a public sector agency.

(g) You agree to obtain from each of your Users their authorisation for the collection, disclosure and use of personal information about him or her by Us on like terms as set out above in this paragraph 14, and to advise them of any rights they may have under the Privacy Act 1993.

#### 14. **Directory Assistance and Listing**

We may include your personal information in any telephone, email or similar directory or directory enquiry service provided or operated by Us or by a third party subject to any objection or preference You may have indicated to Us. We will give You an opportunity to express any objection or preference. If You indicate that You wish to be listed in the white/yellow pages and/or for directory assistance, your name(s), telephone number(s), email address and address details will be given to the directory assistance service provider for listing at your cost.

#### 15. **Disconnection of Services**

(a) You may discontinue your connection to our Network or give up any Service in accordance with clause 2 of this Agreement. Some services may be able to be terminated sooner than this.

(b) In addition, You may Port the Phone Number(s) to another Telecommunications Service Provider at any time. Your connection to our Network will be deemed to be disconnected within 24 hours of the completion of the Port.

(c) If You request Us to, or We elect to, terminate this Agreement and/or disconnect your connection to the Services, (or if You Port the Phone Number) You must pay Us in respect of each connection You have:

- The Express Termination Charge (if applicable);
- All Charges incurred until the date of disconnection; and
- Any outstanding Charges and other moneys payable by You for the Services.

(d) We can suspend, Bar, Re-direct or restrict your use of any or all of the Services or disconnect your connection and end this Agreement without telling You if:

- You do not keep to the terms and conditions in this Agreement;
- You become (or are likely to become) insolvent, bankrupt or where You are or might be a poor credit risk;
- A receiver, manager and receiver, or statutory manager is appointed over any or all of your assets;
- A resolution for liquidation is proposed or passed or proceedings to liquidate You are filed or presented;
- You die or, in the case of a partnership, it is or is intended to be dissolved;
- You do not remain connected to the Services;
- You make abusive, offensive, malicious or nuisance calls or communications, or use any of our services in an offensive way;
- You are abusive or offensive to Us, our dealers or Agents, or any other person;
- You tamper with or modify any SIM Card other than in accordance with instructions given to You by Us; or
- All of the Services are permanently or temporarily (for any reason) unavailable to You;

And all charges for any Services will be payable by You in accordance with this Agreement.

(e) If We suspend your use of our Services, We will try to contact You before doing so. We do not need to suspend Services before disconnecting your connection.

(f) Where We suspend Bar, Re-direct or restrict the Services all Charges will continue to apply.

#### 16. **Transferring Responsibilities**

(a) We may transfer to someone else the whole of this Agreement and/or any interest in our Network. You must on request execute any assignment and/or novation document requested by Us to give effect to the assignment or novation of our interest in this Agreement.

(b) Your interests in this Agreement are personal to You and You may not transfer or on-sell the Agreement or any benefit or obligation under it to another person without our consent. If You are a company and your effective management or control is change in any way, We may treat this as a transfer of this Agreement entitling Us to end it.

(c) You must pay any costs in respect of recording any transfer to which We consent (including our costs in checking the creditworthiness of the transferee). B+W's normal credit criteria will apply to any proposed transferee.

(d) B+W retains the right to alter its Services and/or terms and conditions for the proposed transferee.

## 17. Ending this Agreement

We can disconnect your connection or terminate particular Services:

- If any of our licences to operate our Network are ended or suspended or any interconnection agreement with any other Network Operator expires or is ended; or
- For any other reason We believe that it is appropriate to do so;

And in either case You will only have to pay any outstanding Charges incurred up to and including the time of disconnection.

## 18. Rights and Responsibilities that Continue

Ending this Agreement does not affect any of the rights or responsibilities which are intended to continue or to come into existence after this Agreement ends including (without limitation) any obligation You may have to:

- Pay any outstanding charges;
- Pay any Express Termination Charges;
- Return any B+W equipment You may have on loan from Us or any of our Agents.

