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# 2degrees

## Standard Terms and Conditions



## Important Information

These Standard Terms & Conditions apply to any new Services that are acquired, or existing Services that are renewed, by the Customer from on or after 9 October 2023. The Standard Terms & Conditions that apply to existing Services acquired prior to 9 October 2023 are available at <https://business.2degrees.nz/legal-contracts> under “Historical Terms and Conditions”

**Early Termination Charges:** If you acquire Services from 2degrees for a Fixed Period as set out on the relevant Service Order then you agree to pay the Charges for those Services for that Fixed Term. If the Services are terminated before the end of the Fixed Term, then you may be required to pay the Early Termination Charges for those Services under clause 43 (Effect of Termination) of these Standard Terms & Conditions.

**Changes to the Charges:** 2degrees can change the Charges under clauses 49 (Third Party Supplier Charges) and 50 (CPI) of these Standard Terms & Conditions. If 2degrees increases the Charges during the Fixed Term for a Service, you may have the right to terminate that Service with any Early Termination Charges being waived. However, if you terminate that Service because you have rejected increased Supplier Charges under clause 49 (Third Party Supplier Charges) you will need to pay any third-party costs incurred by 2degrees in relation to that termination, including any early termination charges payable to 2degrees' Third Party Suppliers.

STANDARD TERMS AND CONDITIONS	
<b>1. Agreement</b>	This Agreement comprises of: <ul style="list-style-type: none"> <li>(a) these <b>Standard Terms and Conditions</b></li> <li>(b) each <b>Service Order</b>;</li> <li>(c) each <b>Service Schedule</b>; and</li> <li>(d) the <b>Service Level Agreement</b>.</li> </ul>
<b>2. Priority</b>	If terms of this Agreement are inconsistent, the order of priority is: <ul style="list-style-type: none"> <li>(a) Service Order;</li> <li>(b) Service Schedule;</li> <li>(c) Service Level Agreement; and</li> <li>(d) Standard Terms and Conditions.</li> </ul>
DURATION	
<b>3. Duration of Agreement</b>	You agree that any Service(s) ordered by you under a Service Order, will be governed by this Agreement for the duration of the Service.
<b>4. Service Start Date</b>	The term of each Service starts from the RFS Date.
<b>5. Fixed Term</b>	We will provide each Service to you for its Fixed Term (unless that Service is terminated in accordance with this Agreement). After the Fixed Term, we will keep providing the Service to you on a month-to-month basis until the Service or this Agreement is terminated.
RELATED COMPANIES	
<b>6. Our Related Companies</b>	<ul style="list-style-type: none"> <li>(a) Our Related Companies can provide the Services, Hardware and Equipment to you and invoice you for the Charges.</li> <li>(b) The terms of our Agreement are given for the benefit of, and are enforceable by, our Related Companies in accordance with the Contract and Commercial Law Act 2017.</li> </ul>
<b>7. Your Related Companies</b>	Your Related Companies can purchase Services under our Agreement if you: <ul style="list-style-type: none"> <li>(a) provide us with your Related Company's full corporate details;</li> <li>(b) inform your Related Company of the contractual arrangements in our Agreement;</li> <li>(c) are responsible for the obligations of your Related Company (including payment) as if they were your own; and</li> <li>(d) ensure that your Related Company uses the Services consistently with the terms of our Agreement.</li> </ul>
<b>8. Credit Checks</b>	<ul style="list-style-type: none"> <li>(a) We may perform credit and/or reference check on you and your Related Companies (if applicable) prior to entering into this Agreement and/or a Service Order or otherwise from time-to-time during the Term of this Agreement.</li> <li>(b) Our Privacy Policy describes how we collect, use and disclose credit and/or reference checking information.</li> <li>(c) If we are not satisfied with the results of a credit check we can: <ul style="list-style-type: none"> <li>(i) immediately give you notice and terminate this Agreement; or</li> </ul> </li> </ul>

