

Set out below are TelstraClear Limited's ("we" or "us") Standard Terms for business customers. These will apply to all services and products that we provide to you from time to time. Whenever you decide that you would like us to provide you with services, you will need to complete a covering document for the services in question, which may include the sites at which the services are to be provided, the Initial Term of the agreement and the applicable Charges. It is agreed as follows:

## 1 TERM OF AGREEMENT

1.1 This Agreement commences on the date specified in clause 1 of the Specific Terms and will continue until terminated in accordance with this Agreement.

## 2 SERVICES

2.1 We will begin providing the Services to you in accordance with the timeframe that the parties agree in writing or, if no timeframe is agreed, within a reasonable time.

2.2 The Services are described in the Service Descriptions.

2.3 We are free to choose and change the manner in which and the technologies by which we provide a Service.

## 3 OUR COMMITMENT TO YOU

3.1 We will always:

- provide the Services to you with due care and skill;
- do our best to ensure that the Services are reliable and operate free of faults (although we do not guarantee that the Services will be continuous or fault free); and
- ensure that all work we perform in connection with the provision of the Services is carried out by competent and suitably qualified personnel and in a professional manner.

3.2 From time to time we may temporarily suspend or restrict a Service so that we can carry out maintenance and development work on the Network. We will always try to make sure that such suspensions or restrictions take place outside normal business hours.

3.3 Subject to clause 22.4, if any Service for which a fixed Charge is payable by you is unavailable for more than 24 consecutive hours (other than as a result of a breach of this Agreement by you) then we will, if you ask us to, credit or refund an amount equal to the fixed charges that would have otherwise been payable over the period of unavailability.

## 4 YOUR COMMITMENT TO US

4.1 You will:

- not use the Services in any way which is unlawful;
- not use the Services in any way which could interfere with or damage our Network, any other operator's

network, or another customer's enjoyment of our services;

- give us and our third party suppliers such access to your premises as is reasonably necessary to enable us or our third party suppliers to fix any fault with the Services;
- follow our reasonable instructions about the use of the Services;
- only use the Services for the purposes for which they are provided; and
- only use the Services for your own internal business requirements and not sell, rebill or otherwise provide any of the Services to anyone else without our prior written consent.

4.2 You will make sure that all information you give to us is complete and accurate; this includes advising us promptly if you change premises or postal address.

4.3 You will, if we ask you to, obtain any third party authorisation, licence or consent that we reasonably require in connection with the provision of the Services (such as building consent).

4.4 You acknowledge that you are responsible for any use of the Services by any third party, whether authorised by you or not.

4.5 If you breach clause 4.1 and we incur costs you will if we ask you to reimburse us for our reasonable costs.

4.6 We may charge you on a time and materials basis for diagnosing and/or fixing faults reported by you that fall outside our responsibilities under this Agreement or are not attributable to our Equipment, software or network.

## 5 CHARGES, INVOICING AND PAYMENT

5.1 You will pay our Charges for all the Services we provide to you, irrespective of who ultimately uses them. You will also pay our Charges for Services used by you which we invoice you for but which originate from a third party service provider (e.g., directory assistance services, 0900 calls). The Charges will apply from the date you are connected to the Network so that you are able to receive the Services. You will pay any GST that may be payable in addition to the Charges.

5.2 We will invoice you at approximately monthly intervals for the Services we provide to you. Fixed Charges will normally be invoiced in advance and other Charges will normally be invoiced in arrears. Sometimes Charges will not show on your invoice until some time after the month in which they are incurred. You will still be liable for all such Charges.

5.3 Subject to clause 6.1, you will pay each invoice by the payment date set out in that invoice and without set-off, counterclaim or deduction.

- 5.4 If any invoiced amount remains unpaid after the Payment Date we may charge you either (at our discretion):
- a late payment fee of an amount as specified from time to time at [www.telstraclear.co.nz/go/latepayment](http://www.telstraclear.co.nz/go/latepayment) or
  - interest on that amount until it is paid in full, which will accrue, in respect of any day of a month, at 2.0 percentage points above the average 90 day bank bill rate published in New Zealand on the Reuters screen BKBM at 11am on the first Working Day of that month.

5.5 If we have to spend money on collecting overdue amounts from you then you will reimburse us for those costs.

5.6 Part payment of your invoice will not amount to a full and final settlement unless we have agreed to this in writing.

