

1. These Terms
  - 1.1. These terms and conditions set out the basis on which we provide telephone and internet services to our business customers, whether those services are used for business or residential purposes.
  - 1.2. Additional terms may apply to your use of some of our services. If so, we will tell you what those terms are. If there is any conflict between these terms and conditions and any additional terms, the additional terms will prevail. The additional terms shall be deemed to form part of these terms and conditions, so a breach by you of the additional terms shall be deemed to be a breach of these terms and conditions.
2. Acceptance, Contract Commencement and Minimum Term
  - 2.1. You acknowledge that the person signing the contract agreement or application form is an authorised signatory for your business.
  - 2.2. Your agreement with us and any associated contract term for Services will commence on either: (a) The date that we advise you via your nominated email address that the Services are available for your use, or (b) Your billing commencement date.
  - 2.3. Where multiple services are provided, the contract start date for each service may vary.
  - 2.4. Use of Services will continue for at least the minimum term specified in your Application for Service unless this agreement is terminated in any of the ways described in clause 11.
3. Our Services
  - 3.1. We are not obliged to provide services unless we accept your application. Acceptance only occurs when we communicate this in writing or when we supply services to you. In either event, these terms and conditions shall constitute the agreement between us. We can decide whether or not to accept any application.
  - 3.2. We will be responsible for determining the manner in which the services are to be provided. For example, we may sub-contract other carriers to provide part of any service.
  - 3.3. We will use all reasonable endeavours to make our services available to you at all times. However our services rely on us using networks and services owned by other people. As a result we cannot promise that our services will always be available or fully functioning. If our services are unavailable for any reason we will endeavour to restore service as soon as possible. If you need assistance in using our services please visit our support centre on +64 9 273 8008.
  - 3.4. While we take reasonable security precautions, due to the nature of telecommunications services we cannot guarantee the confidentiality of any calls or transmissions you make using our services.
  - 3.5. We can suspend or restrict our services at any time if: (a) we consider it necessary to protect or maintain our network or anyone else's network; or (b) we believe that you have breached any of our terms and conditions.
  - 3.6. Network charges will still apply during the period of any suspension. In addition, if our services are suspended because of your breach, we can charge you a reconnection fee if services are to be recommenced.
4. Charges, Invoicing and Payment
  - 1.1. You must pay our charges for the services we provide to you, regardless of whether you or someone else uses those services.

- 1.2. We may vary our charges from time to time. If we increase any charge we will give you as much notice as reasonably possible. You can always check the latest available charges by calling customer services on +64 9 273 8008.
  - 1.3. We will invoice you monthly for services we provide to you. Fixed charges are payable in advance. Usage based charges (such as toll calls) are payable in arrears. Our preferred method of invoicing is by means of our online web interface. If you require us to post an invoice to you then we reserve the right to charge you for doing so.
  - 1.4. Unless stated otherwise, all pricing quoted for Uxtrata Limited business customers is excluding GST.
  - 1.5. Unless stated otherwise, 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.
  - 1.6. You must pay each invoice within 10 days of the invoice date. If you do not pay any invoice within that time we may charge you interest on the overdue amount from the due date until the date you pay, at the rate of 3% per month compounding monthly; and (a) withhold any rebate, discount or similar incentive which would otherwise be available to you; and (b) suspend or restrict your service; and (c) recover from you any debt recovery costs including legal costs on an indemnity basis for the enforcement or attempted enforcement of any of these terms and conditions; and (d) require you to put in place a direct debit payment arrangement for payment of our invoices
  - 1.7. If you pay by credit card (Visa, Mastercard, Amex or Diners), the name that will appear on cardholder statements will be Uxtrata Limited.
  - 1.8. Uxtrata Limited is a New Zealand business and all credit card transactions will be billed in New Zealand dollars.
  - 1.9. If you wish to raise a genuine dispute regarding an invoice from us you must do so in writing within 10 days of the date of the invoice. We will consider any issues raised in good faith and will promptly advise you of any resolution or amendment to our charges.
  - 1.10. We may at our discretion impose a credit limit on your account.
  - 1.11. If you breach this agreement, then you must on demand pay our legal costs on an indemnity basis for the enforcement or attempted enforcement of any of these terms and conditions.
5. Using Our Services
- 5.1. You must not use our services (or permit our services to be used) in a way which: (a) breaks any laws; (b) infringes anyone's rights; or (c) is malicious, obscene or offensive.
  - 5.2. You must keep confidential any password or PIN number which is used by you to access our services and we recommend that you change this on a regular basis for security reasons. You must also change your password or PIN number if we ask you to do so.
  - 5.3. You must comply with any reasonable restrictions we impose or directions we give regarding the use of our services.
  - 5.4. Calling Pack - Fair Usage Policy: Fair usage is determined by looking at average customer usage patterns in any given month. If your calling activity is inconsistent with normal business usage patterns, we may deem your calling to be unfair and ask you to moderate your usage. If you fail

