

1. General

This policy is designed to protect the quality and integrity of the Evolve Technologies network and in doing so ensure all customers receive fair and equitable access.

We may depend on our Fair Use Policy in circumstances where your usage that forms part of a plan or promotional offer is deemed to be 'unreasonable' or 'excessive' as defined by us.

We retain the right to vary the terms of the Fair Use policy at our discretion from time to time.

2. Telephone Calls

2.1. Business Services

When we supply you a Service that is a business service, you must use the service in accordance with the following reasonable use policy:

- a. On average, 95% of timed calls made from your service last no more than 30 minutes.
- b. We can collect information and investigate whether you are complying with the reasonable use policy. If we find that you aren't, and you do not comply within 30 days of us telling you, we may change or suspend your Service.
- c. The reasonable use policy is not intended to release Evolve Technologies from any obligation it has under any applicable legislation.

2.2. General Telephone Services

- a. It is important to us that our customers can access our services. Because of this, you must follow our Acceptable Use Policy when you use any of our special offers giving you calls or data usage for free or at rates lower than the standard rates for such calls or data usage as set out in these terms and conditions.
- b. The special offers include Options, Loyalty Programs and other business special offers and discounts.
- c. Our Acceptable Use Policy is intended to ensure that our customers do not use our Services in an excessive, unreasonable or fraudulent manner or in connection with equipment that has not been approved by us.
- d. Such usage may impact the reliable operation of our network and/or the quality or reliability of our services. Generally, legitimate use of our services for their intended retail purposes for which they are supplied to you will not breach our Acceptable Use Policy.
- e. We can rely on our Acceptable Use Policy where we reasonably consider that you have used our Services in a way that is excessive or unreasonable (as set out below) or in the situations set out below under "Commercial use".

2.3. Commercial use

- a. The Services we make available are intended for 'standard small to medium sized businesses' operating within Australia.
- b. Customers who use our services in their capacity as carriers or carriage service providers (or as suppliers of carriers or carriage service providers) must acquire services for such purposes under wholesale terms and conditions. The following clauses are intended to ensure that this occurs.
- c. You must not resell or commercially exploit any of our services.
- d. You must not re-route call traffic in order to disguise the originating party or for the purposes of resale.
- e. You may not use our services in your capacity as a carrier or carriage service provider or as a party supplying services to a carrier or carriage service provider.
- f. You can only use equipment that we provide you with handsets or other devices that have been approved by us for use on our networks.
- g. We can rely on our Acceptable Use Policy if we reasonably think that you have breached any of the previous clauses.

3. Unlimited/Included Call Plans

The policy applies to Evolve Technologies IP Phone Extension plans, Hosted PBX plans and VoIP Trunking plans. Specifically this policy applies to:

- a. Unlimited/Included Call promotions that include Unlimited/Included Standard Call types in conjunction with IP Phone extensions plans and Hosted PBX plans;
- b. The use of the service in conjunction with IP Phone extensions plans, Hosted PBX plans and VoIP Trunking plans;
- c. The call types included and the use permitted within call plans; and
- d. A fixed charge for part or all of a call.

Unlimited/Included Call Plans include Unlimited/Included Standard Calls, as defined by Evolve Technologies, originated by you whilst using an approved IP Phone end point as supplied by Evolve Technologies. Unlimited/Included Standard Calls include calls to included destinations originated within a 'standard small to medium sized business' environment operating from within Australia.

4. Excessive Use

- a. Call Plans that include Unlimited/Included Standard Calls and are designed for use by 'standard small to medium sized businesses' operating within Australia.
- b. A 'standard small to medium sized business' is defined as a business that engages in normal trading activities, during standard business hours applicable to businesses located within their geographic region.
- c. Evolve Technologies have completed an analysis of the call patterns of standard small to medium sized businesses operating within Australia and use this data to assess whether your use under an Unlimited/Included Call Plan is Excessive and or outside the standard use of small to medium sized businesses.

We may contact you by phone or email, using the contact details you have provided prior to commencing charges for excessive use.