5.7 We may amend our Charges at any time during the term of this Agreement by giving you at least 14 days' written notice of any such amendments.

5.8 Unless stated otherwise in a Service Description, calls are charged on a minute plus second basis (calculated to the next second). There is a one minute minimum charge for each call. The charge for each call is rounded to the nearest cent.

## 6 DISPUTED ACCOUNTS

6.1 If you believe that an invoice contains a mistake, please contact us as soon as possible and we will investigate the matter. You may withhold payment of the disputed amount, although you must still pay any undisputed amount by the Payment Date.

6.2 If we agree that we have made a mistake then we will correct the invoice immediately. If we find that there is no mistake, and the Payment Date has already passed, you will pay the outstanding amount straight away plus any late payment fee or interest that we may charge you under clause 5.4.

## 7 CREDIT ARRANGEMENTS

7.1 We are not obliged to begin providing Services to you until we have satisfied ourselves that you will be able to pay the Charges. If we have already begun providing Services to you and we then receive an unsatisfactory credit check, we may stop providing any Services straight away. We may pass on your information to credit reporting organisations so that they can run credit checks on our behalf at any time. We may also let those organisations know if you have not paid our Charges. At any time those organisations may pass on to us information about you that they hold. We will use that information to make decisions about providing or continuing to provide you with Services. Those organisations may keep any information about you that we have passed on to them and use it for the purposes of their businesses, which may include supplying it to other

entities that use their services.

7.2 We may at any time require you to make an advance payment or provide some other form of security to cover amounts payable by you under this Agreement. We may suspend the provision of Services if you fail to provide such security. If this Agreement is terminated we will return to you any security not required to cover outstanding amounts.

## 8 OUR EQUIPMENT

8.1 If we provide Services that require location of our Equipment on your premises then you will give our representatives safe access to your premises so that we can install, inspect, maintain, replace or remove our Equipment. If you are in rented premises then you will obtain the written permission of the owner that we are authorised to access, and locate our Equipment on, your premises for these purposes.

8.2 We will always make sure that our Equipment is safe, free from material defects and fit for the specific written purpose for which it is provided.

8.3 You will:

- provide a safe and secure operating environment for our Equipment;
- take reasonable precautions to protect our Equipment from radio or electrical interference and power fluctuations;
- not damage or interfere with our Equipment;
- pay our charges for repairing or replacing any of our Equipment that is lost or damaged while located on your premises. We will however pay the costs of transporting our Equipment from your premises to us to be repaired; and
- if we ask you, obtain and maintain insurance (to a value agreed by us) with a reputable insurance company against any loss or damage to our Equipment while under your control.

8.4 If our Equipment is no longer required, or if you damage or interfere with our Equipment, then we may remove it from your premises.

## 9 YOUR EQUIPMENT

9.1 You will ensure that all of your equipment that is connected to the Network and/or to our Equipment is telepermitted and is installed in accordance with our specifications.

9.2 You will follow our reasonable instructions about modifications that you may need to make to your equipment so that you can use the Services, including (without limitation) modifications to avoid any danger or interference your equipment may cause to the Services, the Equipment or the Network.

9.3 Notwithstanding anything else in this Agreement, if your equipment causes a fault in the operation of a Service then you will, if we ask you to, pay us the reasonable costs of restoring that Service.

## 10 NUMBERS, ADDRESSES & OTHER CODES

10.1 We may allocate phone numbers, electronic addresses and other codes to you. Phone numbers may also be allocated to you by another telecommunications service provider, and Ported to us. You will not have any ownership rights in those numbers, addresses and/or codes.

10.2 If required by law or if it is necessary to do so for operational reasons, we may change any phone number, electronic address or code allocated to you. However, we will always give you as much notice as reasonably possible of any such change.

10.3 If you are disconnected from the Network for any reason and you have not Ported all or some of your phone numbers prior to disconnection then we may reallocate your phone number to another customer.

## 11 SUSPENSION

11.1 We may suspend the provision of Services at any time if you breach this Agreement or if we consider (acting reasonably) that you have breached this Agreement. We will always give you at least 5 Working Days' notice of our intention to suspend, unless you breach or we consider (acting reasonably) that you have breached clause 4.1 or clause 7.2, in which case we may suspend Services without notice.