to do so, we reserve the right charge our standard per minute rates and/or remove the service from your account. We also reserve the right to remove any country from an international calling pack.

- 5.5. You must ensure that all information you give us is correct. Where any information you have supplied to us changes (such as contact details) you must provide us with updated information as soon as possible.
  - 5.6. Subject to any term commitment, you must notify us if you wish to terminate your non-code access to our services. We do not supply line access only. If your non-code access to our services is removed and you leave line access with us, we may reinstate your non-code access on those lines without giving you notice.
  - 5.7. You agree that we can act on any verbal instructions from authorised personnel in relation to making changes to your services.
  - 5.8. We may install equipment and carry out other work at a customer's premises. If we do so at your premises, then you grant to us and our contractors an irrevocable license to enter your premises as and when we reasonably require (and you must obtain any necessary consents to such access) for the purposes of installing, maintaining, monitoring and removing such equipment or carrying out such work.
6. Internet Services
- 6.1. This clause applies if we provide internet access services to you.
  - 6.2. You must not use a flat rate dial-up internet access account as a permanent connection. We can at our discretion disconnect you if: (a) you are continuously connected for more than 6 hours; (b) your connection is idle for more than 15 minutes (meaning that no data is transferred during that period); or (c) we otherwise consider that your use of our internet access service has been excessive or unreasonable.
  - 6.3. If we disconnect you for one of the reasons set out in clause 6.2 you will normally be able to reconnect without additional cost. However, if your account is overdue at the time of disconnection, you may be unable to reconnect until your overdue account is brought up to date.
  - 6.4. You are responsible for downloading to your computer any email that you wish to keep. We may without notice to you remove any mail that remains on our servers for more than 90 days.
  - 6.5. You must not knowingly transmit any electronic viruses or use our services in a manner which is likely to or is intended to damage or compromise the security of our network or anyone else's network.
  - 6.6. You must use our service in a reasonable and responsible manner and in accordance with established "netiquette".
  - 6.7. You must not have more than one connection to our service using your user ID at any time. If for any reason you do have simultaneous connections we reserve the right to charge you \$5.00 per hour (or part hour) for each additional connection.
  - 6.8. We do not control the information that can be accessed through the internet. Accordingly we are not responsible for any inaccurate, illegal or offensive information which may be obtained from your use of our services. We are also not liable for any viruses or other harmful code which you download via the internet.