	(ii) require a personal guarantee prior to performing the Services or delivering the Hardware and/or Equipment.
<b>SERVICES</b>	
<b>9. Ordering Services</b>	<ul style="list-style-type: none"> <li>(a) You can purchase Services by entering a Service Order with us.</li> <li>(b) Neither party is obliged to enter a Service Order.</li> <li>(c) If you want to purchase additional Services, you need to enter a new Service Order with us.</li> <li>(d) We reserve the right to conduct feasibility studies, surveys or other service qualifications following execution of a Service Order. If we determine that the provision of the Services will, in our reasonable opinion, be unfeasible, we can terminate a Service Order or any part of it by giving to you prior written notice before the RFS Date.</li> </ul>
<b>10. Installation of Services</b>	<ul style="list-style-type: none"> <li>(a) We will install the Services in accordance with a Service Order.</li> <li>(b) We may need Third Party Suppliers to install some Services and we will let you know if this is the case.</li> <li>(c) You must provide us with access to your Premises to install the Services.</li> <li>(d) We will tell you the scheduled delivery date we plan to install and deliver the Services, having regard to the service delivery targets in the Service Level Agreement (if any), and will use reasonable efforts to commence installation as close as practicable to the service delivery targets.</li> </ul>
<b>11. Supply of Services</b>	<ul style="list-style-type: none"> <li>(a) We will supply the Services in accordance with our Agreement and in doing so will: <ul style="list-style-type: none"> <li>(i) use reasonable skill and care; and</li> <li>(ii) use people who have the necessary qualifications and skills.</li> </ul> </li> <li>(b) We do not warrant that any Service will be continuously available, fault free or fit for a particular purpose.</li> <li>(c) To the extent permitted by law all warranties and conditions that are not expressly set out in our Agreement are excluded.</li> </ul>
<b>12. Use of Services</b>	<ul style="list-style-type: none"> <li>(a) You must not use or attempt to use the Services: <ul style="list-style-type: none"> <li>(i) other than for the purpose we've specified and in accordance our Agreement and any other applicable user guide, policy, instructions, terms and conditions (if any);</li> <li>(ii) to break laws, infringe upon anyone else's rights, or harm property or people;</li> <li>(iii) in a way that damages, interferes with or interrupts the Service or our Network; or</li> <li>(iv) to re-supply or re-distribute the Service (or any part of it) without our prior express written consent (and if such consent is given, only in accordance with 2degrees' "Resupply Terms" published at <a href="https://business.2degrees.nz/legal-contracts">business.2degrees.nz/legal-contracts</a>).</li> </ul> </li> <li>(a) You must: <ul style="list-style-type: none"> <li>(i) obtain any required consents (including any landlord or authority) as may be necessary for your Services and provide reasonable assistance to allow us, our Third Party Suppliers to install, inspect, maintain, replace or remove the Services, our Network and Equipment;</li> <li>(ii) if relevant, provide and maintain your own network and network security;</li> <li>(iii) provide all reasonable assistance and take all safety precautions as may be reasonably necessary or otherwise requested by us to ensure safe and proper performance by us of all work at your Premises;</li> </ul> </li> </ul>

