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# **Vocus New Zealand**

## **Mobile Terms and Conditions**

9 June 2020

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## 1. Our agreement

- 1.1 Our agreement for mobile Services comprises:
- a) The online Mobile terms and conditions below.
  - b) Your application form for our Services.
  - c) If there is a conflict, the above take priority in the order listed.
- 1.2 Telecommunications changes rapidly, so we reserve the right to add to, remove or change these terms from time to time. We will notify you of any changes directly or via our website, so please check the website regularly.

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## 2. Contract commencement and term

- 2.1 Your agreement with us and any associated contract term for Services will commence on your billing commencement date and continue for at least the Minimum Term unless this agreement is terminated in any of the ways described in clause 17.
- 2.2 Where multiple mobile connections are provided, the Contract Start Date for each service may vary.

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## 3. Our Services

- 3.1 Vocus Communications Mobile Services allow you to make and receive most local, national and international calls (when within our Mobile Network coverage area) using a Mobile Phone, and access a range of other Services. You will need a Vocus Communications SIM to be able to connect and use the Services.
- 3.2 We will try our best to provide quality Services to you at all times. But, because of the nature of mobile telecommunications, at times our ability to do so will be affected by factors outside of our control including, but not limited to, geographic conditions and physical obstructions, weather conditions, the number of people trying to use our Network at the same time or faults in our Network or other networks used by us to provide the Services to you. We cannot guarantee continuous or fault-free Services.
- 3.3 The quality, speed and coverage of the Services also depends partly on your Mobile Phone, partly on the Network and partly on other telecommunications networks.
- 3.4 The Services may also be unavailable at times due to maintenance, repairs, upgrades or modifications to the Network or other networks used to provide the Services to you. Where it is within our control, we will try to keep such unavailability to a minimum.
- 3.5 If changes to the Services require new or upgraded Mobile or other equipment, you will be responsible for obtaining this at your cost.
- 3.6 We will try to maintain security of information, but

cannot promise that information you receive or send using the Services will be secure because some of our Services are available via the internet or systems operated by third parties.

- 3.7 We will try to prevent viruses or other manipulating programs from harming your Mobile, but will not be responsible if harm occurs.
- 3.8 We may alter information you send when using the Services in order to enable delivery to the recipient.

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## 4. Your responsibilities

- 4.1 In agreeing to use this Service, you agree to:
- a) Comply with all your obligations in this agreement
  - b) comply with the law and all the relevant codes and regulations and not use your Mobile Phone or the Services in a way that is abusive or offensive or for an illegal, immoral or fraudulent purpose;
  - c) provide us with all information we reasonably request in connection with this agreement and make sure that all information you give to us or to any third party retailer is accurate and complete;
  - d) keep confidential, and do not disclose to any other person, any PIN or other access code feature used by, or allocated to, you in connection with the Services;
  - e) do not use your Mobile Phone or the Services in a way that interferes with any other person's use of the Services;
  - f) not use your Mobile Phone or the Services to spam, mail bomb, publish any offensive or unlawful material, harvest information about others, create a false identity, access or upload any Content which breaches a third party right, or any other similar activity;
  - g) use only Mobile Phones and accessories approved for use with our Mobile Service and which comply with all relevant legislation and regulations;
  - h) follow the instructions and guidelines (including any Fair Use Policies) we give you about the use of the Services and your Mobile Phone;
  - i) not do anything or introduce anything (including any virus) that

may damage or harm the Network, equipment or any third party's network or equipment