## 7. Broadband services

- 7.1. This clause applies if we provide broadband internet access services to you.
- 7.2. Our plan speeds are the maximum speeds at which you are able to send data to or receive data from our network. Because we rely on other providers to deliver data to or from our network we are unable to guarantee that these speeds will be available to you. Other issues beyond our control (such as problems with your phone line, or in the telephone network) may also result in you being unable to connect, or to send or receive data at those speeds. We cannot guarantee that our broadband services will always be available or that they can always be utilised for any particular purpose.
- 7.3. You are responsible for all data used over your broadband connection. Uxtrata Limited recommends that you have sufficient security in place to protect your network.
- 7.4. If you are on an “uncapped” or “unlimited” plan the total amount of data you can upload or download is unlimited. We may use traffic prioritisation policies for these plans and our capped plans at any time to improve the overall performance amongst our customers. Other factors may influence the particular speeds or latency you can achieve to servers nationally and internationally. Our control of these speeds is limited to our own network. Connections to servers outside the Uxtrata Limited network are on a “best effort” basis and it may not be possible for you to achieve your desired or expected speeds or latency where you are connecting to equipment outside our control.
- 7.5. If your phone line is disconnected for any reason, we will be unable to provide broadband service to you and this will mean that you have terminated our agreement for the provision of that service. If services are reinstalled, even on the same phone number, you may incur installation charges.
- 7.6. If you change your address or phone line you will need to: (a) provide us with a minimum of 20 days’ notice of the change to minimise service disruption; and (b) cancel all current broadband services to avoid unwanted charges, even if the phone line is no longer valid. Services must be reinstalled on the new phone line and even if you are maintaining your existing phone number you may incur installation charges. We will not always be able to supply broadband services on the new line or to that new address in which case you will have terminated our agreement for the provision of that service.
- 7.7. To maintain the integrity and reliability of the Uxtrata Limited network we reserve the right to occasionally manage customers’ broadband routers. This will ensure a high level of security within the network and may include such tasks as updating router firmware, updating DNS settings and updating / changing general router settings.

## 8. Supply of Equipment

- 8.1. We may from time to time supply equipment to you in connection with our provision of services to you. Where we do so, unless we agree otherwise, you hold the equipment as bailee only, and have no ownership rights to that equipment.
- 8.2. You acknowledge we have supplied to you any equipment specified in your application form.
- 8.3. You must return to us upon termination of this agreement all equipment which we supply to you, unless we agree otherwise. If you do not return any item of equipment to us within 30

days of termination of this agreement then you must pay us on demand the full cost of that item of equipment. You must also meet any repair or replacement costs if the equipment is damaged, lost or destroyed while under your control.

8.4. If requested by us, you will sign a document which identifies the equipment we supply to you. You will also sign any other document and provide us with any other information which is reasonably necessary for us to register a financing statement in respect of the equipment we supply, in terms of the Personal Property Securities Act.

## 9. Wireless Services

9.1. This clause applies if we provide wireless access services to you.

9.2. The services require power to operate. To ensure continuation of services during power outages you should purchase and install a UPS (Uninterruptible Power Supply). If you choose not to install a UPS you should ensure you have an alternative means of communication in the event that you need to access emergency services.

9.3. Unless purchased, all equipment installed remains the property of Uxtrata Limited and you are liable for any damages. You are required to notify us when any equipment is lost, stolen or damaged. You must not use the equipment for any purpose other than to access our services and you must not modify or otherwise interfere with the equipment.

9.4. The base station of the phone provided with installation will be installed next to your Wireless Adapter unless otherwise requested. Installation elsewhere in your business is at your installer's discretion and should be negotiated directly with them.

## 10. Phone Numbers and Directories

10.1. Any phone number that we allocate to you does not become your property. We may need to change your phone number. If we do need to change your number we will give you as much notice of the change as we can.

10.2. If you wish your details to be available through directory assistance and/or in the phone book then we will pass your name, number and address to Telecom. You agree that Telecom can use your details for those purposes.

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

## 11. Termination

11.1. If you have agreed to use a service for a fixed contract term, then you must do so. You can terminate the service during the fixed term by giving Uxtrata Limited 30 day's written notice and paying the early termination fee. 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 the early termination charge of 100% of the remaining contract term applies.

11.2. If a Hardware Fund has been provided, any unused balance of any hardware fund provided will be forfeited on the date that you notify us of termination of this agreement if the agreed contract term has not been completed.

