

Orcon Business, Orcon Wholesale, Kiwi Web Host & iServe, Terms & Conditions



1. These terms

- 1.1. These terms and conditions set out the basis on which Orcon Limited (Company Number 1008544) or CallPlus Services Limited (Company Number 1271483) (**we, us, our**) provides telephone, internet, and other communications services to our Orcon Business, Orcon Wholesale, Kiwi Web Host & iServe customers (**you**).
- 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 any additional terms, the additional terms will prevail.
- 1.3. Depending on which Services you choose to use, you will also be bound by the specific terms and conditions published on our Website relating to your selected Plan and any specific terms and conditions relating to the Services you use.
- 1.4. If there is any conflict or inconsistency between:
 - a) The terms and conditions set out in this Agreement; and
 - b) the terms and conditions relating to your Plan or the specific terms and conditions relating to the Services you use,then the terms and conditions relating to your Plan or the specific terms and conditions relating to the Services you use will prevail over the terms and conditions of this Agreement.

2. Our services

- 2.1. Not all Services are available in all areas or to all customers.
- 2.2. We are not obliged to provide Services unless we accept your application. We can decide whether or not to accept any application and we cannot guarantee the availability of a Service until it is connected.
- 2.3. We will be responsible for determining the manner in which the Services are to be provided. For example, we may sub-contract other network operators to provide part of any Service.
- 2.4. 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 them as soon as possible.
- 2.5. 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.
- 2.6. Where we materially alter or remove any free services that are provided to you, we will endeavor to give you

at least 7 days' notice of such change.

Suspending or restricting services

- 2.7. We may suspend or restrict your use of the Services or disconnect you from the Network without warning if:
 - a) you or anyone who uses your services, Mobile Device or SIM does not comply with the terms and conditions of this Agreement or any other agreement with us, including any terms and conditions relating to Additional Services;
 - b) you or anyone who makes use of your Service or your Equipment (with or without your authorisation) damages our or an Other Supplier's Network or puts our or an Other Supplier's Network at risk;
 - c) you harass, abuse or threaten our team members; or
 - d) you notify us that your Mobile Device or SIM has been lost or stolen.
 - e) our or another Supplier's Network needs urgent maintenance or upgrading;
- 2.8. Up to date information about our current services can be found at <https://business.2degrees.nz/home>

Email services

- 2.9. Orcon email mailbox is only available if you have an active broadband or dial-up connection with us. An email mailbox charge may apply if there is no internet connection on your account.
- 2.10. You are responsible for downloading to your computer any email that you wish to keep. We may, without notice to you, remove any email that remains on our servers for more than 90 days.
- 2.11. We will archive inactive mailboxes after 6 months and delete unused mailboxes after 12 months. An active email mailbox is defined as accessing the email mailbox by POP, IMAP or Webmail at least once every 6 months. For the avoidance of doubt, forwarding email from primary mailbox to another email address is not deemed as accessing your email mailbox.
- 2.12. You must not transmit any worms or 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. We may limit the quantity and size of email to protect our network and customer experience.
- 2.13. You must use our service in a reasonable and responsible manner and any email abuse is strictly prohibited, including;
 - a) Sending multiple unsolicited emails ("spam") to single or multiple users including advertising emails,
 - b) Forging email or USENET posting

header information

- 2.14. To prevent spam we may limit or disable access to your email mailbox outside of New Zealand.
- 2.15. We are not liable for any losses incurred as a result of inability to access email, deleted email or undelivered email.