## 19. Network Operators and Other Suppliers

We have certain obligations towards other Network Operators, Agents and suppliers. Those persons (and their officers, employees, contractors and agents) will not be liable to You or anyone else for any claims, costs, damages, losses or other liabilities of any kind arising in any way from the Services We provide or from your use of those Services and our network, including (without limitation) your access to and use of any provider's site or Network Operator's networks. This paragraph creates an obligation that other Network Operators, Agents and suppliers can enforce, whether as a defence or otherwise.

## 20. Notices and Variations of Charges, Terms and Pricing Plans

We may change this Agreement and any Pricing Plan at any time. Changes will be posted on our Website. You are responsible for checking this regularly for updates.

If We change a Pricing Plan for the elements of the Service You are using or change the terms and conditions of this Agreement to your significant disadvantage (in our reasonable opinion) We will give You at least 14 days' prior notice. We will notify You by leaving a message on your voicemail and/or by text message or email.

## 21. New Zealand Law

This Agreement is governed by the laws of New Zealand and You submit to the jurisdiction of the New Zealand courts.

## 22. Waiver

If We fail or delay to exercise any right or power under this Agreement, this will not be a waiver of that right or power. Any failure or delay will not prevent Us from exercising that right or power in the future.

## 23. Disputes

If You have any disputes with Us or our Services, please refer that dispute, initially, to Member Services. If Member Services are unable to resolve your concerns the matter will be escalated to the Member Operations Support Manager. You agree that all disputes will be dealt with and resolved in a confidential manner as between You and Us and You shall not make the details of any dispute including any resolution of a dispute public.

#### **24. Force Majeure**

We will not be liable for any delay or failure of the Services or for any loss or damage from such delay or failure to the extent that it was caused, in whole or part, by an act of God, war, terrorism, civil disobedience, riots, strike, industrial stoppage or unrest, fire, volcanic eruption, earthquake, shortage of suitable labour, materials, equipment or energy or any other event beyond our control.

#### **25. Agents of B+W**

(a) We shall be entitled to subcontract and/or delegate the performance of any rights or obligations under this Agreement. Without limiting this, We may appoint an agent to provide billing services (including credit checking and control) and Member Services.

(b) Invoices issued by our Agent will be binding on You and payment of those invoices in full to our Agent will be a valid discharge of your liability to pay those invoices under this Agreement.

(c) Any Mobile Device supplied to You by our Agent has been supplied by our Agent acting in its own right and not as Agent of B+W. B+W accepts no responsibility for any matters relating to the Mobile Device supplied by our Agent.

(d) Our Agents can enforce those obligations expressed to be for their benefit in accordance with the Contracts (Privity) Act 1982.

#### **26. Privity**

You acknowledge that Black & White Group Limited (BWGL) possesses rights and entitlements in relation to the Services, the Intellectual property and this Agreement and that your duties in terms of this Agreement are also owed to BWGL. You agree that all of your obligations, duties, liabilities, restrictions and covenants under this Agreement confer a benefit on BWGL and are enforceable against You at the election of BWGL. For the avoidance of doubt it is agreed and declared that BWGL can and may enforce its rights under the provisions of the Contracts (Privity) Act 1982 as if it were a contracting party to this Agreement.

#### **BLACK + WHITE Specific Roaming Terms and Conditions**

#### **27. Roaming**

(a) You can use your Mobile Device in other countries. We call this "roaming". For a list of the countries in which You can use roaming services, please visit our Website.

(b) If You would like the ability to use your Mobile Device in any roaming country then please contact Member Services. Your request will be subject to You meeting our credit criteria and if met We will enable roaming within 48 hours of receiving your request. We may require a security deposit or impose a credit limit and roaming may be limited to a specific period of time. All charges incurred in relation to your Mobile Device or SIM Card in any of these countries will be deducted from your nominated credit card (if your application is accepted by Us) or will be charged to your account at our option.

(c) The terms and conditions for using overseas networks will depend on the country You are visiting. The terms and conditions of those other Network Operators will apply in addition to ours.

#### **28. Charges**

(a) Unless otherwise advised by B+W from time to time all outgoing calls are charged at airtime rates based on the charges from the external carrier including calls to Member Services and voicemail. This airtime rate will vary from carrier to carrier. International rates will also apply where You make international calls (including calls to voicemail). Charges may change without prior notice and all prices are indicative only. If your pricing plan includes monthly minutes, these minutes do not apply to roaming charges. 0800 (1800) and other special numbers may be charged for by external carriers.