5. Unreasonable Use

Without restricting what is meant by 'unreasonable' Evolve Technologies will supply the service for the purpose of you making and receiving calls or faxes on our network.

Evolve Technologies consider unreasonable use of the service:

- a. if you use a device that reroutes calls to/from our network or the network of another supplier;
- b. if you operate a telephone based marketing business or call centre;
- c. your usage of the service affects other customers' access to the network;
- d. you set up switch devices which overcome the subscription and/or pricing charges, potentially keeping a session open for hours and limiting the ability for other customers to access the service; or
- e. you are re-supplying or reselling any service on our network.

5.1. Call Patterns

Certain activity and certain call patterns may indicate that your use of the service is not that of a 'standard small to medium sized business'. Use of the service outside of what is typical of a 'standard small to medium sized business' is regarded as unreasonable use. You agree that Evolve Technologies may use its sole discretion to determine whether your use of the service is unreasonable. In contrast to the above sub-clauses we may in our absolute discretion give our consent to this type of behaviour, subject to conditions and in writing.

5.2. Equitable Access

We further consider your use of the service to be unreasonable if you reduce or limit the ability of other customers to access our network as you:

- a. engage in the bridging of conference calls;
- b. use the Evolve Technologies service to link two or more communication devices together for the purposes of providing a permanent or semi-permanent circuit;
- c. use the Evolve Technologies service for any other purpose than the predominant function of person-to-person voice communication.

6. What we can do

If we reasonably believe that you are in breach of this Fair Use Policy, without reducing or restricting our rights under our Terms and Conditions, where we consider your use unreasonable we may:

- a. suspend your access to that offer, or
- b. suspend or cancel your Services:

immediately and without any prior warning or notice given to you. Our right to suspend or cancel the Service without notice to you under this clause overrides any requirement we may have to give you notice in other parts of our Terms and Conditions.

If we believe on reasonable grounds that you are in breach of this Fair Use Policy, you must pay us the standard applicable retail rate calculated from the date of the breach. If you have already paid us for such Services, you must pay us the difference between the standard applicable retail rate and the amount you have paid to us.

7. Broadband, Fax and SMS services

7.1. Prohibitions

You cannot use Evolve Technologies Broadband and/or SMS Service:

In a way which results in you or us breaching, or being involved in a breach of a law, order or regulation (including a foreign law, order or regulation), a mandatory code of conduct; or a voluntary code of conduct that you have agreed to comply with;

- a. In a way which results, or could result, in damage to property or injury to any person;
- b. To knowingly send e-mail that may destroy or damage an e-mail recipient's computer;
- c. To knowingly accept email which is unlawful, and violates or infringes upon the rights of any person or corporation;
- d. To reveal confidential information about our wholesale partner and/or its suppliers which may result in unauthorised usage of the Broadband and/or SMS Services by a third party, except where you are required by law to disclose such information;
- e. To knowingly transmit information which contains viruses or other harmful components;
- f. To interfere, damage or destroy computer systems operations of the Broadband and/or SMS Services including disobeying any requirements, procedures, policies or regulations of our wholesale partner, other users and/or third parties;
- g. To knowingly store or transmit any unlawful, threatening defamatory, offensive or pornographic material that constitutes a criminal or civic offence under State and/or Commonwealth laws.
- h. To harass, menace or stalk people;
- i. Which enables a minor to access material inappropriate for a minor or to establish (or try to establish) contact with a minor not otherwise known to you;
- j. Which unlawfully incites discrimination, hate or violence towards one person or group, for example because of their race, religion, gender or nationality;
- k. To send, display or be otherwise involved in material which is obscene or defamatory;
- l. Which is, or which would be considered by a reasonable person to be, offensive or abusive;

- m. To engage in any misleading or deceptive business or marketing practice;
- n. That involves providing or promoting illegal pyramid selling schemes or unlawful gambling or gaming activities;
- o. Which infringes our or any other person's rights (including Intellectual Property Rights and moral rights);
- p. Which constitutes a misuse of our or any other person's confidential information or;
- q. Which results in a breach by you of any obligation that you owe to any person.