3. Charges

- 3.1. You must pay our charges for the Services we provide to you, regardless of whether you or someone else uses those Services. You are responsible for the maintenance of your Equipment and network devices used to access the Services and for the maintenance of appropriate security software to prevent unauthorised access to your equipment and network devices.
- 3.2. You will not be liable for any unauthorised use of the Services if such use is a result of our breach of this Agreement or negligence or unauthorised third-party actions outside of your reasonable control provided that you supply reasonable evidence to us of compliance with your obligations under this clause. Should we charge you for any use of Services which you consider to be unauthorised by you, you should advise us without delay. We will assess any use so notified and reasonably determine who should be responsible for the resulting Charges.
- 3.3. We may vary our charges from time to time. If we increase any charge we will give you at least 30 days' notice. You can always check the latest charges for popular services at <https://business.2degrees.nz/home>. If you do not agree to the changes, you may terminate the Service which is the subject of the changes. If you have a minimum term contract with us, the charges for the Services covered by that contract will not increase until the end of that contract, unless an increase is as a result of a change in the price from a supplier for an input required for your Broadband Service.
- 3.4. We will invoice you for Services we provide to you. However, we may elect to carry forward charges to the next billing period if your usage is below a minimum level. Fixed charges are payable in advance. Usage-based charges (such as Toll Calls) are payable in arrears. If we change the frequency of your billing, we will give you at least 30 days' notice.
- 3.5. If you breach any of the terms of your Agreement with us and we incur costs as result, then we may require you to pay those costs.
- 3.6. The Charges for each Service are those specified in this Agreement, as varied in accordance with this Agreement.
- 3.7. If any Charge is not expressed to be GST inclusive, you will pay to us at the same time an amount equal to the amount of GST on the supply. We will issue a tax invoice to you.
- 3.8. We may charge you a late payment fee if an Invoice is not paid in full by the Due Date.
- 3.9. Unless shown to be incorrect, an Invoice is sufficient evidence of the provision of the Services to you and

of our entitlement to make the Charges to which the Invoice relates.

Payment terms

- 3.10. You must pay each invoice by the Due Date. If you do not pay any invoice by the Due Date we may:
 - a) suspend or restrict your Service/s;
 - b) charge you a late payment fee of \$5 if your invoice is unpaid 20 days or more after the Due Date, which reflects the cost to us of recovering money owed to us;
 - c) recover from you any debt recovery costs including collection costs, revenue costs, legal fees, administration fees and/or other costs related to late or non-payment;
 - d) require you to put in place a direct debit payment arrangement;
 - e) register your payment default with a credit reporting agency.
- 3.11. Method of payment: You may pay by online banking, credit card, debit card or direct debit. If you wish to pay by another method there may be an associated charge as notified by us.

Disputes

- 3.12. If you wish to raise a genuine dispute regarding an Invoice you must do so in writing within 90 days of the date of the Invoice. We will consider any issues raised in good faith and will promptly advise you of any resolution.

Direct debit authority

- 3.13. If you have authorised us to debit your account or credit card in connection with Charges and other amounts owing on an ongoing or recurring basis, you acknowledge and agree that we may without further notice, debit from the account or credit card, on the Due Date all Charges or other amounts owing until fourteen (14) days from the date that you revoke that authority.
- 3.14. Your account with us will have a credit limit. If you need this raised or lowered, please contact our finance team at 0800 13 30 30. We may change that credit limit at any time at our reasonable discretion and will provide you with our reasons on request. If we reduce your credit limit, we may require you to pay us a deposit before you can use, or continue to use, the Service/s. We will provide you with reasonable advance notice if this is required. We will only reduce your credit limit where in our reasonable discretion, we determine that such reduction is justified by your credit risk.

4. Your obligations when using the Services

- 4.1. You must not use the Services in a way which:
 - a) breaks any laws;

- b) breaches this Agreement;
- c) infringes anyone's rights; or
- d) is malicious, obscene or offensive;
- e) not resell any Services to another party;
- f) only use a Residential Service for residential or private use and not for business or commercial purposes;
- g) use our Services in a reasonable and responsible manner;
- h) comply with any reasonable restrictions we impose or directions we give regarding the use of our Services;
- i) ensure that all information you give us is correct and that where any information you have supplied to us changes (such as contact details) you must provide us with updated information as soon as possible by emailing <https://business.2degrees.nz/home>
- j) agree that we can act on any verbal or written instructions you give us in relation to the Services; and
- k) comply with our Fair Use Policy, as provided in clause 15. In addition to our standard Fair Use Policy, specific fair use terms may also apply to certain Services as communicated in the service terms applicable to such Services, the relevant Plan and on our Website.

