

Terms and Conditions Updated: 01 October 2018

1. INTRODUCTION

- 1.1 The following terms apply to the supply by us of goods, products and services (collectively "Services", or individually a "Service") to our residential customers. In addition to these Terms, terms and conditions specific to a particular Service ("specific product terms") may also apply. Those specific product terms "sit beneath" these general Terms.
Copies of the specific product terms can be found on our website. Please call us on 09-9741499 if you have any questions about these Terms, or any specific product terms.
- 1.2 In these terms we have used "we" for Unicom New Zealand Limited and Smartcall Limited, "you" for our customer and "Services" to cover all goods and services of any kind we provide to you/your home, and anything else in relation to them.

2. SUPPLY OF GOODS OR SERVICES

- 2.1 We, or a carrier or network operator nominated by us, may supply the services that you subscribe to together with UNICOM^{NZ} Limited and SmartCall Limited supplying or installing goods or equipment on the basis of the terms set out in this agreement. In the course of supply we will: (a) use reasonable endeavors to ensure that services are supplied reliably and consistently (but we do not guarantee that the services will operate uninterrupted without any faults); (b) if faults do occur, use reasonable endeavors to ensure that they are remedied as quickly as reasonably possible.
- 2.2 We are not responsible for any losses suffered by you as a result of: (a) any interruption of services caused by an event outside of our reasonable control, including any restrictions on the service by a carrier; or (b) suspension of services for breach of any of the terms of this agreement; (c) your use of the services other than in accordance with this agreement.
- 2.3 You acknowledge that we may suspend or restrict your access to the services at any time when we consider it necessary to protect our own network or that of any third party or we believe that you have breached any of our terms and conditions.

3. GETTING SET UP

3.1 Connection and availability

UNICOM^{NZ} & Smartcall Broadband is not available in all areas. Occasionally factors like the distance of our equipment from a particular site or address mean we are unable to deliver UNICOM^{NZ} & Smartcall Broadband, even where UNICOM^{NZ} & Smartcall Broadband is available in your area.

3.2 Connection and installation

3.2.1 DSL Broadband

If you are a new UNICOM^{NZ} & Smartcall Broadband customer, you will need a standard broadband connection and in some cases you will be required to get broadband wiring to use the UNICOM^{NZ} & Smartcall Broadband Service. You will be advised of any connection charges that apply before you agree to use the Service

If you are using five or more telephone jackpoints at your home, or you have a monitored alarm or an alarm capable of being monitored, you will need to select the "connection and wiring option". This includes the standard broadband connection and wiring. A technician approved by UNICOM^{NZ} & Smartcall will visit your home to get UNICOM^{NZ} & Smartcall Broadband working on your telephone line. You will be advised of any charges associated with this connection option before you agree to use the UNICOM^{NZ} & Smartcall Broadband Service.

3.2.2 Ultra Fiber Broadband

Standard Fiber installation will include the work needed to connect your home to the fiber in your street. You will be advised of any applicable charges prior to you agreeing to the commencement of any installation work. This includes installing and connecting:

- I. the fiber cable from the street (up to 200m) through your home;
- II. the External Termination Point (ETP)
- III. the Optical Network (ONT); and
- IV. the Fiber Enabled Modem (RGW)

A non-standard installation will require additional charges. You will be advised on the charges that apply to your specific installation prior to the commencement of any installation work. Non-standard installations include:

- I. if your house is more than 200m from the fiber access point on the street
- II. if your RGW is installed at a separate location to the ONT and additional wiring is required

Other points to note:

- I. If, despite our reasonable efforts, your Unicom^{NZ} & Smartcall Broadband installation fails (e.g. the technician is unable to get the service running), the Unicom^{NZ} & Smartcall jackpoint and any other equipment will remain at your premises and you will not be charged for the installation.
- II. If you decide to cancel your Unicom^{NZ} & Smartcall Broadband order, through no fault of Unicom^{NZ} & Smartcall or the installer, after you have accepted your order and have been provided an installation date, we may charge you a cancellation fee. This will not apply in the case of a non-standard installation where you do not agree to any additional work or costs.
- III. This service does not come with a phone line. This means that services that use a landline phone line, such as some medical alerts, monitored home alarms, faxes, the interactive features of PABXs is incompatible with this.

3.3 Speed

Broadband speeds do vary. Factors which impact on speed include how close your premises are to an exchange, your computer's capability, connection and wiring, Wi-Fi, interference from electrical devices, the location and quality of the websites you choose to view, and any software you may have downloaded (malicious or otherwise). The day-to-day performance will also be affected by the number of users in your household and also on our network or the network of 3rd parties that we use to provide the service to you.