7.2. General Matters

- a. You are not authorised to access our computer systems or networks for any purpose other than to use the Broadband and/or SMS Service in accordance with this policy and your agreement with us for supply of the Broadband and/or SMS Service;
- b. You must not interfere with the proper operations of the Broadband and/or SMS Service or any other part of our network or system;
- c. You must not use the Broadband and/or SMS Service to contribute to, or participate in, a Newsgroup, forum or chat room in a way that has or may have an adverse effect on the proper operation of those newsgroups, forums and chat rooms.

7.3. Spam

You must not use the Broadband and/or SMS Service, attempt to use the Broadband and/or SMS Service or allow the Broadband and/or SMS Service to be used;

- a. To send, cause the sending of or otherwise be involved in the sending of SPAM or USENET SPAM; SPAM means unsolicited Bulk electronic messages of any kind (including email, fax, SMS and ICQ messages). Bulk means 20 electronic messages over a 10 minute consecutive period. USENET SPAM means excessive electronic newsgroup messages, excessive means posting the same or substantially the same message to one or more newsgroups resulting in a Breidbart Index of 20 or more. A Breidbart Index is calculated by multiplying the number of messages by the square root of the number of newsgroups that they are posted to over a consecutive 45 day period.
- b. In connection with any program (including a virus, Trojan horse, worm, cancelbot, time bomb), or activity (including a denial of service attack), that is designed to provide or allow any form of unauthorized control of, or result in an adverse effect on, a computer, a network or data (whether the computer, network or data is Evolve Technologies's or anyone else's)
- c. To access or use our or anyone else's systems, networks or data (including through open relay, port probing and the use of packet sniffers) without consent, regardless of whether or not such access or use has any adverse effect on the system, network or data;
- d. To create, send or alter in any way and by any means (including spoofing and use of third party mail servers), the contents of an electronic message for the purpose of hiding, obscuring or deleting the source of the message or making the message appear to come from someone other than you; or
- e. To manipulate or bypass our content usage limits by any means including connecting multiple modems to the Broadband and/or SMS Service.

7.4. Other obligations related to SPAM and USENET SPAM

- a. You must not benefit from SPAM or USENET SPAM (which includes causing or requesting any of your details to appear in SPAM or USENET SPAM and/or receiving responses to SPAM or USENET SPAM).
- b. You must not purchase, create, use, distribute, sell or otherwise be involved in software, Broadband and/or SMS Services or lists of sites, addresses, numbers or other identifiers of any kind (including email addresses and phone numbers) that are used to promote, send, or assist with the sending of SPAM or USENET SPAM.

7.5. Bulk Messages

If you send Bulk solicited electronic emails, then:

- a. You must include in each message, an email address, telephone number, facsimile number or mailing address that can be used to notify you that the recipient no longer wishes to receive such messages from you ('Opt Out Notice');
- b. If you are sent an Opt Out Notice, then you must immediately comply with the notice; and
- c. In the case of SMS, we consider that excessive use is more than 1,000 SMS each day.

7.6. E-mail Limits

We set limits on the size of emails sent to or by you, the period for which emails messages can be stored and the maximum disk space that will be allotted on Evolve Technologies VOICE & DATA servers for your Broadband Service. These limits are set out in the Tariff Sheet for your Broadband Service ('Mail Quota').

We will delete any electronic mail message sent to you, by you or addressed to you if:

- a. The size of the mail message (including attachments) exceeds your mail quota;
- b. The total of your undeleted messages (including attachments) exceeds your Mail Quota; or
- c. You have not deleted the message within 180 days of it becoming available to you (whether read or unread). We recommend that you delete emails on a regular basis, as, once deleted, the message, the message will not be able to be retrieved.

You will not send any electronic mail message that is sent using a (server/service) other than our SMTP server, unless we otherwise agree with you.

We will delete any electronic mail message where the message has been stored in the Deleted, Spam, or Outbox folders 7 days after the message becomes available to you or was sent by you.

If we delete any electronic mail messages under the terms of this agreement we are not required to notify you or the sender of the mail message.