- j) never interfere, or connect any non-approved equipment to any part of our Network unless you have been authorised in writing by us to do so;
  - k) authorise us or a person approved by us to remotely access your Mobile Phone in order to perform any tasks that in our opinion are reasonably necessary to maintain, alter or protect the integrity or performance of our Network or our Services or where we have been directed to do so by law;
  - l) pay for the repair or replacement of any Mobile Phone or other equipment you rent from us, or which is loaned to you, which is lost, stolen or damaged;
  - m) agree to make sure everyone who uses your Mobile Phone or SIM complies with the obligations and responsibilities set out in this agreement.
- 4.2. The Services we supply are for your use only, you may not gift, resell or assign them.
- 4.3. You are responsible for all charges for using the Services and your Mobile – even if it was not you using them.
- 4.4. You must keep your Mobile Phone and the SIM secure at all times. We recommend that you use a PIN and other access code features provided with your Mobile Phone and SIM to ensure that only you are able to access and use the Services. You must keep all such PINs and access codes confidential at all times. We may assume that any request or instruction we receive is authorised by you if it is made from your Mobile Phone.
- 4.5. If a PIN is entered incorrectly three times in a row, the SIM will automatically block and it will not be possible to use it unless it is unblocked. To unblock the SIM you will need a PUK1 Code, which you can obtain from your SIM packaging or by contacting Vocus Communications Customer Services. If you continue to block your SIM by incorrectly entering the PUK1 Code the SIM will be rendered useless after 10 attempts and you will lose names, numbers and other information stored on it. You will then need to purchase a new SIM if you wish to continue using the Services.
- 4.6. The SIM card we issue you remains our property, so please return it in good condition and within 15 working days after your connection or this agreement ends. If you do not do this we may charge you for the cost of a new SIM card.
- 4.7. You must inform us immediately if your Mobile Phone or the SIM supplied to you is lost, stolen or damaged. You will remain liable for all Charges incurred in relation to the use of your Mobile Phone or the SIM up to the time you inform us that your Mobile Phone or SIM is lost or stolen, whether the Charges have been incurred by you or someone else. If your Mobile Phone is lost,

stolen, damaged or destroyed, you will need to purchase a new Mobile Phone and/or SIM if you wish to continue using the Services

- 4.8. We may stop you using your Mobile Phone or SIM card if we believe you have breached any of the terms in this agreement.

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## 5. Our fair use policy

- 5.1 We have a Fair Use Policy to ensure we can manage our customers experience at all times.
- 5.2 This policy has been developed based on average customer usage of mobile services. If we consider your use of our Services exceeds estimated use patterns over any month, then we may request you to stop such usage. This includes roaming daily rate for data, if you substantially use more than your typical daily New Zealand usage.
- 5.3 If you do not comply with our request you will breach the Fair Use Policy and we may charge you for the excessive part of such use.
- 5.4 Unlimited talk and text is for standard person-to-person calls and texts to standard NZ numbers. Excludes premium and special numbers. Unlimited talk and text cannot be used for multiple simultaneous calling, re-supply, call centre usage, telemarketing, bulk messaging, application-toperson communication, continuously call forwarding, auto-dialling, machine to machine communication (including by using your SIM card in any other device), Cellular Trunking Units (CTUs), or any other activity that Vocus Communications considers to be non-standard personal usage.

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## 6. Mobile Roaming

- 6.1 You can use your Mobile Device in other countries. This is called “Mobile Roaming” For a list of the countries in which you can use roaming services and the associated pricing, please contact Customer Services or visit our website at [www.vocus.co.nz/mobile-roaming](http://www.vocus.co.nz/mobile-roaming)
- 6.2 Roaming Services are enabled on your connection as a default setting. You can check this before heading overseas by calling our Business Service Centre on 0800 89 5000.
- 6.3 Because overseas Network Operators charge us when you use roaming Services, we may require you to meet credit criteria before we enable roaming.

- 6.4 Roaming charges vary and are subject to change without notice, so we please check before using Roaming Services.
- 6.5 While you use roaming Services, promotional offers, minute or other entitlements which may come with your Pricing Plan may not apply. Please call our Customer Services on 0800 89 5000 before you leave New Zealand to check.
- 6.6 Roaming relies on the use of overseas telecommunication networks which we do not control and therefore we cannot offer any guarantees about the quality of Roaming services. Some Services may not be available while Roaming. The use by you of overseas telecommunication networks will be subject to the terms and conditions of the relevant network operator. Those terms and conditions will apply in addition to the terms and conditions contained in this agreement.
- 6.7 New Zealand rates do not apply when roaming. The charges that apply to roaming services are in addition to any other charges which apply to your mobile plan.
- 6.8 All Roaming charges are listed in New Zealand currency and do not attract GST
- 6.9 Charges listed for incoming and outgoing calls while roaming are charged per minute (you pay the full minute rate for each minute or part minute.
- 6.10 Data roaming is charged in 10kb increments.
- 6.11 When roaming, MMS messages are charged at the standard data roaming rate for the zone you are in.
- 6.12 To retrieve a voicemail while overseas you will be charged the standard per minute rate for an outbound call in the zone you are in.