11.2 If we suspend the provision of Services to you at any time, we may require you to pay a temporary disconnection charge and/or a reconnection charge (which would be a condition of lifting any such suspension).

## 12 TERMINATION

12.1 We may cease providing any Service or terminate this Agreement after the expiry of the Initial Term by giving you not less than 30 days' notice in writing.

12.2 You may give up any Service or terminate this Agreement at any time by giving us not less than 30 days' notice in writing. Our charges are payable by you throughout the 30 day notice period even if you are outside the Initial Term. In addition, if you terminate during the Initial Term you will be required to pay any early termination charges that are payable under clause 13.2.

12.3 Notwithstanding clauses 12.1 and 12.2, either party may terminate this Agreement or particular Services at any time by giving the other party notice in writing where the other party:

- commits a material breach of this Agreement which is incapable of being rectified;
- commits a material breach of this Agreement which is not rectified within 30 days of written notice of that breach having been given to the other party by the terminating party;
- (or its directors or principals) goes into liquidation, bankruptcy or receivership (or it appears that any of these events is likely to happen);
- has a receiver or statutory manager appointed over any or all of its assets; or
- is removed from the Companies Register (other than as a result of a solvent amalgamation), is dissolved or dies.

12.4 We may, without liability to you, end the availability of any or all of the Services provided to you or not commence the supply of any or all of the Services to you if:

- The relevant Service is not commercially viable; or
- we are unable to provide the relevant Service; or
- we decide to withdraw the relevant Service from general availability.

12.5 To avoid doubt, clause 13.2 does not apply if we end the availability of any or all of the Services under clause 12.4.

## 13 CONSEQUENCES OF TERMINATION

13.1 When this Agreement is terminated or Services have ceased to be provided to you:

- you will be disconnected from the Network so that you are no longer able to receive the relevant Services;
- clauses 12 to 22 (inclusive), together with the other provisions of this Agreement which are required to give effect to those clauses, will remain in effect;
- each party must immediately return to the other any information, equipment or any other item which is in its possession and which belongs to the other party and, in the case of cessation of particular Services, such information, equipment or items relating to the relevant Services; and
- we may access your premises to remove our Equipment. If we are unable to gain access we may invoice you and you will pay the standard replacement charge for the Equipment in question.

13.2 If you give up any Service or terminate this Agreement under clause 12.2 or we terminate this Agreement or any Service under clause 12.3 prior to the expiry of the Initial Term, then we may require you to pay:

- 30% of the amount of the fixed Charges that would have otherwise been payable from the date of termination to the end of the Initial Term, except where the Service is for fixed Charge Services only, in which case we may require you to pay 100% of the fixed Charges that would otherwise have been payable from the date of termination to the end of the Initial Term;
- 30% of the amount of any anticipated Charges (for

example, variable charges such as calling) payable by you for the Services terminated, from the date of termination to the end of the Initial Term. These charges are calculated based on your total average monthly spend with us over the past six months; and

- if we have agreed to waive a set-up charge, the amount of that set-up charge multiplied by the number of months remaining in the Initial Term at the date of termination divided by the total number of months in the Initial Term.

13.3 Termination and the rights set out in clause 13.2 are without prejudice to any other rights, remedies or obligations either party may have under this Agreement.

## 14 CONFIDENTIALITY, PUBLICITY & PRIVACY

14.1 Neither party will reveal any information concerning the provisions of this Agreement or information provided under it to any third party, other than:

- as required by law or by the rules of any stock exchange;
- to its employees, agents, contractors and, in the case of us, to our third party suppliers to allow those suppliers to supply all or part of the Services, and in order to give effect to the purpose for which the information was provided;
- where the information is already in the public domain (but not where it is in the public domain as a result of a breach of this clause); or
- with the other party's prior written consent.

14.2 Neither party will issue any press release or public announcement concerning this Agreement without the other party's prior written approval.

14.3 If you are an individual, we may collect, hold and use information about you and pass it on to our employees, contractors, agents and suppliers for a range of lawful purposes connected with our business operations, such as checking your creditworthiness, providing the Services and keeping you informed about new products and services. You may ask to see the information that we hold about you at any time and you may ask us to correct any errors.