Installation

- 4.2. We may install Equipment and carry out other work at your premises in order to provide you with the Services. You must allow us and our contractors access as and when we reasonably require for the purposes of installing, maintaining, monitoring and removing that Equipment or carrying out that work. If necessary, you must obtain any necessary consents to enable our access.
- 4.3. You are responsible for providing suitable environmental conditions for any Equipment and the Services, including reliable electricity supply with surge protection, if applicable.
- 4.4. If you decide to cancel your order, through no fault of us or the installer, after we have accepted your order and you have been provided an installation date, we may charge you a cancellation fee.
- 4.5. When you place an order and get your order number, you have committed to buying the item(s) and/or Service/s from us. If you have made a mistake, email support@business.2degrees.nz within 7 days. We will do our best to resolve any problems. If you choose to cancel your Service after purchase, we may charge you Early Termination Charges and other usage Charges.

5. Voice services

- 5.1 This clause applied if we provide Voice Services to

you

- 5.2 Some of our Calling Packs include a set number of minutes of toll calling per month to the destinations included in the pack. If the number of minutes is exceeded, then our standard per-minute rates will apply to all toll calls for the remainder of that billing period. You are responsible for monitoring usage and for any per-minute charges incurred, should the limit be exceeded.

6. Internet services (including broadband)

- 6.1. This clause applies if we provide Internet Services or broadband Services to you.
- 6.2. You must not knowingly transmit any malware 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.
- 6.3. 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 malware or other harmful code which you download via the internet.

Modems and other equipment

- 6.4. You will need a suitable modem to use our Internet Services and broadband Service. We may provide you with a modem and anything else you need to get up and running. Our friendly technical support team can help you with any issues you have. Ownership of any modems we provide you will either remain with us if you are leasing the modem or transfer to you if you have purchased the modem.
- 6.5. If you decide to leave us, you will have to return the modem if you have leased one from us. If the modem is not returned, you will be charged a fee to recover the cost of this device. Contact us at support@business.2degrees.nz to confirm exact charges for this.
- 6.6. To maintain the integrity and reliability of our Network, we reserve the right to occasionally manage your modem to ensure a high level of security within our Network and may include such tasks as updating router firmware, updating DNS setting and updating or changing general settings.
- 6.7. We may provide you with other Equipment to use while you purchase our Services. If you decide to leave us you may be charged a reasonable amount to recover the costs for the supply of such Equipment.

Change of address

- 6.8. When you move, you will need to cancel all current broadband Services to avoid unwanted charges. Services must be reinstalled on the new phone line and even if you are maintaining your existing phone number you may incur installation charges.
- 6.9. If you change your address or phone line, give us 7

days' notice.

Feature availability

- 6.10. Better Network and Easyphone features are not available everywhere; these are address dependent.

Speeds

- 6.11. Our plan speeds represent the theoretic maximum speeds at which you are able to send data to or receive data from our network. Actual speeds you experience depend on many different factors such as other providers' delivery of data to or from our Network, your phone line quality, your equipment, number of users accessing the Services in your premises and many other factors. We cannot guarantee that our Services will always be available or that they can always be used for any particular purpose.
- 6.12. 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 to protect our network and 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 our Network are on a "best effort" basis. 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.

Copyright and law enforcement

- 6.13. We do not proactively monitor what content you download or access, however, we must act on lawful requests for information and/or interception as well as infringement notices which we receive under any applicable legislation or regulation, including the Copyright (Infringing File Sharing) Amendment Act 2011. This action may include sending you an infringement notice. Please see business.2degrees.nz/copyright further information.

Availability

- 6.14. You are responsible for downloading to your computer any email that you wish to keep. We may, without notice to you, remove any email that remains on our servers for more than 90 days.