	<ul style="list-style-type: none"> <li>(iv) provide all necessary space and utility services (including electricity, earthing and air-conditioning) as reasonably required by us for the installation, provision and proper operation of the Equipment and for the provision of the Service; or</li> <li>(v) ensure that, prior to the connection of any cabling at your Premises: <ul style="list-style-type: none"> <li>A. any existing cabling at the Premises has been installed by a registered cabling service provider and meets minimum technical requirements as determined by the New Zealand Telecommunications Forum; and</li> <li>B. you have obtained all necessary consents from the owner of the premises (if not you).</li> </ul> </li> </ul>
<b>13. Training</b>	We may offer training to assist you to use the Services, which may incur an additional Charges as agreed in a Service Order.
<b>14. Fault reporting</b>	<ul style="list-style-type: none"> <li>(a) If there is a fault, you must firstly ensure the fault has not been caused by your equipment or software application.</li> <li>(b) You must report any faults in relation to the Services to the 2degrees network operations centre, as soon as reasonably practicable after you become aware of them.</li> <li>(c) We are not responsible for repairing faults caused by our Third Party Suppliers outside of our reasonable control, but will request that our Third Party Supplier repairs such faults.</li> <li>(d) You are responsible for repairing faults relating to your equipment and services not supplied by us.</li> <li>(e) If a fault was due to your equipment, software or failure to use the Services in accordance with our Agreement or any act or omission by you, we can charge you for our costs incurred in repairing the fault.</li> </ul>
<b>15. Rebates</b>	<ul style="list-style-type: none"> <li>(a) If we do not provide the Services at the service levels set out in the Service Level Agreement and you have reported that failure to us, you may be eligible for a rebate (if any) as set out in the Service Level Agreement.</li> <li>(b) The rebate is your sole remedy if we do not meet the required service levels.</li> </ul>
<b>16. Maintenance</b>	<ul style="list-style-type: none"> <li>(a) We and our Third Party Suppliers may conduct maintenance on our Network from time to time, and you acknowledge that this maintenance may impact the Services we provide to you.</li> <li>(b) We will use our reasonable efforts to tell you before conducting maintenance work in accordance with any Service Level Agreement (if applicable) and will use reasonable endeavours to perform all scheduled maintenance at times likely to minimise interference to you.</li> <li>(c) If we are required to perform unscheduled or urgent maintenance, then we will use reasonable efforts to provide prior notice to you, however you accept that such prior notice may not always be possible.</li> </ul>
<b>EQUIPMENT AND HARDWARE</b>	
<b>17. Equipment</b>	<p>If we provide you with Equipment:</p> <ul style="list-style-type: none"> <li>(a) the Equipment continues to be our property unless we sell it to you (and in that case title only passes to you when you pay us for it, and risk passes to you when we deliver it to you);</li> <li>(b) you must only use the Equipment for the Services in accordance with our instructions, and not modify, tamper with, reconfigure or otherwise interfere it;</li> <li>(c) you must take reasonable care of the Equipment and provide adequate and suitable space, power supply and environment for it;</li> <li>(d) you must return the Equipment to us no later than 10 Business Days after the related Service is terminated;</li> </ul>

	<p>(e) we can charge you for the full replacement cost of the Equipment if it is not returned in accordance with subclause (d) and/or for the repair or replacement costs of any Equipment that is lost, stolen or damaged, excepting any fair wear and tear; and</p> <p>(f) we will remedy any faults in the Equipment, provided that your use of the Equipment has been in accordance with our Agreement.</p>
<b>18. PPSR</b>	<p>With respect to the Equipment and Hardware (for which title has not yet passed to you) you:</p> <p>(a) grant us a security interest (as defined in the Personal Property Securities Act 1999) in all Equipment (or Hardware), (the "Secured Property") as security for payment of all Charges by you and your Specified Related Companies and for the performance by you of all your other obligations to us;</p> <p>(b) agree to do anything that we require (including signing any documents) and to promptly give us all assistance and information as we request to ensure that we have a perfected first ranking security interest in all Secured Property (and the proceeds thereof);</p> <p>(c) agree to waive your right to receive a copy of any verification statement under section 148 of the PPSA; and</p> <p>(d) agree that, to the maximum extent permitted by law, you have no rights under sections 114(1) (a), 116, 120(2), 121, 125, 126, 127, 129, 131, 133 and 134 of the PPSA.</p>
<b>19. Hardware</b>	<p>(a) Title to Hardware will pass to you when you pay us in full for it. Risk in the Hardware will pass to you when it is delivered to your nominated location.</p> <p>(b) Any Hardware you purchase from us is subject to the warranties given by the manufacturer in respect of the Hardware (if any apply at the time).</p> <p>(c) To the extent that we are lawfully able to do so, we will assign to you the benefit of any warranties given to us by the manufacturer of the Hardware.</p> <p>(d) To the fullest extent permitted by Law, we do not provide any warranties to you in respect of the Hardware in addition to those set out in clauses 19 (b) and (c).</p>
<b>20. Insurance</b>	<p>(a) You must keep:</p> <p>(i) all Equipment; and</p> <p>(ii) any Hardware that has been delivered to your nominated address but for which title has not yet passed to you,</p> <p>insured with an insurer of recognised standing, for the full replacement value, against loss or damage by fire, theft, accident and such other risks as are insured against by prudent persons engaged in a similar business to yours.</p> <p>(b) You must promptly provide us with evidence of such insurance on our request.</p>
<b>21. Your equipment</b>	<p>(a) You must ensure that any equipment you use in connection with the Services that has not been provided by us or our Third Party Suppliers is fully compatible with the Services and complies with Applicable Laws.</p> <p>(b) We do not warrant that such equipment will be compatible with the Services or will support your use of the Services or any Equipment or Hardware. If your equipment does not work properly you need to contact the supplier or manufacturer of your equipment for assistance.</p>
<b>PAYMENT AND TAX</b>	
<b>22. Invoice</b>	<p>(a) We will issue you a monthly invoice for the Charges.</p> <p>(b) We can start to invoice you for a Service from the RFS Date.</p>
<b>23. Payment</b>	<p>You must pay the invoiced Charges by the 20th day in the month following the invoice date in cleared funds and without set-off, counterclaim or deduction and free and clear of</p>

