

**Ultimate Mobile Limited T/as Ultimate Broadband
TERMS AND CONDITIONS OF USE**

1 Services

1.1 Ultimate Mobile Limited trading as Ultimate Broadband ("we" or "us") has agreed to provide to you web, voice and associated services which may include internet, email, voice (including VoIP), multicast, broadcast and others. (the "Services")

2 Acceptance and Alteration of Terms and Conditions

2.1 By using the Services you shall be deemed to have accepted these terms and conditions (the Terms).

2.2 You acknowledge that from time to time we may update these Terms and agree to be bound by any such updates and changes.

3 Wireless Use/VoIP

3.1 We will provide the Services to the network access port of the Equipment. We have no responsibility beyond that point. You are responsible for all of your equipment, software and associated cabling or equipment, and any problems or issues that may affect your experience of the Services, or the performance of the equipment or Services beyond the network access point.

3.2 We do not warrant or represent that wireless broadband will be suitable for any particular application. You are responsible for satisfying yourself as to whether your intended applications will be suitable for use with wireless broadband.

3.3 Where you are using any VoIP system as part of the Services you acknowledge and understand that we do not own or operate every part of the network used to provide VoIP Services and do not guarantee you will be able to make successful VoIP calls to every valid number.

3.4 You acknowledge and understand that the VoIP Service (including calls to emergency services) will not function in the event of power failure. Address location service is also not available

4 Telephone Services

The following will apply if we provide telephone services to you as part of the Services:

4.1 The phone numbers you are assigned remain our property and we reserve the right to alter or replace any number allocated to you. Porting fees apply.

4.2 You will advise us if you wish your phone number(s) to appear in the White Pages directory. If you fail to do so it will not appear.

4.3 You agree that no member of the Telecom group of companies (or their officers, employees, contractors or agents) has any liability to you in connection with the directory assistance service or your listing in the White Pages directory.

5 Installation and Equipment

5.1 To provide the Services to you, we may provide and install equipment at the site you have designated for Service ("Equipment") which will remain our property. Where we have agreed a time for the installation of the Equipment and you change that time or we are unable to install the Equipment at that time you will be liable for any costs incurred by us.

5.2 The costs of standard installation will be provided to you prior to installation. Non-standard installations or requirements, such as where a clear line of sight does not exist to your premises, may attract additional costs.

5.3 We may remove the Equipment on termination of these terms and conditions or disconnection of the Services, or earlier if we decide the Equipment is no longer required for your use of the Services.

5.4 You may not remove the Equipment on your premises unless we agree in writing and you will be liable for any associated costs resulting from damage to the Equipment or your own property or person.

5.5 You will allow us, or any person authorised by us, access to your premises at all reasonable times and on reasonable notice (subject to compliance with your reasonable security requirements and where applicable, health and safety requirements) to inspect, maintain or remove the Equipment. Where you are not the owner of the premises on which the Equipment is installed, or is to be installed, you warrant that you have permission from the property owner for us, or any person authorised by us, to access the property to conduct any or all of the above activities.

5.6 All installations are undertaken at the property owners or occupants risk, Ultimate Mobile Limited & our installer contractors are not liable for damages to property that occur in the process of an installation. All possible steps will be made to avoid or mitigate any risk of property damage however property owners should provide all means to reduce potential for damage.

5.7 Installations in unsafe conditions will not be undertaken, appropriate measures must be provided by the property owner to allow for a safe and OSH compliant installation.

6 No Warranty

6.1 You acknowledge that while we will use all reasonable efforts to ensure the availability or reliability of the Services we give no warranty that the Services will be free of faults or continuous. Speed of the Services may vary from time to time.

6.2 Neither we nor any third party suppliers are liable for temporary outages, interruptions, or faults associated with our Services or services provided by third party suppliers, nor for any costs or damage associated with lack of Service.

6.3 We may from time to time, due to operational or other reasons restrict or suspend the Services.

6.4 Where there is a fault with any aspect of Services, we will use all reasonable endeavours to remedy the problem as soon as possible. However, where remedial work, action or onsite support is required as a result of any act or omission on your part, or due to issues not originating from our network or on our side of the network access point, we reserve the right charge you for the cost (or portion thereof) of remedying the fault.

6.5 We do not guarantee the accuracy or completeness of any information provided to you, or the adequacy of the Services to meet your requirements. In using the Services you confirm that all matters relevant to the supply of Services are to your satisfaction and that you have relied on your own skill, inspection and judgement.