3.4 Modem

You will need a modem to use a Unicom^{NZ} & Smartcall Broadband Service.

DSL Broadband requires a DSL modem and filters that have a Telepermit. Unicom^{NZ} & Smartcall can provide a complete Broadband Self-Install Kit for you under free lease conditions. Ultra-Fiber Broadband requires a fiber enabled modem. UNICOM^{NZ} can provide you with a fiber enabled modem called a Residential Gateway (RGW) under free lease conditions.

You will lease the modem from us and Unicom^{NZ} & Smartcall is not responsible for it (without limiting your rights under Consumer Guarantees Act 1993 and Fair Trading Act 1986). As a consumer customer under the Consumer Guarantees Act 1993, our goods come with guarantees that cannot be excluded under that law.

4. YOUR RESPONSIBILITIES

- 4.1 You are responsible for paying for the goods or services by the due date, ensuring that all uses of the service are lawful and do not interfere with the use of the services by any other person, complying with this agreement and any of our instructions relating use of the services and keeping us informed of any changes to your contact details.
- 4.2 If you request that we provide the goods or services to third parties not directly related to you, you will remain principally liable for all charges incurred by such third parties in using the services. You may not resell or provide the use of the services to any third parties other than pursuant to this clause.
- 4.3 During the term of this agreement, you agree to use UNICOM^{NZ} Limited and SmartCall Ltd as your exclusive provider in respect of all services that you have subscribed to (as set out in the application form) or will subscribe to with us pursuant to this agreement.
- 4.4 You agree to keep us indemnified against all claims, actions, losses and expenses of any nature, which we may suffer or incur or for which we may become liable in respect of or arising out of this agreement or the use of the goods or services, by you.
- 4.5 You acknowledge that you are exclusively liable for any termination fees or unpaid amounts due under any agreement between you and any third party service provider whether payable prior to or following commencement of this agreement.
- 4.6 You may become aware that you have suffered loss before we do. If you suffer any loss as a result of this agreement, you agree to take reasonable steps to avoid or minimize your loss and that we are not liable for any loss that results from your failure to take reasonable steps to do so.

5. INVOICES AND PAYMENT

- 5.1 You agree to pay for the Services we provide for you, no matter who uses them. For example, you are responsible for the charges for anyone else's use of your telephone or your internet. However, if you believe that a mistake has been made in an invoice, you must notify us in writing at least 10 business days prior to the due date for payment of such invoice. We will investigate your query and advise you promptly as to whether an adjustment is required.
- 5.2 Charges payable for the goods or services and notice periods for variations are set out on the applicable service application form(s) or the sales order, quotation or proposal upon which your signed acceptance is indicated.
- 5.3 An invoice for any service charges may be sent to you on a monthly basis. You must pay the full amount stated on each invoice by the 20th day of the month following the date of the invoice, without any deduction or set-off.

- 5.4 If you do not pay an invoice by the due date, we may charge you late payment fee and/or suspend or restrict your services. If your services are suspended due to non-payment, we may charge you a reconnection fee.
- 5.5 Where you do not meet your responsibilities to us, we may require you to pay any expenses or collection agency fees incurred as a result of our enforcing or exercising our legal rights in relation to those responsibilities.

6. INTELLECTUAL PROPERTY

- 6.1 We (and other service providers who work with us) own or are licensed to use intellectual property rights in content, software, personal identifiers (including addresses) and anything else we use or make available to you in connection with our Services.

7. CONFIDENTIAL INFORMATION

- 7.1 You may not use or disclose to any third party any information received from us that is confidential (including, for example, pricing information and the specific terms of this agreement) except where required by law or the terms of this agreement or specifically authorized by us in writing.
- 7.2 During the term of this agreement your use of the services will generate certain information. We will also retain your contact details, credit information and any related personal details that you supply or that we obtain independently. You acknowledge that we or third parties authorized by us may gather and disclose such information for purposes connected with the supply of the services to you (e.g. credit checks, informing you of new service offers/changes, use in publicly available publications and databases)

8. MOVE AND/OR CHANGE SERVICES

8.1

MOVE ADDRESS		
Connection Type	Contract Term	Charge
Connection Only	New fixed term contract	\$49.00 and new address installation fee
	Keep existing contract term	\$99.00 and new address installation fee
Connection and Wiring	ALL	Directly pass by

8.2

CHANGE SERVICES		
Connection Type	Contract Term	Charge
Connection Only	New fixed term contract	\$49.00 and new address installation fee
	Keep existing contract term	\$99.00 and new address installation fee
Connection and Wiring	ALL	Directly pass by

8.3

- 8.3.1 All prices are in NZ dollars and include GST.
- 8.3.2 Not applicable for open term customers.