7. Mobile network services

- 7.1. This clause applies if we provide Mobile Network Access Services to you.
- 7.2. We provide mobile Services via upstream providers (currently Spark New Zealand Limited) as a mobile virtual network operator.
- 7.3. You may make local, national and international calls, send text messages, use mobile internet data and access voicemail. We do not support Voice over

Internet Protocol on our mobile network and so do not assure you that currently available access levels may be maintained.

- 7.4. You agree to:
- a) not use your Mobile Device or the Services in a way that reduces or affects another person's use or enjoyment of the Services;
 - b) not connect a SIM you have obtained from us to any other telecommunications network, other than as is permitted by this Agreement, such as for using Roaming Services;
 - c) comply with the terms of any Mobile Device or other Equipment repayment agreement you agree to with us and return it to us in the same condition you received it, or pay us the then current market replacement costs;
- 7.5. We supply our Mobile Services at the maximum available coverage, speed and quality available from our upstream supplier's mobile network. Because we rely on other providers, we are unable to guarantee the quality, reliability and coverage of the Service will be available to you. Other issues beyond our control (such as radio interference, outages and network coverage), may result in you being unable to connect or you may experience a less than an optimal mobile Service.
- 7.6. If your mobile device or SIM card is lost, stolen or otherwise out of your control, contact us on 0800 19 19 19 immediately, so that we can bar calls and use of the Service/s. Be quick because you will be liable to pay for all calls and Services up until you contact us and request that your account be suspended.

Using your mobile overseas

- 7.7. Roaming Services allow you to use your Vocus Mobile Service in a country other than New Zealand (Roaming Services).
- 7.8. Visit our website (<https://business.2degrees.nz/vocus-mobile-roaming>) to see the countries where you can use Roaming Services.
- 7.9. Roaming Services are enabled by default. You may need to purchase a roaming pack through <https://mymobile.vocus.co.nz/> otherwise you will be charged our roaming casual rates. To turn off Roaming Services, email support@business.2degrees.nz. When using Roaming Services for outgoing calls, you will be charged at the overseas network operators' rates. The charges vary and change without notice, so please check overseas pricing before enabling Roaming Services. You may also check with us by emailing support@business.2degrees.nz or visit our website for further information. Charges for Roaming Services will appear on your monthly statement.
- 7.10. When using Roaming Services, promotional offers, minutes or other entitlements which may come with your Plan may not apply. Please email support@business.2degrees.nz before you leave New Zealand to check.

Mobile services

- 7.11. Charges for calls made from your Mobile Device are included within the subscribed plan or charged at our published casual rates if that plan is consumed. Generally, there is a minimum one minute charge for each call and calls are charged by the minute. Standard data rates are calculated based on usage and billed in 10KB blocks, rounded up to the nearest 10KB at the end of each session, and a minimum charge of 1c per session applies. (Where: 8 bits (b) = 1 Byte (B); 1024 Bytes = 1 Kilobyte (KB); 1024 KB = 1 Megabyte (MB)).
- 7.12. The Charges for our other Services are available by emailing support@business.2degrees.nz. We may change our Charges from time to time and will notify you of any changes in accordance with clause 3.1.
- 7.13. You are responsible for the use of and security of access to your Mobile Device and you are liable for all Charges under this Agreement whether incurred by you or someone else using or accessing your Mobile Device or SIM (with or without your knowledge or authority). This includes when your Mobile Device or SIM has been lost or stolen, and prior to us activating a block on your Mobile Device or SIM.
- 7.14. You will not be liable for any unauthorised use of your Mobile Device if such use is a result of our breach of this Agreement or negligence or unauthorised third-party actions outside of your reasonable control, provided that you supply reasonable evidence to us of compliance with your obligations under clause 7.14. Should you consider that any Charges for your Mobile Device are unauthorised by you, you should advise us without delay. We will assess any use so notified and reasonably determine who should be responsible for the resulting Charges.
- 7.15. If you use up your available credit while you are on a call, the call will be disconnected. You agree we are not liable for calls being disconnected after your available credit has been used up. If you use up your available credit on your Vocus Mobile account during an open data session, the session will be terminated.
- 7.16. If you have no credit on your Vocus Mobile Account or have no quota remaining on an active Mobile Plan, no chargeable outgoing calls (except to emergency services on 111 or to Customer Services or any other non-chargeable calls) or any other Services that would incur a Charge will be able to be used.