Where you disclose to us any information about a director, partner, principal or contact person, you confirm that:

- you are authorised by that person to make that disclosure for the purposes described below;
- that person has agreed that we can collect, hold and use information about him or her and can pass it on to our employees, contractors, agents and suppliers for a range of lawful purposes connected with our business operations, such as checking his or her creditworthiness, providing the Services and keeping him or her informed about new products and services; and
- that person understands that he or she may ask to see information that we hold about him or her at any time

and may ask us to correct any errors.

14.4 You agree that we may monitor and/or record calls made between you and us for the purpose of maintaining and improving the quality of our service.

## 15 INTELLECTUAL PROPERTY RIGHTS

15.1 You acknowledge that all rights to intellectual property contained in or relating to the Services and/or the Equipment (including any improvements or changes to any Service or to the Equipment) belong to us or to our licensors. However you are licensed by us to use that intellectual property, on a non-exclusive and non-transferable basis for the term of this Agreement, for the purposes, and in accordance with the terms, of this Agreement.

## 16 SOFTWARE

16.1 If we provide you with any software in connection with the provision of the Services, you :

- will not copy, modify or reverse assemble the software;
- are licensed by us to use the software, on a non-exclusive and non-transferable basis for the term of this Agreement, only for the purposes, and in accordance with the terms, of this Agreement and any terms upon which the software is ordinarily licensed or which we notify to you.

## 17 COMPENSATION AND LIABILITY

17.1 You acknowledge that you are acquiring the Services for the purposes of a business and the Consumer Guarantees Act 1993 does not apply.

17.2 We will compensate you for any damage or loss, which we directly cause to your tangible property through our negligence, provided that our maximum liability to you for such negligence under or in connection with this Agreement will be \$50,000 for any event or series of related events and \$100,000 for all events occurring in any 12-month period.

17.3 Subject to clause 17.2, our liability to you under or in connection with this Agreement, for any loss or damages which you incur as a direct result of our failure to meet any of our obligations under this Agreement or for any negligence by us in relation to the supply of the Services, will be limited to the value of 3 average months' Services used by you under this Agreement for all events occurring in any 12 month period.

17.4 Notwithstanding any other clause in this Agreement, we will not be liable to you in tort (including negligence), contract or otherwise for any economic loss, loss of profit,

loss of revenue, loss of anticipated profit or savings, or for any indirect, special or consequential loss or damage, however caused.

17.5 No other network operator and/or third party supplier (including their officers, employees, contractors and agents) will be liable to you for loss or damage of any kind arising from your use of the Services. This clause creates a right and benefit that other network operators and/or suppliers can enforce as a defence to any claim.

17.6 Apart from the warranties expressly given to you in this Agreement, all other warranties, express or implied, are excluded to the extent permitted by law.

## 18 DISPUTE RESOLUTION

18.1 Nothing in this clause affects any rights you may have under the Consumer Complaints Code.

18.2 If any dispute arises out of this Agreement, neither party is to commence proceedings relating to the dispute (except where urgent interlocutory relief is sought) unless that party has first complied with this clause 18.

18.3 A party claiming a dispute has arisen is to give written notice to the other party specifying the nature of the dispute. On receipt of that notice, the parties will use all reasonable endeavours to resolve the dispute by discussion, negotiation or other informal means.

18.4 If the parties do not resolve the dispute within 10 Working Days of the receipt of the notice then either party can, by writing to the other, require that the dispute be mediated in accordance with the standard mediation agreement of LEADR New Zealand Incorporated (Leading Edge Alternative Dispute Resolvers), and the Chair of LEADR will select the mediator and determine the mediator's fee.

## 19 NOTICES

19.1 Any notice given pursuant to this Agreement must be in writing and be delivered, or sent by post or by facsimile, to the other party's contact address, as set out below.

**TelstraClear Limited**  
**Smales Farm Office Park**  
**Cnr Northcote & Taharoto Roads**  
**Takapuna**  
**Private Bag 92143**  
**Auckland**  
**Facsimile: (09) 912 4077**  
**Attention: General Counsel**

### You

As set out on the execution page of the Agreement.

19.2 Any such notice will be assumed to have been delivered:

- in the case of delivery, when received;

- in the case of facsimile, when a correct transmission confirmation slip is received; or
- in the case of posting, on the second Working Day after the date of posting.

## 20 ENTIRE AGREEMENT AND VARIATION

20.1 This Agreement supersedes all prior discussions and agreements that you may have had with us regarding the subject matter of this Agreement and represents the entire agreement between the parties regarding such subject matter.

