

Redtrain Networks Pty Ltd

Access Seeker

Agreement on Fair Use for Aggregated Services

DATE _____ **2020.**

PARTIES

Redtrain Networks Pty Ltd (ACN 153 859 244) of 33 Clarke Place, Mount Waverley, Victoria 3149
("Redtrain Networks")

The party specified in clause 4 *Definitions* as the **Access Seeker**

BACKGROUND

- A. Residents, businesses, end users and occupiers ("**End Users**" or "**Residents**") in premises ("**Connected Premises**") connected to the superfast broadband networks of Redtrain Networks ("**Networks**") require broadband, voice and other telecommunication services ("**Retail Services**") from Retail Service Providers ("**RSP**").
- B. The Access Seeker is in the business of providing Retail Services to End Users or Residents.
- C. Pursuant to an agreement with Redtrain Networks for wholesale broadband and voice access services to Connected Premises ("**Wholesale Broadband Access Agreement**") the Access Seeker is or will be connected to the Networks and is in the business of providing Retail Services to End Users or Residents; as well as potentially providing aggregated local area broadband and voice access services on behalf of the Access Seeker to End Users ("**Aggregated Services**").
- D. The Access Seeker has agreed with Redtrain Networks to buy Aggregated Services and to market those to End Users in Connected Premises.
- E. The Access Seeker may request Redtrain Networks to:
- (i) publicly display and promote that Access Seeker is willing to enable, provide manage and charge for Retail Services to End Users connected on the Networks ("**Adverting Access Seeker's Services**");
 - (ii) accept orders for Retail Services to particular addresses of End Users ("**Accepting Orders**");
 - (iii) connect and maintain Retail Services to premises ("**Connecting Services to Premises**");
 - (iv) provide support for service difficulties including fault notification and rectification, ("**Supporting Services**"); and
 - (v) render to the Access Provider, Tax Invoices for Aggregated Access Services ("**Rendering Invoices**").
- F. Subject to there being no breach of the Wholesale Broadband Access Agreement by the Access Seeker and compliance with the Fair Use Policy herein by the Access Seeker, Redtrain Networks agrees to perform, provide and act as requested by the Access Seeker in accordance with the terms and conditions of this document.
- G. The Access Seeker agrees to pay Redtrain Networks the charges specified in the Tax Invoices for the Aggregated Access Services (including all Network Service Charges and Backhaul Service Charges) pursuant to and complying with all terms and conditions of a Wholesale Broadband Access Agreement executed on, before or after this Agreement.

OPERATIVE PROVISIONS

1. Consideration and Fair Use

1.1 For Fair Use Policy

In consideration of Redtrain Networks's agreement to undertake or perform the following services:

- (a) Advertising Access Seeker's Services,
- (b) Accepting Orders,
- (c) Connecting Services to Premises,
- (d) Supporting Services; and
- (e) Rendering Invoices; then

The Access Seeker agree that they shall comply with this Agreement and the Fair Use Policy in relation to:

- (f) use and access to the Network and the Network Equipment,
- (g) provision and continuation of the Network Services; and
- (h) provision and use of the Retail Services by End Users.

1.2 No Unfair Use

The Access Seeker must not by themselves, nor by permitting other parties to do so including any End User, undertake any Unfair Use of the Network, Network Equipment, Network Services or Retail Services.

2. Fair Use Policy

2.1 Evolution & Application of Fair Use Policy

The parties agree that:

- (a) the Fair Use Policy has been provided to the Access Seeker;
- (b) the Fair Use Policy is reasonable and acceptable to Access Seeker;
- (c) the Access Seeker has had the opportunity to seek independent legal advice as to its obligations liabilities under the Fair Use Policy; and
- (d) Access Seeker must comply with the Fair Use Policy and such amendments, revisions, variations, replacements and additional terms and conditions for the Fair Use Policy from time to time determined by Redtrain Networks in its absolute discretion and notified to the Access Seeker.

2.2 Consequence of breaches

In the event that Access Seeker is in default under the Wholesale Broadband Access Agreement or the Fair Use Policy, then in addition to any other rights or powers Redtrain Networks may have at law or in equity or under any other deed, agreement or document, Redtrain Networks may do any or all of the following:

- (a) freeze, postpone or cease Advertising Access Seeker's Services, Supporting Services or Accepting Orders,

- (b) suspend or reduce the Network Services to the Access Seeker;
- (c) freeze, postpone or cease Network Services being supplied on the Network; or
- (d) disconnect any RSP Equipment of the Access Seeker from the Networks.