8. Mobile device, SIM and other equipment

- 8.1. Any SIM we supply to you remains our property. It is your responsibility to keep any SIM we supply to you in a good condition.

Delivery

- 8.2. We can only deliver things you buy from us to physical addresses in New Zealand - not PO Boxes or Private Bags – and couriers need a signature on delivery. We are responsible for the items you've ordered until your order is signed for by you or someone on your behalf. Once it has been signed for,

it's your responsibility.

- 8.3. You must pay the purchase price of any Mobile Device or other Equipment you buy from us. We will continue to own the Mobile Device or other equipment until you have paid for it in full.

Change of mind or cancellation

- 8.4. If you wish to return an item because you have changed your mind or the device is not what you thought it was or you wish to cancel a mobile Plan, please email support@business.2degrees.nz. All items must be returned to us in original packaging and the box/es must be unopened and undamaged. All external wrapping and seals must be intact. If you return a device that we do not consider to be packaged up like new, we won't be able to refund you. Instead, we will give you a call and we may also ask you to pay for the device to be sent back to you. This returns process does not apply to SIM cards.

Faulty items

- 8.5. If, for any reason, the Equipment we send you isn't exactly what you ordered, or turns out to be faulty, we will do our best to get that fixed. It's important to note that we're not responsible for the Equipment you send back until it arrives. If you buy Equipment from us that stops working within its manufacturer's warranty period, email support@business.2degrees.nz and we will send you a postage- paid courier bag so you can return it. The limits of warranty are detailed by the manufacturer's warranty included with the device. At that point, you may be required to pay a bond to cover the cost of inspection by the manufacturer.
- 8.6. If there is a genuine fault with your Equipment, you'll get the bond back and the manufacturer will repair or replace your mobile device on the basis set out in their warranty terms. Warranty claims are also subject to the other terms and conditions that you'll find in the manufacturer's warranty that you'll get with your equipment.
- 8.7. If you need to send a Mobile Device back for repair or replacement, there is a chance you might permanently lose any contacts, ringtones, messages, games or other downloads that you have saved on your device. So we recommend that before you send a device back to us, you back-up this data. We aren't responsible for any loss of data from your device in the case of repair or replacement.

9. Phone numbers and directories

- 9.1. Any phone number we allocate to you does not become your property. We will use all reasonable commercial endeavours to avoid making any change to the phone number allocated to you. If due to circumstances that leave us with no reasonable option, we do need to change your number, we will give you as much advance notice of the change as we can. We do not have to pay you anything if we change a phone number.

- 9.2. You may transfer your phone number to another telecommunications service provider. To do so you must contact the alternative provider and you will be responsible for satisfying its requirements. We will comply with the approved industry process relating to any such transfer but you will be responsible for any costs associated with the transfer including any applicable Early Termination Charges.
- 9.3. If you or we disconnect your Service and you have not transferred your Service to another provide prior to the date of disconnection we may re-allocate your phone number to another party.
- 9.4. If you wish your details to be available through directory assistance and/or in the White Pages then we will pass your name, number and address to Yellow Pages Group Limited. You agree that Yellow Pages Group Limited can use your details for those purposes.
- 9.5. Subject to the terms of the Consumer Guarantees Act 1993, you agree that no member of the "Yellow Pages Group Limited" 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.

10. Voice services

Fixed contract terms

- 10.1. If your Plan has a Fixed Contract Term and you have agreed to use a Service for a Fixed Contract Term, then you must do so. If you cancel within the Fixed Contract Term, you will be liable for any applicable Early Termination Charges.

Month-to-month

- 10.2. For Services where there is no Fixed Contract Term, or where the fixed term has expired, 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. Where you wish to terminate a Service you must do so by calling us on 0800 19 19 19.
- 10.3. If you purchase the ESET antivirus product through us then the term of the license for that product is month to month.