7 Use of Services

7.1 In using the Services you agree that you will:

(a) follow our instructions on using the Services and comply with any reasonable restrictions we impose, or directions we give, in respect of the Services;

(b) use the Services, and any information you access or make available through using our Services, in a responsible manner;

(c) not use the Services, in a way that breaks any laws, infringes anyone's rights, or is in our reasonable opinion malicious, obscene or offensive;

(d) keep confidential any password you use to access our Services and immediately change your password if we ask you to do so;

(e) not use your connection to distribute or on-sell Broadband or associated Services to any third party except with our prior consent in writing;

(f) not introduce anything harmful (such as viruses, worms or malware) to, or interfere in any other way with, anyone else's computer system, communications service or use of the internet or associated applications;

(g) not engage in any activity which facilitates or encourages unsolicited email including without limiting the generality of the foregoing, "spamming" and "mail bombing";

(h) not use your access or Services to distribute unsolicited commercial electronic messages as defined in the Unsolicited Electronic Messages Act 2007 and you must comply with that Act in all respects;

(i) not breach copyright or any other intellectual property right anyone else may have in anything forming part of the Services or in anything you access using the Services;

(j) comply with the Privacy Act 1993, all defamation and other laws which may apply to your use of the Services, or to the information you access or make available through using the Services;

(k) comply with the same obligations as we have in respect of our use of the Services or Equipment (as defined below) as advised to you from time to time;

(l) not use the Services to post or transmit any, defamatory, libelous, slanderous, false or misleading statements, obscenity, pornography, profanity or illegality;

(m) not use the Services for illegal file sharing including peer-to-peer (P2P) file sharing;

(n) provide a suitable operating environment for the Equipment;

(o) take reasonable precautions to protect the Equipment from theft or other loss or damage;

(p) take all reasonable precautions to protect the Equipment from radio or electromagnetic interference, electrical interference or power fluctuations;

(q) follow our reasonable directions in the use of the Equipment including the Equipment, solely for the purpose of receiving the Services;

(r) insure the Equipment with appropriate insurance cover for its' replacement value.

8 Monitoring your Data Usage

8.1 To ensure the overall customer experience of our network we reserve the right to monitor and investigate the use of bandwidth on the network. Where we deem necessary in our sole discretion we may: and accordingly it may be necessary for us, at our sole discretion, to apply shaping or bandwidth management on connections to ensure all customers receive a quality service and experience.

9 Charges

9.1 You shall pay those charges from time to time advised by us.

9.2 Payment for use of the Services must be made in full without deduction or set off on the due date. Payment by automatic payment, direct debit, cheque and credit card is accepted

9.3 We reserve the right to alter our pricing structure for the Services at any time. You will be notified in writing of any changes.

- 9.4 Unless we specifically state otherwise, our charges are GST inclusive.
- 9.5 In the event of non-payment a minimum late fee of \$10 will be applied to your account for late payment. At any point customers with overdue accounts may have their service disabled until payment is completed. Failure to meet our payment terms and conditions may result in service termination, termination fees, removal & collections fees being applied.
- 9.6 We reserve the right to send any outstanding invoices to a debt collection agency to be recouped. Any & all costs incurred by us in undertaking this action will be passed onto you for full payment.
- 9.7 All connections are paid one month in advance or a part period until the end of the current billing period. If there is a failure of credit card or automatic payment due to lack of funds, we will contact the account holder within 24 hours to arrange re payment. If we are unable to contact the account holder or rentals are not paid within 21 working days of following the funds failure your broadband service may be temporarily disconnected until payment is made.
- 9.8 Debt Collections agency charges for overdue accounts will be on charged to the customer.
- 10 **Minimum Term**
- 10.1 Provision of the Services is for No contract, 12, 24 and 36 month terms as dictated by your chosen package and service type that you have agreed to.
- 10.2 If you choose to disconnect from Services prior to the expiry of the minimum term, disconnection fees apply and RF or connection equipment is required to be returned within 7 days of the disconnection and/or all charges and accounts are brought up to date. Equipment removal charges which may apply. You agree that those charges are a reasonable pre-estimate of the loss we will suffer.
- 10.3 All equipment unless stated otherwise remains the property of Ultimate Mobile Limited at all times on both open and term contracts
- 10.4 Disconnection fees on term contracts:
RBI & Ruralnet Services
 All contracted Ruralnet & RBI connections will incur a \$20 inc GST per month disconnection fee for every remaining month in contract.