2.3 Limitation of action

Notwithstanding any implications, costs, losses or damages suffered by the Access Seeker as a result of any action by Redtrain Networks hereunder, the Access Seeker shall not be entitled to make, bring or demand any claim for compensation, loss or damage, take any legal action or seek any other remedy in relation to such action by Redtrain Networks including any suspension, postponement, cessation or disconnection of:

- (a) Advertising Access Seeker's Services;
- (b) Accepting Orders;
- (c) any one or more Aggregated Services;
- (d) Supporting Services; or
- (e) RSP Equipment of the Access Seeker.

3. General

3.1 No Assignment

The Access Seeker cannot assign, novate or transfer any rights or obligations under this Agreement.

3.2 Governing Law

This Agreement shall be governed by and construed in accordance with the law of the State of Victoria and each of the parties hereby submits to the non-exclusive jurisdiction of courts exercising jurisdiction there.

3.3 Notices

A notice by a party must be in writing and must be given to each other party. A notice may be given to a party in any of these ways:

- (a) delivered by hand to the party and is deemed delivered when handed over;
- (b) sent by prepaid mail or document exchange to the address of the party and is deemed delivered 48 hours after posting;
- (c) sent by email or other electronic means to the parties nominated e-mail address and is deemed delivered immediately after sending unless a delivery failure notification is given concerning the email.

A notice given on a day which is not a Business Day or after 5:00pm on a Business Day is treated as given on the next Business Day.

3.4 Law & Jurisdiction

The same laws and jurisdiction in relation to the Wholesale Broadband Access Agreement governs this Agreement.

3.5 Counterparts

- (a) This document may be executed in any number of counterparts all of which taken together constitute one instrument.
- (b) All parties agree that a facsimile of a party's signature or other electronically transmitted signature of a party is sufficient to indicate their approval of the terms of this Agreement and agree to be so bound.

3.6 Costs

Unless expressly stated otherwise in this Agreement, each party agrees to bear their own costs (for example, legal costs, charges and expenses) associated with the preparation, negotiation, amendment, finalisation and execution of this Agreement.

3.7 Severability

If all or any part of a provision of this Agreement is held to be unenforceable or invalid, then that provision (or part of it) must:

- (a) where possible, be interpreted as narrowly as necessary allow it to be enforceable and valid;
- (b) if unenforceable or invalid in respect of one party who is conferred a right or benefit or is under an obligation jointly and severally with another party, then must be severed in respect of the party for whom the part of provision of this Agreement is unenforceable or invalid and then remains otherwise enforceable and valid by the other party; or
- (c) be severed from this Agreement

and in either case the validity and enforceability of the remaining provisions are not affected.

3.8 No Waiver

- (a) A party may exercise its rights at any time and does not waive those rights even if that party previously waived a breach or default of all or part of the same or other provision or delayed or omitted to exercise its rights.
- (b) A waiver is only effective if it is signed by the party granting the waiver and to the extent set out in the waiver.

4. Definitions

In this Agreement, unless the context otherwise indicates, each of the following expressions shall have the meaning assigned to it below:

Accepting Orders	Means Redtrain Networks acceptance of orders for Retail Services to be enabled and maintained to particular addresses for Connected Premises.
Access Seeker	Name
	ACN/ABN
	Address
	Contact Person
	Mobile

	Email
	Postal Address
Advertising Access Seeker's Services	Means from time to time, that Redtrain Networks might: <ul style="list-style-type: none">(a) publicly display and promote on the Redtrain Networks website and elsewhere that Access Seeker is willing to provide Retail Services to End Users connected on the Networks;(b) distribute to End Users a written notice or information about the availability of Retail Services in premises connected to which may be connected to the Networks and which advises that Access Seeker and other RSPs are willing to provide Retail Services to End Users;(c) distribute a circular or brochure (which may be provided by Redtrain Networks) to End Users advising that Access Seeker with other RSPs are willing to provide Retail Services to End Users; and(d) place a notice on any website(s) for premises connected or potentially to be connected to the Networks to advise End Users of:<ul style="list-style-type: none">(i) the connection or potential of the Network to their premises;(ii) the web-links to Redtrain Networks website for information about available Retail Services;(iii) how to get connected and Retail Services; and(iv) contact details of Redtrain Networks and RSP including Access Seeker.
Aggregated Services	Means the aggregated local area residential broadband and voice access services and may include IP Transit services necessary for several parties, including Access Seeker, to deliver Retail Services to End Users using the Network Equipment of the RSP providing the access services.
Business Day	means a day on which banks are open for business excluding Saturdays, Sundays or public holidays in Queensland.
Connected Premises	Means premises connected to the Networks.
Connecting Services to Premises	Means connect and maintain Retail Services to Premises for the benefit of Access Seeker
End Users	Means the residents, owners or occupiers of lots, dwellings, buildings, premises or areas connected or to be connected to the Networks
Fair Use Policy	Means the policy attached hereto in Annexure A or such other policy as Redtrain Networks may, from time to time and in its absolute discretion deem fit to notify to Access Seeker and to other RSPs connected to the Networks.