9. TERMINATION OF AGREEMENT

- 9.1 Notwithstanding any other clause, either you or we may terminate this agreement with immediate effect in whole or in part if the other party: (a) commits a material breach of this agreement that is not remedied within 30 days of notice by the non-breaching party specifying the default; (b) enters into a compromise with its creditors, is declared bankrupt, goes into liquidation or a receiver or equivalent is appointed in respect of part or all of its assets.
- 9.2 Early termination fees (ETF) may apply where you terminate all or part of this agreement prior to expiry of a fixed term period (if any). For ADSL Broadband, Ultra-Fast Fiber Broadband and VDSL Broadband this is \$199.00. You acknowledge that such fees represent a genuine pre-estimate of the losses that will be caused to us if all or part of this agreement is terminated before the expiration of its term. You agree that such fees are not penalties.
- 9.3 Subject to any minimum term or notice period (where, as noted, an early termination fee may apply), charges will stop 30 days after we receive your notice to terminate a Service, unless we agree that charges will stop earlier. You can choose to continue to receive the benefit of a Service during the 30 days' notice period. Notice only receive by email or phone, not accept by message or others.
- 9.4 Early termination fees will not be applied on open term users; however, 30 days in advance notice is still required before terminating your service, you can choose to continue to receive the benefit of a Service during the 30 days' notice period.
- 9.5 Your free leased customer premises equipment (CPE) will have to be returned to us if you choose to terminate your Service. Otherwise CPE recovering fee will be charged as UnicomNZ Limited and Smartcall Ltd Standard retail price if we haven't received your CPE within 10 working days after Service terminated.
- 9.6 Welcome Credit is subject to repay to UnicomNZ Limited and Smartcall Limited plus early termination fees of \$199.00 if you choose to terminate a fixed term contract prior to expiry date.
- 9.7 Any promotional products will be charged as UnicomNZ Limited and Smartcall Limited standard retail price plus early termination fees of \$199.00 if you choose to terminate a fixed term contract prior to expiry date.

10. FAIR USE POLICY

- 10.1 For services that are subject to our Fair Use Policy. We may apply our Fair Use Policy where in our reasonable opinion your usage of our Services is excessive and/or unreasonable as detailed in this paragraph. We have developed our Fair Use Policy by reference to average customer profiles and estimated customer usage of our Services.
- 10.2 If your usage of our Services materially exceeds estimated use patterns over any month, or is inconsistent with normal usage patterns, then your usage will be excessive and/or unreasonable.
- 10.3 Fair Use excludes activities such as auto dialing; continuously call forwarding, tele marketing, call centers, and use of Cellular Trucking Units (CTUs). If your usage is excessive and/or unreasonable we may contact you to advise you that your usage is in breach of our Fair Use Policy. We may then request that you stop or alter your usage to come within our Fair Use Policy.
- 10.4 If you're excessive or unreasonable usage continues after receipt of a request to stop or alter the nature of such usage, we may without further notice, apply charges to your account for the excessive and/or unreasonable element of your usage; suspend, modify or restrict your use of the Services or withdraw your access to the Services.

11. EXCLUSION AND LIMITATION OF LIABILITY

- 11.1 We will not be liable to you under the law of tort (including negligence), contract or otherwise for any loss of profits or savings or for any indirect or consequential loss or damage, arising out of or in connection with the performance or non-performance of any of our obligations under this agreement.
- 11.2 In any case, our liability to you arising out of any claim for damages for any reason will under no circumstances exceed in aggregate the total amount of the sums actually paid by you for the services supplied during the preceding 3 months period.
- 11.3 The parties acknowledge that the services are provided for a business purpose and accordingly the provisions of the Consumer Guarantees Act 1993 are specifically excluded.

12. AMENDMENTS

- 12.1 We may change the terms of this agreement by giving you notice ("variation notice") to that effect by sending you notice in writing or by email, by publishing changes on our website or by putting a notice in major daily newspapers. The changes contained in a variation notice will take effect 30 days from the date that the variation notice is given.
- 12.2 Except as otherwise expressly provided in this agreement any change to or variation of this agreement must be agreed to between the parties in writing.

*Notice only receive by email or phone, not accept by message or others.