 A removal fee \$50 inc GST, plus any travel applies. Return of equipment is at customers cost.

Fibre Services
 The fibre disconnection fee in term contract is \$100 base fee plus a termination fee based on the number of months remaining in the contract multiplied by the base plan rate charged by EA Networks, Chorus or Enable.
- 10.5 If you wish to terminate or disconnect the Services following the minimum term, you can do so by providing us with 30 days written notice.
- 11 **Intellectual Property Rights**
- 11.1 You acknowledge that we own all rights, title and interest to the intellectual property in the Services, including any improvements or changes made to the Services during the time we are providing the Services to you. None of those rights, title and interest are transferred to you.
- 12 **Limitation of liability**
- 12.1 Neither we, our officers, employees, contractors or agents, are liable to you for any loss, damage or injury of any kind whatsoever (whether arising in contract, tort or otherwise and including any consequential loss) and whether suffered or incurred by you or another person whether such loss or damage arises directly or indirectly from Services provided to you or failing to provide Services to you. Without limitation, none of the people referred to in this clause are liable to you:
- for the interception or 'hacking' of data by unauthorised third parties;
 - if any communication you make is not properly transmitted or received;
 - if any of our Services are not available at any time or are faulty;
 - for any delay in commencing the provision of Services;
 - if any software we supply does not operate properly;
 - if your computer becomes affected by any viruses, worms or malware;
 - for any costs or damages from damage caused by you de-installing the Equipment other than in accordance with our instructions;
 - for any costs incurred by using another suppliers services during a period when Services are not available or fully operational.
- 12.2 No claim for damage, loss or injury (direct or indirect) against us in respect of any Services supplied by us, shall in any case exceed our average charges to you for one month.
- 13 **Indemnity**
- 13.1 You indemnify us against all costs, claims, losses (including any loss or damage to the Equipment), liabilities, damages and proceedings incurred by us arising from your use of the Services or Equipment.
- 14 **Privacy and Credit Checks**
- 14.1 You authorise us to retain information on the user for the purposes of communicating with you and from time to time making you aware of any offer of Services
- 14.2 We may use the information we hold about you to carry out credit checks on you and may exchange information about you with our contractors, agents and representatives, with other carriers, and with credit reporting and debt collection agencies for the purpose of our business and to law enforcement agencies as required under law.
- 15 **Personal Properties Securities Act 1999 (PPSA)**
- 15.1 Ownership in all Equipment is retained by us unless we agree otherwise in writing.
- 15.2 Clause 14.1 creates a security interest in our favour in any Equipment and/or any associated software or other goods supplied. If requested by us, you will promptly execute any documents, provide all necessary information, and do anything else we require to ensure that the security interest created under these Terms constitutes a perfected security interest in the Equipment and their proceeds, which will have priority over all other security interests in the Equipment.
- 15.3 You agree we may register a security interest in the Equipment on the Personal Properties Securities Register and so far as permitted by section 107 of the PPSA you waive your rights under sections 114(1) (a), 116, 117, 119, 120(2), 121, 125, 129, 131, 133 and 148 of the PPSA.
- 16 **General**
- 16.1 These Terms are governed by the laws of New Zealand and you agree to submit to the exclusive jurisdiction of the New Zealand High Court.
- 16.2 These Terms constitute the entire agreement in relation to the provision of the Services. No modification or waiver of them is valid unless expressly made in writing and signed by an authorised officer of us and by you;
- 16.3 Our failure to enforce any Terms is not a waiver of any of the rights or obligations we have under these Terms;
- 16.4 If any provision of these Terms cannot be enforced or relied on by us all other provisions remain binding.
- 16.5 You may not assign your rights under these Terms. We can transfer our rights and obligations under these Terms to anyone else.
- 16.6 Neither you or us will be liable for failures or delays in performance of its obligations under these Terms due to any cause or circumstances beyond our control. We are not liable for failure to provide the Services due to acts of God, civil disorder or war, national or local emergency, adverse weather conditions, industrial dispute, or acts or omissions of other couriers or carriage Service.
- 16.7 You may have rights under the Consumer Guarantees Act and these Terms do not limit those rights. However, if you use the Services for business purposes (or have told us you will do so) then you agree the Act does not apply to those Services.

Please note, by engaging in our services you are deemed to have accepted these terms & conditions in full.