Network or Networks	Means a superfast telecommunication network or networks owned or operated by Redtrain Networks and to which Connect Premises are provided with Retail Services.
Network Equipment	Means electronic equipment, lines, cables, racks, conduits and pits, poles, antennae, radio frequency and microwave dishes and other telecommunications facilities connected or to be connected to the Networks.
Network Services	Means the wholesale, open access services and Ethernet Bitstream Services products that are provided by Redtrain Networks to RSPs that connect to the Networks and which enable RSPs to provide Retail Services to End Users.
Rendering Invoices	Means render to the Access Seeker, Tax Invoices for Aggregated Access Services.
Retail Services	Means voice, data, broadband, internet, content, security or other services by RSP.
RSP or RSPs	Means a Retail Service Provider or providers of Retail Services.
RSP Equipment	Means equipment of an RSP or Access Seeker which is connected to the Networks, Network Equipment or located in equipment racks, premises or property of Redtrain Networks.
Supporting Services	Means support for service difficulties including fault notification and rectification.
Unfair Use	Means a breach or default under the Fair Use Policy.
Wholesale Broadband Access Agreement	Means an agreement between the Access Seeker and Redtrain Networks for wholesale broadband and voice access services to be enabled and maintained to Connected Premises.

ANNEXURE A - FAIR USE POLICY

Any of the following actions, undertakings or omissions shall be deemed to be unfair uses and breaches of or defaults under the Fair Use Policy and this Agreement:

- (a) use of the Networks or any Network Equipment in a way that creates or increases or is likely to increase or create a risk to:
 - (i) the integrity or financial viability of the Network or any part of it as determined by Redtrain Networks;
 - (ii) the integrity of Network Equipment or any facilities of the RSP or any other Redtrain Networks RSP used in connection with the Redtrain Networks Network;
 - (iii) the quality of any product or service supplied by Redtrain Networks to any RSP; or
 - (iv) the health or safety of any person;
- (b) use of the Networks in a way that causes or may cause interference, disruption, congestion or, more generally, sub-optimal performance of the Network;
- (c) undertaking or attempting to disable, disrupt or interfere with the regular working of any Retail Services, Network Services or the Network, including, without limitation, via means of overloading it, denial of service attacks or flooding the Network;
- (d) probing, scanning or testing the vulnerability of a system on the Network or the Network generally;
- (e) breaching security or authentication measures for a Retail Service or the Network;
- (f) use of a Retail Service that relies on the Network Services as an input:
 - (i) to support substantial carrier or service provider data aggregation applications (such as backhaul for mobile base stations and multiplexed access systems and/or networks) that result in substantial and continuous network throughput;
 - (ii) to support connections for the purpose of providing or enabling carrier or service provider interconnection;
 - (iii) where the average download usage for RSP's Ordered Products using the Network exceeds 1,000GB of data in a calendar month;
 - (iv) where the average upload usage for RSP's Ordered Products using the Networks exceeds 400GB of data in a calendar month;
 - (v) in any other way which Redtrain Networks considers, acting reasonably, to be inappropriate or excessive, as notified by Redtrain Networks to RSP from time to time;
- (g) use of networking devices and plans intended to be used by End Users for residential, business or educational purposes within a single Connected Premises only and the traffic volumes being managed or handled by the networking device do not exceed the traffic volumes that would reasonably be expected to be managed or handled by a networking device when used for residential, business or educational purposes within a single Connected Premises only.

EXECUTED AS AN AGREEMENT

SIGNED by **REDTRAIN NETWORKS PTY LTD (ACN 153 859 244)** by its authorised officer in accordance with Section 127(1) of the Corporations Act 2011 in the presence of:)
)
)

Witness

Name (print)

Date

Authorised Officer

Name and Position (print)

SIGNED by _____)
(Access Seeker) by its authorised officer in the presence)
of:)
)

Witness

Name (print)

Date

Authorised Officer

Name and Position (print)