	and without deduction for or on account of any taxes, levies, imports, duties, charges (including intermediary bank charges), fees and withholdings of any nature.
<b>24. Invoice disputes</b>	You can dispute an invoice (or any part of it) only by: (i) notifying us in writing within 14 days of receiving the invoice of the reasons for disputing the invoice and (ii) paying the undisputed amount when due.
<b>25. Late payment</b>	If you pay late, we can: (a) suspend the Services after writing to you seeking payment; and/or (b) charge you interest at the rate set by our main trading bank plus 2%.
<b>26. GST</b>	Our charges exclude GST unless otherwise stated. You must pay the GST specified on the invoice.
<b>27. Withholding tax</b>	(a) You will pay the charges without withholding or deduction unless prohibited by law. (b) If you need to pay withholding tax, you will pay us an additional amount that will result in us receiving the full amount, which we would have received if no withholding or deduction had been made.
<b>PRIVACY AND CONFIDENTIALITY</b>	
<b>28. Privacy</b>	You agree that: (a) we can collect, use and disclose information about you and End Users, including the way in which the Services are used, in accordance with our Privacy Policy published at <a href="https://business.2degrees.nz/privacy-policy">business.2degrees.nz/privacy-policy</a> ; (b) we can send you marketing messages, electronic or otherwise, about (among other things) rewards, special offers, competitions and other promotions. You can unsubscribe from receiving marketing messages from us at any time; and (c) you have all necessary authority from each End User for our collection, disclosure and use of personal information in accordance with our Agreement and Privacy Policy.
<b>29. Confidentiality</b>	In relation to the other party's Confidential Information, each party will: (a) keep it confidential; (b) use it solely for the purpose of performing its obligations or exercising its rights under our Agreement; (c) not disclose it to any person, except its directors, officers, employees or professional advisors who need it to perform obligations, exercise rights or conduct audits in connection with the Agreement, or as required by Applicable Law; (d) ensure that such persons keep it confidential; and (e) return or destroy it on termination of this Agreement, except where it is necessary to keep it for regulatory reasons in secure archives.
<b>30. Customer reference</b>	We can publicly refer to you as a 2degrees customer in our marketing, sales, financial material, or reports. If you don't want us to refer to you as a customer, you must let us know in writing.
<b>INTELLECTUAL PROPERTY</b>	
<b>31. Ownership</b>	(a) Each party retains ownership of its own IPR. (b) All of the IPR in or to the Services, Hardware and Equipment are either owned by us or our Third Party Suppliers or licensors.