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## 7. Payment

- 7.1 We will bill you monthly for mobile usage and rental Charges.
- 7.2 You are responsible to pay the Charges no matter who incurs them or how they are incurred.
- 7.3 Payment is required by the date specified in the Bill. Payment must be made without deduction, counter claim or set-off of any kind.
- 7.4 If Payment or any other sum payable under this agreement is not paid when due, then we may:
  - a) charge you Default Interest; and
  - b) charge you for any expense (including legal costs on a solicitor and client basis) we incur in trying to collect what you owe us; and
  - c) apply any credit balance or security deposit in your accounts or set off any sum we owe you to pay what you owe us.

- 7.5 If you dispute a Bill, then and provided you tell us within 15 working days of receiving it, we promise to consider what you say and, if we agree with you, will advise you of any change to the Bill or repayment or credit we decide to give you.
- 7.6 We may charge you administration fees if we regard your account to be dormant or we supply statements or otherwise have to deal with your unused credit balances.
- 7.7 Any security deposit you pay us will be held in a non-interest bearing account.

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## 8. Charging

- 8.1 We may at any time set credit limits for your use of Services, but when we do we will try to notify you. Once set, we may restrict your use of the Services to that limit.
- 8.2 Calls are charged at the rate applicable when they are commenced. There may be additional charges for data and other Services.
- 8.3 Unless stated otherwise, mobile 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.
- 8.4 Mobile Data/Mobile Broadband charges are rounded to the nearest 10KB.

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## 9. If you terminate the agreement

- 9.1 If you terminate this agreement prior to the expiry of the Term then:
  - a) You will repay to us any promotional offers, sign-on or welcome credits we have given against your account; and
  - b) The early termination fee which is specified in your contract and/or application form for that service; or
  - c) Where none is specified, then it shall be as detailed on the Vocus Communications Terms & Conditions. This can be found at <https://www.vocus.co.nz/legal-contracts>.
- 9.2 Where a hardware fund has been provided, any unused balance of this fund will be forfeited on the date that you notify us of termination of this agreement.

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## 10. Credit

- 10.1 If we consider giving you credit, personal or other information you provide to us may be given to a credit reference agency.
- 10.2 If we are dissatisfied with your information, we may decline credit and or end this agreement without disclosing our credit criteria or giving reasons.

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## 11. Limitation of Liability

- 11.1 You agree that you are using our services for the purposes of a business and that any rights you may have had under the Consumer Guarantees Act are excluded.
- 11.2 If we are held to be liable to you for any reason, then our liability to you is limited to an amount equal to our average charges to you for one month in respect of any single event or related series of events and to a maximum amount equal to our average charges to you for a three month period in any one year.
- 11.3 In the clauses 13.1 and 13.2 above, “we” and “our” include our officers, employees, agents, contractors and Network Operators.
- 11.4 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.
- 11.5 If you obtain a Mobile other than from us and it does not support all of the Services we offer, we are not obliged to take any action to enable access to any of the Services.

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## 12. Your phone number

- 12.1 Phone Numbers are allocated to you by us or another Telecommunications Service Provider and do not belong to you.
- 12.2 You may Port the Phone Number to another Telecommunications Service Provider. If you wish to do so, you must contact the Telecommunications Service Provider to whom you wish to Port and you will be responsible for completing the Porting requirements of that Telecommunications Service Provider. We will comply with our obligations under the Terms for Local and Mobile Number Portability in relation to the Porting of the Phone Number to the other Telecommunications Service Provider. You will be responsible for all costs associated with Porting the Phone Number (including any applicable early termination charges owed)
- 12.3 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 such change.

- 12.4 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 Customer.

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## 13. Your privacy

- 13.1 You may supply us with personal information or we may obtain it from your use of our Services.
- 13.2 You agree we may use this information and disclose it to third parties if required to provide you with Services, for credit checking, for collection and or to communicate with you about current and future Services.
- 13.3 You agree that personal information that we have obtained from you can be shared with other networks, for the purpose of monitoring and investigating fraud and other offences. We may also share your information with public sector agencies in order for them to investigate an offence.
- 13.4 Any collected personal information is kept at our offices at Level 4, 110 Symonds Street, Auckland. You are entitled to see the information (although we may charge you a fee for making it available) and to request that any incorrect information be corrected.
- 13.5 We may record or monitor calls between us to verify information and for staff training.
- 13.6 If another Vocus Communications customer calls you, your name may appear on that person’s account as the called party. If you do not want this, then please call Customer Services on 0800 89 5000 to stop it.
- 13.7 We may include your personal information in a telephone or similar directory or directory enquiry service provided or operated by us or by a third party unless you tell us not to.