Termination

- 10.4. We can terminate the provision of any Service to you, immediately if you breach any term of these terms or if we reasonably believe that you have supplied incorrect or misleading information to us.
- 10.5. If your Services are terminated for any reason you must still pay us for your use of the Services provided to you up to the date of termination.

11. Consumer protection laws and liability

- 11.1. The Consumer Guarantees Act 1993 and the Fair Trading Act 1986 apply alongside these terms. You can visit www.consumeraffairs.govt.nz to find out more about your rights under this legislation. Any rights you may have or obligations we may have to you under this legislation are not affected by the provisions of this clause 11 to the extent they are inconsistent.
- 11.2. If you are acquiring any Services from us for the purposes of a business, you acknowledge that the provisions of the Consumer Guarantees Act 1993 and Fair Trading Act 1985 that are able to be contracted out of for the purposes of businesses do not apply to those Services.

Forces outside our control

- 11.3. We strive to always provide quality Services and to exercise reasonable skill and care in performing our obligations to you. However, in rare circumstances, we may be prevented from doing so because of an act of God, act of State, riot, insurrection, civil commotion, strike, sanctions, boycott, embargo or any other circumstance beyond our reasonable control. If that happens, we will try to let you know about it as soon as we reasonably can. Where those circumstances prevent us from providing Services to you, our obligations to you will be suspended in relation to the affected Services and we are not liable to you in those circumstances.
- 11.4. 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.

Our liability to you

- 11.5. Subject to clause 11.1, if we or anyone described in clause 11.4 are ever liable to you for losses arising from our breach of this Agreement or for our negligence, our maximum combined obligation to pay damages or losses is limited to \$5,000 for any one event and a total of \$10,000 in respect of all events in any 12 month period.
- 11.6. We accept our liability to you for breach of contract or negligence and as provided for in the Consumer Guarantees Act 1993 and the Fair Trading Act 1986. However, we are not liable for loss to the extent that it is caused or contributed to by you.

Your liability to us

- 11.7. You accept your liability to us for your breach of this Agreement with us or your negligence. However, you are not liable for loss to the extent that it is caused by us.

Minimise your loss

- 11.8. If you suffer any loss as a result of this Agreement, you must take reasonable steps to avoid or minimise your loss. We are not liable for any loss that results from your failure to take those reasonable steps. Subject to clause 11.1, we will not be liable to you

and you will not be liable to us for any indirect or consequential loss, or for any loss of profits, revenue, goodwill or business arising from a breach of this Agreement or negligence.

12. Privacy and credit checks

- 12.1. Our Privacy Policy forms part of our agreement with you and sets out how we collect, use and disclose your personal information in order to supply you with the Services and other uses. This policy is available on our website at <https://business.2degrees.nz/privacy-policy> We may record calls you make to us to verify information and for staff training purposes.
- 12.2. If another one of our customers 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 support@business.2degrees.nz. You agree that personal information that we have obtained from you can be shared with others, 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.
- 12.3. You are entitled to see any personal information we hold about you (although you must pay our reasonable charges for our time and resources in making it available) and to request that any incorrect personal information be corrected.

Credit checks

- 12.4. We may require credit references and other credit information from time to time. We may also supply your information to a credit reference agency, in order to check your credit status. They may hold this information for up to two years. The information we share with credit reporting agencies includes information to ensure that those agencies are able to accurately identify individuals, information about an individual's credit accounts (such as type of accounts and amount of credit), information relating to the circumstances of any credit default and information about credit non-compliance action.
- 12.5. Your rights in relation to credit information are set out in schedule 4 of the credit reporting privacy code. For more information, visit the Office of the Privacy Commissioner's website www.privacy.org.nz/credit-reporting-privacy-code.

13. Notices

- 13.1. 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.
- 13.2. Email is our primary method of communicating with you. It is your responsibility to keep us informed of your most recent and active email address. We will not be liable for you not receiving notices if we have an incorrect, inactive or unused email address. If you contact us through the preferred contact email address you register with us when you create your

account, we will take this to mean you are the account holder and have authority on the account. Please keep access to your preferred email account secure.