(b) Text messages sent while roaming have a surcharge applied by the external carrier. The surcharge rate will vary from carrier to carrier.

(c) Incoming calls are charged at the international rate applicable at the time the call is made to You. Some external carriers may add an incoming call rate from the time You answer the call. You agree that all charges incurred while roaming will be charged to your monthly statement. You agree to pay all charges in full when they are due. (There may be delays in B+W receiving notice from external carriers of charges to be billed to You). This does not affect B+W's right to charge You or receive payment from You.

**29. Promotions**

Promotional offers to B+W New Zealand customers may not apply to You while You are roaming. If You are in doubt please call Member Services before You leave New Zealand for specific promotion details.

**30. Liability**

As roaming involves services provided by networks other than B+W, You agree that We will not be responsible for the way in which any external carrier provides or fails to provide any service (including disconnection lack of coverage or the performance of that carrier's network).

**31. Acceptance**

You will be taken to have accepted these specific terms and conditions as soon as You start using roaming.

**32. Data Roaming**

If You wish to register for and use our data roaming Service (if available) then the following additional provisions will apply:

(a) Our data roaming Service must be available;

(b) You must have a data capable device connected for overseas data roaming;

(c) You agree to be charged for using data roaming at the rates set out by external carriers advertised by Us, either on our Website or via other means from time to time. While B+W frequently up-dates the Website it accepts no liability for fluctuating prices with overseas carriers. We recommend You check on pricing with overseas networks at the time of roaming.

(d) You acknowledge costs are measured on data volume. The speed at which a device receives data impacts volume and therefore price. Since overseas networks vary their data speeds ensuing charges will relate to the amount downloaded rather than time spent online.

**33. Important Notes**

(a) All rates quoted are on a per minute basis, are in NZ\$ and are GST exclusive and indicative only. These rates are considered by Us to be reasonably accurate as at the date they are posted on our Website. Charges do fluctuate and may be subject to change without notice. You are responsible for all Charges incurred regardless of the indicative costs posted on our Website.

(b) Data and data fax services while roaming overseas are charged at the same rates as per voice roaming calls. Charges will be billed at roaming national or international rates depending on the roaming network You are using and on the destination of the data or data fax call.

**34. Additional Services**

If You wish to register for and use our B+W Mail Service, WEBMail Service, or any other Service which requires registration on our Website, then You must follow all instructions provided by Us from time to time.

**35.** We may establish capacity and other limits in relation to your Use of any of our Services, including without limitation:

(a) the maximum number of days that email or other messages will be retained;

(b) the maximum number of email or other messages that may be sent or received;

(c) the maximum size of an email or other message that may be sent or received;

(d) the termination of your use of our Service if You have not accessed or used the relevant Service for a specific continuous period of time; and

- (e) the amount of storage space available to You;

The current limits are displayed on the Website, or if not, please contact Member Services. We may change these limits from time to time. We will try to notify You of this by posting all such changes on our Website or by sending You an email. If your use or attempted use of the relevant Service exceeds any of these limits, We may suspend the Service, and this happens frequently, We may decide to terminate your use of the Service.

36. If You Use any of our Services (including our B+W Mail Service and WEBMail Service) to access other email accounts, Websites or other information on the internet which are hosted by or belong to third parties and relate to You, then You warrant to Us that prior to doing so, You have obtained the consent of that third party to enable Us to access that information on your behalf. When acting in accordance with your instructions, We rely on your fulfilment of this clause and as a result, You agree to protect Us from all losses, damages, costs and expenses which We suffer or incur as a result of a breach of this clause by You.

37. **Text and Picture Messaging (together "Messaging")**

When using our Messaging service then the following provisions will apply:

- (a) If text, You will only be able to send messages of up to 160 characters in length (including spaces) in the standard GSM alphabet text format. If your message exceeds 160 characters in length, We may break it up and send it as separate messages and separate charges will apply to each;
- (b) All messages sent and received by You will be at your risk;
- (c) You must not use the Messaging service to advertise products or services; and
- (d) Text charges will apply even if the messages are not received by the intended recipient for whatever reason.