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## 14. Termination and suspension

- 14.1 You can discontinue your Services connection and end this agreement on 30 working days’ written notice to your account manager or by email to support@vocus.co.nz.
- 14.2 Your connection will end on the 30th working day after we receive your notice or port notification from another

provider. At our option, some Services may be terminated sooner.

14.3 If you end this agreement, or if we elect to discontinue your Services connection or end this Agreement, or if you port your Phone Number you will, for each of your connections, pay us:

- a) any agreed early termination charges; and
- b) all Charges incurred by you to the date of disconnection; and
- c) any outstanding Charges and other moneys payable by you under this agreement.

14.4 We may Stop and or Bar your use of any Services or discontinue your Services connection or end this agreement if:

- a) you become or in our view will imminently become insolvent, go into receivership, liquidation or bankruptcy;
- b) you do not remain connected to the Services;
- c) you breach any term of this agreement;
- d) any of the Services for any reason are permanently or temporarily unavailable to you;
- e) you do not pay your Bills when due;
- f) 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;
- g) for any other reason we believe that it is appropriate to do so, in which event you will only have to pay outstanding Charges incurred up to and including the time of disconnection.

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## 15. Communication between us

15.1 You can contact us via the following methods:

- a) In writing to: PO Box 108-109, Symonds Street, Auckland
- b) By phone: Customer Services on 0800 89 5000
- c) By email: support@vocus.co.nz.

15.2 We can contact you by post, phone, facsimile or email to the last known address or phone number we have for you or we will place information on our website.

15.3 Any notice we send you will be deemed to have been communicated to you if delivered in accordance with paragraph b above. Please

ensure you advise us of any change to your address or number.

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## 16. Other matters

16.1 This agreement is to be interpreted under New Zealand law by New Zealand courts.

16.2 You may not assign your rights under this agreement. We may assign our rights and obligations under this agreement to anyone.

16.3 If we delay or do not exercise a right on any occasion we are not prevented from exercising that right later or on another occasion.

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## 17. Definitions

In these terms the words below have these special meanings:

**Bar** - means suspending access to Services and may be either an Out-bar, restricting use of the Mobile for making calls and accessing the Services, or an In-bar, restricting use of the Mobile for receiving calls and accessing the Services, or both.

**Bill** - means either a paper statement of your Charges or an Online Bill, that is, an electronic statement of your Charges accessed by you through any means.

**We, us or our Charges** - means all monthly access charges, Services costs and usage call charges payable in accordance with the Pricing Plan and any additional charges or sums payable by you under this agreement. Unless otherwise stated, all prices include GST.

**Customer Services** - means our Customer Services team.

**Default Interest** - Means the interest we may charge you for any sum you owe us from the due date for payment to the date we receive payment in full at the rate of 1.5% per month compounding monthly or any other rate notified to you on Our website.

**Liability** - means liability of any kind we may have to you or anyone claiming through you (whether in contract, tort, equity or otherwise) relating to any loss of profits, loss of data, lost business or missed opportunities, wasted expenditure or savings, or any form of indirect or consequential loss whatsoever, arising from this agreement or our breach of it

and or the Services or hardware, such as Mobiles, supplied to you under it.

**Network Operator** - means any entity with whom we have entered into an interconnection agreement or arrangement (directly or indirectly) providing for the passing of customer generated or customer destined communications between us and that entity.

**Mobile** - means a mobile phone or other cellular telecommunications device.

**Payment** - means crediting your Vocus Communications account or any other Vocus Communications account by any means available to 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.

**Pricing Plan(s)** - means your chosen voice, airtime, data and access rates which form part of this agreement.

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

**Services** - means any telecommunications services and related products and services that are made available to you by us or our agents from time to time.

**SIM card** - means the Subscriber Identity Module needed to operate your Mobile and through which you are connected to our network and includes any SIM card issued to you by us.

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

**Stop** - means stopping your use of the Mobile or SIMcard or ending this agreement or suspending, modifying, Barring, Re-directing or restricting your use of the Services or your Mobile or disconnecting your connection to the Services.

**Term** - means the period specified in your application form or in any extension to or replacement for this agreement. The Term may be shortened as provided for in this agreement.

**You or Your** - means the person who completes the application form for our mobile Services and who becomes our Vocus Communications Customer and account holder.