- 13.3. If your contact details change you must advise us of the new details as soon as possible.
- 13.4. Except where you wish to terminate your Services with us (in which case you must follow the procedure in clause 10), if you wish to notify us of anything you can do so by writing to us at P.O. Box 302362, North Harbour, Auckland, or email support@business.2degrees.nz We may require you to confirm in writing any advice you give us by phone.

14. Changes

- 14.1. We can change these terms from time to time as provided in this clause 14. We will inform you of any change by emailing or writing to you, or by providing relevant information on our website. Our latest terms and conditions are available at <https://business.2degrees.nz/legal-contracts>
- 14.2. If we reasonably determine that a change to these terms will be neutral or positive for you, we can make the change immediately and do not need to give you prior notice and you will not be able to terminate the Service which is the subject of the change.
- 14.3. If we reasonably determine that a change will have a minor detrimental effect upon you, we will give you at least 10 days advance notice of the change.
- 14.4. If you can show us that any change to these terms will have a material detrimental effect on you and we proceed with the change and you are on a fixed term contract, you will be able to terminate the relevant Service or change Plans without any Early Termination Fee or transfer charge.
- 14.5. We will consider you to be affected by a change (and therefore provide you notice where required) if you have used or have been billed for that particular element of the Service affected by the change during the three months (or up to six months where we consider it appropriate) before the date of our notice.

15. Fair use policy

- 15.1. Our Fair Use Policy has been developed by reference to average customer profiles and estimated customer usage of our Services. From time to time, we may monitor usage patterns. If your usage of our Services:
 - a) materially exceeds estimated use patterns over any week or month,
 - b) is inconsistent with either normal usage patterns and/or the types of uses and purposes for which we communicate that the Services are to be used for, and/or
 - c) includes activities such as auto-dialling, continuously call (or text)-forwarding, bulk texting by machines, automated texting, tele-marketing, call centres, and use of cellular trunking units (CTUs),

- d) then your usage will be excessive and/or unreasonable in accordance with this Fair Use Policy and 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. If your 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 and/or withdraw your access to the Services. We may publish on our Website additional terms, requirements and/or policies relating to fair use that apply to some or all of the Services which will provide further rules and details around how such Services can be used. We will do this to help us prevent spamming, bullying or fraud and to ensure that excessive use of such Services does not prevent our customers from enjoying such Services (for example, by affecting our Network or a specific cell tower).

16. General

Assignment

- 16.1. 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 and we will use best endeavours to provide notice in advance of any such transfer.

Delay

- 16.2. 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.

Applicable law

- 16.3. Any dispute regarding the provision of our Services under these terms is to be determined by New Zealand courts.

17. Definitions

- 17.1. The following definitions and rules of interpretation apply unless the context requires otherwise:

Additional Services means the value added, optional services offered by us from time to time (such as email, data, SMS, Roaming, and Video Calling) which may incur a fixed recurring Charge and/or other Charges. Full information about these Services are available in your Plan or at our website,

Agreement means this Agreement, including these Terms and Conditions, any and all annexures, schedules (including Service Schedules) and attachments to this Agreement, the Plans for Services acquired in connection with this Agreement and expressly includes any variation, replacement or substitution of them from time to time.

Charges means amounts payable to us by you for the Services, being amounts specified in your Plan, the Service Schedule or elsewhere in this Agreement, and for Services for which charges are not specified, the standard amounts charged by us for such Services.

Confidential Information of a party means all information (except information in the public domain other than as a result of a breach of an obligation of confidentiality) regarded by that party or any Related Company as being confidential, whether the other party became aware of the information before or after entering into this Agreement. Confidential Information includes the terms of this Agreement.

Due Date means the date by which a Charge is payable as notified to you on your bill which we will endeavour to make available to you 1-2 days after the start of your billing period.

Equipment means Equipment supplied by or on behalf of Vocus (other than Equipment Sold).