38. **B+W Mail (Email) Service**

When using our B+W Mail Service then the following provisions will apply:

- (a) When You register, as part of the B+W Mail Service We will allocate You with an email address which will either have a "@bw.co.nz" suffix (with a prefix of your choice, subject to availability and our approval which may be withheld at our absolute discretion) or You may select an alternative domain name that You own or have the right to administer. B+W shall own the email address at all times and You shall have a limited non-transferable licence of the same subject to the terms of this Agreement;
- (b) If You select an alternative domain name email address, then, without limiting any other provision of these terms and conditions:
  - (i) We will not be responsible for hosting that domain name on the internet. You will need to arrange for a third party to provide this service for You;
  - (ii) You warrant to Us that You have the right to access and use this alternative domain name email address and We may refuse any such domain name or email address at our discretion. You agree to indemnify Us for all losses, damages, costs, and expenses which We incur as a result of any breach of this provision by You;
  - (iii) Although We endeavour to provide the means by which You will be able to access the alternative email address, You will need to take all necessary steps (in addition to following the guidelines and instructions on our Website) to switch access to that address to Us, including gaining that party's consent. We will not be able to provide You with access to the alternative email address until this process is complete;
  - (iv) We do not represent that We will be able to provide You with access to such alternative email addresses;
  - (v) We do not represent that You will be able to access historic or stored data/emails via the alternative email address account which pre-dates the time of switching to Us; and

- (vi) Although We will use all reasonable endeavours to provide You with access to the alternative email address account as quickly as possible, We do not represent that this will occur within a particular time frame; and
  - (vii) Should your use of the B+W Mail Service be discontinued for any reason, We will not be liable or responsible for providing mechanisms to allow You to move your historical or stored data.
- (c) There is no charge for setting-up the B+W Mail Service but We will charge You for your use of the B+W Mail Service when used via wireless connection to our Network.
- (d) If using our B+W Mail Service via the internet, then You will need to arrange connection to our Network, as well as ISP services, with parties other than Us who provide such services.
- (e) You may request that We change your email address in accordance with our notified procedure (as may be amended);
- (f) Our B+W Mail Service will operate for an indefinite period until You either request Us to discontinue hosting your email address or We suspend or terminate your use of this service in accordance with this Agreement (including automatic termination for the sending of Spam).
- (g) We may at your request (and our discretion) issue You on a limited non-transferable licence basis with multiple email addresses in addition to your original B+W email address (Associated Email Boxes). The use of Associated Email Boxes will be subject to these terms and conditions. In relation to your Associated Email Boxes You agree to:
- (i) Follow all directions from Us relating to the set-up, administration and security of your Associated Email Boxes;
  - (ii) Ensure that anyone who uses your Associated Email Boxes (Associate Users) has read these terms and conditions and is aware that their use of the Service is governed by these terms and conditions;
  - (iii) Comply with the Privacy Act 1993 in relation to the use and administration of your Associated Email Boxes and ensure that any Associate Users have read paragraph 14 of this Agreement (Privacy) and are aware that any personal information or content contained in emails they send or receive using your Associated Email Boxes may be accessed by You.

### 39. Fair Use Policy

- (a) It is important to B+W that all eligible B+W Members are able to access our Services. For this reason, and to ensure the provision of a quality service, a Fair Use Policy applies to some of our Services.
- (b) All our Services are subject to this Fair Use Policy. We may apply this Fair Use Policy where in our reasonable opinion your use of our Services is excessive and/or unreasonable as detailed below.
- (c) We have developed this Fair Use Policy by reference to average member profiles and estimated member use of our Services.
- (d) If your use of our Services materially exceeds estimated use patterns over any month, then your use will be excessive and/or unreasonable.
- (e) If your use is excessive and/or unreasonable B+W may contact You to advise You that your use is in breach of this Fair Use Policy.
- (f) We may then request that You stop or alter your use to come within our Fair Use Policy.
- (g) If your excessive or unreasonable use continues after receipt of a request to stop or alter the nature of such use, We may without further notice, apply charges to your account for the excessive and/or unreasonable element of your use; suspend, modify or restrict your use of our Services or withdraw your access to the Services.