<b>32. Licence</b>	Each party grants the other party a licence to use the IPR owned by or licensed to it or its group companies and which the other needs to use for the purpose of providing or using the Services.
<b>33. Licence terms</b>	<p>Each licence will be:</p> <ul style="list-style-type: none"> <li>(a) non-exclusive, non-transferable, non-sublicensable licence;</li> <li>(b) subject to the licensee not copying, modifying, reverse engineering, adapting, unless expressly permitted by Applicable Law;</li> <li>(c) solely for the duration of the Services; and</li> <li>(d) in accordance with any Third Party licences.</li> </ul>
<b>34. Third Party Software (EULAs)</b>	<ul style="list-style-type: none"> <li>(a) By accessing and using Third Party Software you agree that: <ul style="list-style-type: none"> <li>(i) you have read and agree to be bound by the terms of each Third Party EULA; and</li> <li>(ii) if the EULA is terminated, we can terminate the relevant Service pursuant to clause 41(a)(i)(B) (We can terminate).</li> </ul> </li> <li>(b) Without limiting clause 34(a), you agree that: <ul style="list-style-type: none"> <li>(i) our licensors retain all rights, title and interest (including Intellectual Property Rights) in and to any Third Party Software;</li> <li>(ii) the Third Party Software is Confidential Information of our licensors and you must not use or disclose that information without our or our licensor's prior written consent;</li> <li>(iii) you will not: <ul style="list-style-type: none"> <li>A. assign, transfer, lease or rent the Third Party Software to any third party;</li> <li>B. attempt to modify or create any derivative work of the Third Party Software;</li> <li>C. remove, modify or obscure any copyright, trademark or other proprietary rights notices that are contained in or on the Third Party Software; and</li> <li>D. reverse assemble, disassemble, reverse engineer or otherwise attempt to derive source code, the underlying ideas, algorithms, structure or organisation of the Third Party Software;</li> </ul> </li> <li>(iv) you will indemnify and hold us harmless from all claims made by any Third Party Software Licensor arising from: <ul style="list-style-type: none"> <li>A. any breach of our Agreement or any agreement or licence entered between you and the Third Party Software Licensor or between the End Users and the Third Party Software Licensor; or</li> <li>B. any improper, unlawful or unauthorised use or dealing by you or the End Users with the Third Party Software.</li> </ul> </li> </ul> </li> </ul>
<b>LIABILITY</b>	
<b>35. No indirect loss</b>	<p>Neither party is liable for:</p> <ul style="list-style-type: none"> <li>(a) any loss (direct or indirect) of profit, revenue, anticipated profits or savings, or goodwill;</li> <li>(b) any loss or corruption of data;</li> <li>(c) loss or damage to credit rating or increased financing costs;</li> <li>(d) any indirect or consequential losses, regardless of whether they were contemplated by either of the parties when this Agreement was entered into or when the relevant Service Order was entered under it,</li> </ul> <p>unless such liability cannot be excluded under the Applicable Law.</p>



<b>36. Liability cap</b>	<p>(a) A party's aggregate liability under this Agreement (whether in contract, tort (including negligence), breach of statutory duty, indemnity or otherwise) during each consecutive 12 month period starting on the RFS Date of the first Service ordered under this Agreement (<b>Liability Period</b>) will not exceed the amount of the Charges paid or payable in respect of that Liability Period.</p> <p>(b) If the Liability Period is less than 12 months, a party's liability will not exceed the monthly Charge paid or payable for that Liability Period multiplied by 12.</p>
<b>37. Exclusions</b>	<p>The limitations of liability under clause 36 (Liability Cap) will not apply to limit:</p> <p>(a) either party's liability to the other party for any willful breach of our Agreement or fraudulent act or omission; or</p> <p>(b) your liability to pay the Charges that are payable under our Agreement.</p>
<b>38. Contributory Negligence</b>	<p>Each party's liability under this Agreement is limited to the extent that it is contributed or caused by the other party's breach of our Agreement or negligent act or omission.</p>
<b>THIRD PARTY SUPPLIERS</b>	
<b>39. Third Party Suppliers</b>	<p>In order to provide you the Services, Hardware and Equipment, we may enter into arrangements with Third Party Suppliers. You agree that:</p> <p>(a) we can share information about you with our Third Party Suppliers to the extent necessary for us to provide you with the Services, Hardware and Equipment;</p> <p>(b) our Third Party Suppliers do not confer any benefit or right on you; and</p> <p>(c) to the maximum extent permitted at law, our Third Party Suppliers will not be liable to you in connection with the Services, Hardware or Equipment. This clause is for the benefit of our Third Party Suppliers and is intended to be enforceable by them under the Contract and Commercial Law Act 2017.</p>
<b>TERMINATION</b>	
<b>40. You can terminate</b>	<p>Subject to clause 43 (Effect of termination):</p> <p>(a) You can terminate this Agreement or a Service at any time by giving us 30 days' written notice.</p> <p>(b) You can terminate this Agreement or a relevant Service at any time by giving us written notice if:</p> <p>(i) we materially breach our Agreement and:</p> <p style="margin-left: 40px;">A. we fail to remedy that breach within 14 days after written notice from you asking us to do so; or</p> <p style="margin-left: 40px;">B. the breach is not capable of remedy; or</p> <p>(ii) we suffer an Insolvency Event.</p> <p>(c) You can terminate a Service:</p> <p>(i) at any time before the RFS Date for that Service by giving us written notice;</p> <p>(ii) if we increase the Charges during the Initial Term for that Service under clause 49 (Third Party Supplier Charges) provided that notice of termination must be given before the increased Charges for that Service come into effect; or</p> <p>(iii) if we increase the Charges under clause 50 (CPI) during the Fixed Term for that Service, provided you give us written notice within 30 days of the increased Charges coming into effect.</p>
<b>41. We can terminate</b>	<p>(a) We can terminate this Agreement or a relevant Service at any time by giving you written notice if:</p> <p>(i) you materially breach our Agreement and:</p>