20.2 TelstraClear may change these Standard Terms, the Service Descriptions and/or the Service Levels either by giving you at least 14 days' notice in writing or by notices in major city newspapers. Otherwise no variation or waiver of any provision of this Agreement shall be recognised or binding unless it is in writing and signed by authorised representatives of both parties. You may request a copy of the most up to date Standard Terms, the Service Descriptions and the Service Levels from TelstraClear Customer Services or view a copy of those terms at [www.telstraclear.co.nz](http://www.telstraclear.co.nz).

## 21 CONFLICT

21.1 If there is any conflict or inconsistency between the terms contained in these Standard Terms and the Specific Terms, then the Specific Terms will take precedence.

## 22 GENERAL

22.1 You may assign any of your rights and obligations under this Agreement to any other person provided that you have obtained our prior written consent (such consent not to be unreasonably withheld).

22.2 From time to time we may assign any of our rights and obligations under this Agreement without your consent.

22.3 We may subcontract any or all of our obligations under this Agreement without your consent, but we will remain ultimately responsible to you for carrying out those obligations.

22.4 We will not be liable to you for any failure to perform our obligations under this Agreement during the time and to the extent that such performance is prevented by reason of a Force Majeure Event. We will notify you as soon as practicable after the Force Majeure Event occurs and endeavour to provide you with information regarding the extent of our inability to perform and an estimate of the time likely to be required to overcome the Force Majeure Event. We will use our reasonable endeavours to remedy or mitigate the effect of the Force Majeure Event and to complete our obligations under the Agreement as far as is

reasonably practicable. You will not be required to pay any charges for any services to the extent that such services are not provided by us due to a Force Majeure Event.

- 22.5 If either party delays or fails to enforce any of its rights or remedies under this Agreement, this will not constitute a waiver by that party of that or any other right or remedy available to it.
- 22.6 This Agreement is governed by the laws of New Zealand. The parties agree to submit to the non-exclusive jurisdiction of the courts of New Zealand.
- 22.7 You may appoint an agent to act on your behalf in relation to this Agreement, provided that you first obtain our written consent.

## 23 INTERPRETATION

- 23.1 In these Standard Terms, unless the context requires otherwise:

**“Agreement”** means the covering document signed by the parties, the Specific Terms and these Standard Terms, as may be amended from time to time in accordance with clause 20.2.

**“Charges”** means the charges payable under this Agreement (as amended from time to time).

**“Equipment”** means any equipment (including software) (which we may or may not own) that we provide to you in connection with the provision of Services.

**“Force Majeure Event”** means any event or circumstance beyond our reasonable control, including (without limitation) any act of God, fire, flood, storm, earthquake or any natural disaster, any act of a public enemy, sabotage, embargo, malicious damage, riot or war, any Government intervention and any defect in or failure of any third party electricity network or infrastructure.

**“GST”** means goods and services tax as defined in the Goods and Services Tax Act 1985.

**“Initial Term”** means the initial term of a Service as set out in clause 2 of the Specific Terms.

**“Network”** means the telecommunications network that we use to provide the Services to you and to other customers (including any network to which we interconnect).

**“Payment Date”** means the payment date set out on each invoice we send to you.

**“Port”** means the process under which a phone number is transferred from one telecommunications service provider to another, in accordance with industry approved terms.

**“Service Descriptions”** means descriptions of the Services we will provide to you, as referenced in the Specific Terms.

**“Service Levels”** means the service levels that apply to the Services, as referenced in the Specific Terms.

**“Services”** means any or all of the services which we have agreed to provide to you as set out in the Specific Terms and described in the invoices we issue to you.

**“Specific Terms”** means the Specific Terms (including the Service Descriptions and the Service Levels) attached to

the covering document signed by the parties which set out the Services to be provided to you, the Initial Term and the Charges payable by you.

**“Standard Terms”** means these standard terms, being clauses 1 to 23.

**“Working Day”** means a day other than Saturday or Sunday on which registered banks are open for business in Auckland, Wellington and Christchurch.

- 23.2 In interpreting this Agreement:

- references to either party include its respective successors in title and permitted assigns;
- the singular includes the plural and vice versa;
- where a word is defined, its other grammatical forms have a corresponding meaning; and
- a reference to any day, which is not a Working Day, will be deemed to be a reference to the next Working Day.