- 11.3. For services where there is no fixed contract term, or where the fixed term has expired, either of us can terminate that service on giving the other 30 days' written notice.
- 11.4. Where you wish to terminate a service under sub-clause 10(1) above you must do so in writing to your account manager or by sending an email to [support@uxtrata.com](mailto:support@uxtrata.com).
- 11.5. If you terminate any service under sub-clause 2 above without giving Uxtrata Limited 30 days' written notice, you will be required to pay 30% of the early termination fee payable in sub-clauses 10.1(b) and 10.1(c) above.
- 11.6. We have the right to terminate an account if all billing on the account has ceased for a period of 3 months.
- 11.7. We can terminate the provision of any service to you on no less than 30 days' written notice if a third party service provider or carrier does anything that alters the circumstances in which we provide the services to you (i.e. including factual circumstances or financial conditions or circumstances) from those that existed on the day you entered into this agreement.
- 11.8. We can terminate this agreement, or the provision of any service to you, immediately if you breach any term of this agreement or if we reasonably believe that you have supplied incorrect or misleading information to us.
- 11.9. If this agreement is terminated for any reason you must still pay us for services provided to you up to the date termination takes effect. If you have prepaid for a service, no refund is payable to you on termination unless we agree otherwise.

## 12. Liability

- 12.1. We exclude all of our liability (including liability in contract, negligence, nuisance, otherwise in tort, equity, by statute or otherwise howsoever) to you in connection with us providing services to you or failing to provide services to you or for any other breach by us of the express or implied terms of this agreement. This exclusion of liability shall extend to include all and any liability of our officers, employees, contractors or agents. Without limiting this, we are not liable to you: (a) if any communication you make is intercepted; (b) if any communication you make is not properly transmitted or received; (c) if any of our services are not available at any time or are faulty; (d) for any delay in commencing the provision of services; (e) if any software or equipment we supply does not operate properly; (f) for any error in any directory listing which we arrange; (g) (for internet customers) if your computer becomes affected by any virus.
- 12.2. We are not liable to you for any fault in or non-provision of services which is caused by an event beyond our reasonable control.
- 12.3. If you use another service provider's services during any period when our service is not fully operational, we are not liable to pay any amount you are charged by that service provider.
- 12.4. You acknowledge that no third party whose network or services we use to supply services to you (nor any officer, employee, contractor or agent of such third party) is in any way liable to you in connection with our services. This clause is intended to confer a benefit which those third parties can enforce.
- 12.5. 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.

12.6. 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.

12.7. 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.

### 13. Privacy

13.1. You may at times supply us with personal information, for example, when you apply to become a customer. We may also obtain personal information from your use of our services.

13.2. You agree to us obtaining information about you from Credit Reporting Agencies for the purpose of credit checking where this may be required to provide you with services. You also agree to us disclosing information about you to Credit Reporting Agencies for collection purposes.

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 personal information we collect is kept at our offices at Laidlaw Business Park, Level 1, 8/42 Ormiston Road, East Tamaki, Auckland. You are entitled to see any information we hold about you (although you must pay our reasonable charge 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 purposes.

13.6. If another Uxtrata Limited customer calls you, your name will appear on that person's account as the called party. If you do not wish this to occur then please email us [support@uxtrata.com](mailto:support@uxtrata.com)

### 14. Changing these terms

14.1. We can change these terms from time to time by giving you 30 days' notice. We will inform you of any change by emailing or writing to you, by putting a notification on your invoice or by providing relevant information on our website.

### 15. Notices

15.1. If you wish to notify us of anything (other than to terminate your agreement with us) you can do so by writing to us at PO Box 58153, Botany, Auckland, or by email [support@uxtrata.com](mailto:support@uxtrata.com)

15.2. If we wish to communicate with you or notify you of anything we can do so by post, phone, facsimile or email to the last known address or number we have for you.

15.3. If your contact details change you must advise us of the new details as soon as possible.

### 16. Other matters

- 16.1. These terms are to be interpreted in accordance with the laws of New Zealand. Any dispute regarding the provision of our services under these terms is to be determined by New Zealand courts.
- 16.2. You must not assign your rights under this agreement. We can transfer our rights and obligations under this agreement to anyone else. We will notify you if we do so.
- 16.3. A delay in exercising any right is not a waiver of that right. A failure to exercise a right on any occasion does not prevent any subsequent exercise of that right.