	<ul style="list-style-type: none"> <li>A. you fail to remedy that breach within 14 days after written notice from us asking you to do so; or</li> <li>B. the breach is not capable of remedy;</li> <li>(ii) you fail to pay any amount due under our Agreement within 14 days of the date that we write to you seeking payment;</li> <li>(iii) you suffer an Insolvency Event; or</li> <li>(iv) we are required to do so by law or government direction.</li> </ul> <p>(b) We can terminate a Service at any time by giving you written notice if:</p> <ul style="list-style-type: none"> <li>(i) we cannot provide the Service in accordance with our Agreement because of a Third Party Supplier failure (not caused or contributed to by us);</li> <li>(ii) we cannot obtain or retain any permit, license, lease, or consent required to provide the Service;</li> <li>(iii) the Service is not feasible in accordance with clause 9(d) (Ordering Services) and we will not be liable to you in connection with the termination of the Service; or</li> <li>(iv) the Fixed Term for the Service has expired.</li> </ul>
<p><b>42. We can suspend</b></p>	<p>We can suspend the Services if:</p> <ul style="list-style-type: none"> <li>(a) you fail to pay any amount due under our Agreement within 14 days of the date that we write to you seeking payment;</li> <li>(b) we believe it is necessary to do so to maintain, protect or restore any part of our Network; or</li> <li>(c) there is an emergency,</li> </ul> <p>but only for as long as it is necessary to do so.</p>
<p><b>43. Effect of termination</b></p>	<ul style="list-style-type: none"> <li>(a) On termination of this Agreement: <ul style="list-style-type: none"> <li>(i) all Services under our Agreement will automatically terminate;</li> <li>(ii) you must immediately stop using the Services, return all Equipment to us and pay us all Charges due under our Agreement; and</li> <li>(iii) if termination occurred under clauses 40(a) (You can terminate), or 41(a)(i)-(iii) (We can terminate), then you must also pay us an Early Termination Charge for each Service that was terminated during its Fixed Term.</li> </ul> </li> <li>(b) On termination of an individual Service (but not this Agreement): <ul style="list-style-type: none"> <li>(i) you must immediately stop using that Service, return all Equipment relating to that Service to us, and pay us all Charges due under the relevant Service Order;</li> <li>(ii) if termination occurred under clauses 40(a) (You can terminate), or 41(a)(i)-(iii) (We can terminate), then you must pay us an Early Termination Charge for that Service if it was terminated during its Fixed Term;</li> <li>(iii) if termination occurred under clause 40(c)(i) (You can terminate), then you must pay us all infrastructure, equipment and installation costs incurred by us in connection with preparation for the provision of the Service including, costs payable to our Third Party Suppliers; and</li> <li>(iv) if termination occurred under clause 49 (Third Party Supplier Charges) then you must pay us any third party costs we incur in relation to that termination, including any early termination charges payable to our Third Party Suppliers.</li> </ul> </li> </ul>
<p><b>44. Force Majeure</b></p>	<p>If a Force Majeure event occurs which prevents a party (<b>Affected Party</b>) from performing any or all of its obligations under our Agreement:</p>