Emergency means any actual or apprehended event or condition that in our opinion may endanger the safety or health of a person, or damage any property or cause interruption to any Service or affect in any way the normal operation of our Network or any interconnected network or expose any person to legal liability or to any loss, damage or expense.

Equipment means any hardware, software or other infrastructure used in connection with a Service.

Equipment Sold means Equipment sold by us to you under this Agreement and for which the Charges in relation to the Equipment sold have been received in full by us.

Fair Use Policy means a fair use policy as referred to in clause 15.1, as amended from time to time in accordance with this Agreement.

Fixed Charge means a Charge that is fixed and is not calculated by reference to volumes of data transferred or stored, or time online, or other variable factors.

GST means goods and services tax charged in accordance with the Goods and Services Tax Act 1985.

Internet Services means Services that provide Internet access and email and other Services provided in conjunction.

Invoice means an account rendered by us for Charges.

Mobile Device means the mobile phone or other telecommunications device (which incorporates a SIM) which is compatible with and operates on our Network and is used by you to access the Services.

Minimum Term means the minimum period stated in your relevant Plan details provided to you at the time of entering the Plan unless another period is specified in respect of this Agreement or one or more Services.

Network means the telecommunications network (including Equipment) owned by us and/or any of our

Related Companies which we use to provide the Services to you and other customers and includes (if applicable) any connected telecommunications network.

Other Supplier means Spark New Zealand Limited (or its related companies) or other third-party suppliers (whether to us or to you directly) of goods or Services in relation to the Services.

Plan means one of the different levels (by reference to such factors as we decide, for example, mode, price, speed, volumes of data, regional or other availability and Minimum Term) of Services from time to time offered by us.

Prepaid Plan means the relevant Prepaid Service pricing plan you choose from time to time.

Related Company means a related company as defined in section 2 of the Companies Act 1993

Residential Service means a Service which is of a type, or which is supplied on terms, which we designate for residential or private use.

Roaming means an Additional Service that allows you to use your Mobile Device in countries other than New Zealand.

Service means the Services specified in each Service Schedule and such other Services as we agree to supply to you. References to Services include the sale of Equipment.

Service Schedule means a schedule to this Agreement and the terms published or notified by us as being applicable to the supply of a Service from time to time.

SIM means the subscriber identity module/s (SIM) that we provide to you that allows you to insert into a Mobile Device and access our Services.

Orcon means that business name and/or trademark owned and used by Orcon.

SMS means a short message service, a type of text messaging on Mobile Devices.

we, our or us means CallPlus Services Limited Company Number 1271483 or Orcon Limited Company Number 1008544as applicable.

Website <https://business.2degrees.nz/home> and all associated pages.

you or your means the customer who is party to this Agreement.

Interpretation

- 17.2. The following rules of interpretation apply on any matter affecting the proper interpretation construction of this Agreement:

Headings: headings are for convenience only and do not affect the interpretation of this Agreement;

Inconsistency: in the event of inconsistency, the parts of this Agreement will have the following order of priority, first the Table, second each Service Schedule and third other parts of this Agreement, including these Core Terms and Conditions;

Singularity: the singular includes the plural and conversely;

Grammar: where a word or phrase is defined, its other grammatical forms have a corresponding meaning;

Including: to avoid doubt, the word including is not intended to be exhaustive in operation and is to be interpreted as including but not limited, unless expressly provided to the contrary;

Construction: no rule of construction or interpretation applies to disadvantage a party because that party prepared or was responsible for the preparation of this Agreement or any part of it;

Reference to Currency: A reference to currency is a reference to New Zealand currency unless expressly stated to the contrary.

References to Persons: a reference to a person includes a natural person, partnership, joint venturer, government department or agency, body corporate, an unincorporated body or other legal entity and conversely;

References to Parties: a reference to a party includes the party's successors and permitted assigns; and

Reference to Right or Obligation: a reference to a right or obligation of any two or more persons confers that right, or imposes that obligation, as the case may be, jointly and severally.