	<p>(a) the Affected Party is not liable for that failure or delay and is not required to perform its obligations for the duration of the Force Majeure provided it gives the other party notice of the Force Majeure Event as soon as reasonably practicable; and</p> <p>(b) either party can terminate the impacted Service(s) with immediate effect by giving written notice to the other party if the Affected Party is subject to a Force Majeure event that continues for more than 30 consecutive days.</p>
<b>DISPUTES</b>	
<b>45. Good faith resolution</b>	The parties must use their best endeavours and act in good faith to resolve any dispute arising in connection with this Agreement by negotiation.
<b>46. Senior Executive resolution</b>	If the parties have not resolved any dispute within 20 Business Days of notification of the dispute, the dispute must be escalated to the relevant senior executive (or equivalent or delegate) of each party for resolution.
<b>47. Final resolution</b>	If the parties fail to resolve the dispute within a further 20 Business Days of notification of the dispute, either party may take such additional action as it deems necessary to resolve the dispute, including initiating legal proceedings.
<b>48. Interlocutory relief</b>	Nothing in this Agreement prevents either party from seeking urgent interlocutory relief.
<b>CHANGING THE CHARGES</b>	
<b>49. Third Party Supplier Charges</b>	<p>(a) Any charges payable in respect of those services from a Third Party Supplier (<b>Third Party Supplier Charges</b>) that are known when the parties enter a Service Order will be included in the Charges or otherwise specified on the Service Order. Any Third Party Supplier Charges that can only be estimated when the parties enter a Service Order will be separately identified and described as being an estimate only.</p> <p>(b) If a Third Party Supplier has a right to increase or introduce new Third Party Supplier Charges under its arrangements with us and does so, we will provide the increased or new Third Party Supplier Charges (with any supporting information) to you for approval. We can place any non-provisioned Services that are dependent on the Supplier's services on hold pending your approval.</p> <p>(c) You must approve or reject the increased or new Third Party Supplier Charges within 10 Business Days of receipt from us. If you approve (or do not reject in writing) the increased or new Third Party Supplier Charges within 10 Business Days (and any validity period imposed by the Third Party Supplier), those Third Party Supplier Charges will be invoiced to you and any Services that were placed on hold will recommence. If you reject the new Third Party Supplier Charges then the relevant Service will automatically terminate.</p>
<b>50. CPI</b>	In July each year, we can increase the Charges by the CPI increase for the previous 12 months by giving you written notice. The revised Charges will be effective from 1 July that year.
<b>CHANGING OUR AGREEMENT</b>	
<b>51. Changes required by Applicable Law</b>	We can vary our Agreement (including changing or introducing new charges or changing or withdrawing Services) where required to comply with Applicable Law. We will notify you of such change as is reasonably practicable.
<b>52. Changes in writing</b>	Except for the changes made in accordance with clause 49 (Third Party Supplier Charges), 50 (CPI) and 51 (Changes required by Applicable Law) and any Service Schedule, any amendment to our Agreement must be in writing and signed by the parties.
<b>ASSIGNMENT AND SUBCONTRACTING</b>	

<b>53. Assignment</b>	<p>(a) We can assign or transfer our rights and obligations under our Agreement to any third party.</p> <p>(b) You can only assign or transfer your rights and obligations under our Agreement to a third party with our prior written consent (not to be unreasonably withheld or delayed).</p>
<b>54. Subcontracting</b>	We can subcontract some or all of our obligations under our Agreement but will be responsible to you for the acts or omissions of our subcontractors. Each of our subcontractors and delegates will have the benefit of any terms of our Agreement that confer benefits on us.
<b>GENERAL</b>	
<b>55. KiwiRail</b>	A portion of the Services may traverse cable infrastructure owned by KiwiRail Holdings Limited ( <b>KiwiRail</b> ). The agreement between us and KiwiRail requires you to acknowledge, and by using the Services you do acknowledge, the "KiwiRail Provisions" published at <a href="http://business.2degrees.nz/legal-contracts">business.2degrees.nz/legal-contracts</a> .
<b>56. Consumer Guarantees Act and Fair Trading Act</b>	<p>Each party acknowledges and agrees that:</p> <p>(a) the Services, Equipment and Hardware are supplied and acquired in trade and for a business purpose;</p> <p>(b) to the extent permitted by law, the parties are contracting out of the Consumer Guarantees Act 1993 and sections 9, 12A, 13 and 14(1) of the Fair Trading Act 1986, and it is fair and reasonable to do so.</p>
<b>57. Health and Safety</b>	<p>(a) Each party will comply with the Health and Safety at Work Act 2015 and any associated regulations (<b>HSWA</b>) in all respects in performing its obligations under or in connection with our Agreement.</p> <p>(b) To the extent that their respective duties under the HSWA overlap, each party will, so far as is reasonably practicable, co-operate, collaborate and co-ordinate with each other and any other PCBU (as "PCBU" is defined in the HSWA) who has a duty in relation to work being carried out under or in relation to our Agreement.</p>
<b>58. Inclusive wording</b>	Any phrases introduced by the terms "including", "include", "in particular" or any similar expression are deemed to have the words "without limitation" following them and are construed as illustrative and do not limit the sense of the words preceding those terms.
<b>59. Survivability</b>	<p>(a) Any provision of this Agreement which expressly or by implication is intended to come into or continue in force on or after termination of this Agreement (in whole or part) will continue in force.</p> <p>(b) This Agreement will be binding on the parties and their successors, trustees, permitted assigns or receivers but no other person.</p>
<b>60. Severance</b>	Any provision of this Agreement found to be unenforceable does not form part of our Agreement, but the remaining provisions continue in full force.
<b>61. Notices</b>	All notices must be sent to the parties' respective registered office set out in this Agreement by registered post or email to an email address previously used or advised by the other party.
<b>62. Entire Agreement</b>	Our Agreement represents the entire agreement between the parties relating to its subject matter and supersedes any previous agreements between the parties.
<b>63. No reliance</b>	The parties acknowledge that, in entering into this Agreement, neither party has relied upon any statement or warranty made, or agreed to, by any person, except those expressly provided for by this Agreement.
<b>64. Further assurances</b>	(a) Each party will from time to time do all things (including executing all documents) necessary or desirable to give full effect to our Agreement.

	(b) Each party acknowledges that it has obtained legal advice, or had the opportunity to obtain legal advice, in connection with our Agreement.
<b>65. Authority to sign</b>	Each party warrants that an individual executing this Agreement has the full and proper authority to do so.
<b>66. Counterparts</b>	This Agreement can be executed in one or more counterparts, each of which is deemed to be an original and all of which taken together will constitute one and the same agreement.
<b>67. Governing law and jurisdiction</b>	Our Agreement is governed by the laws of New Zealand and the parties submit to the jurisdiction of the New Zealand courts.
<b>DEFINITIONS</b>	
<b>2degrees (and includes references to 'we' or 'us')</b>	means Two Degrees Mobile Limited (NZCN: 1117222)
<b>Activation</b>	means the activation of a Connection under the relevant Mobile Services.
<b>Agreement</b>	has the meaning given in clause 1.
<b>Applicable Law</b>	means law, regulation, binding code of practice, rule or requirement of any relevant government or governmental agency, professional or regulatory authority, each as relevant to (i) us in the provision of the Services and/or (ii) you in the receipt of the Services or the carrying out of your business.
<b>Confidential Information</b>	means of a party means any information marked as confidential or which by its nature the other party knows or ought to know is confidential (regardless of the form of the information and when it was acquired) and includes trade secrets, technical knowledge, concepts, designs, plans, precedents, processes, methods, techniques, know-how, innovations, ideas, procedures, research data, financial data, databases, personnel data, computer software and programs, customer and supplier information, correspondence and letters and papers of every description including all copies or extracts of same relating to the affairs or business of the party.
<b>Connection</b>	means a connection to our Network using a SIM card issued by us.
<b>Charges</b>	means the charges and fees for the Services, Equipment or Hardware including as set out in a Service Order.
<b>CPI</b>	means the consumer price index (all groups) as published by Statistics New Zealand or its successor.
<b>Customer (and includes references to 'you')</b>	means the Customer described in the Service Order and any of its employees, subcontractors, agents and representatives.
<b>Early Termination Charge</b>	means in respect of each Service a charge payable by you if that Service is terminated during its Fixed Term, and unless otherwise specified in a Service Schedule, this will be an amount equal to the Charges remaining to the end of the Fixed Term for the Service.
<b>End User</b>	means an end user of the Services.
<b>Equipment</b>	means any hardware or equipment that is owned by us or any of our Third Party Suppliers and is provided to you (and your Related Companies) to access and/or use the Services, and includes any software that we licence to you for the purposes of your use and access to the Services and Equipment but excludes any Hardware.
<b>Fixed Term</b>	means the term of an individual Service as specified in a Service Order.

<b>Force Majeure</b>	<p>means any event or circumstance beyond a party's reasonable control (including acts of God, fires, flood, landslide, earthquake, natural disaster, war, national emergency, terrorist acts, epidemics, riots, civil disturbance or governmental action) except to the extent that such event or circumstance is caused by:</p> <p>(a) a lack of funds for any reason; or</p> <p>(b) the party's own negligence.</p>
<b>GST</b>	<p>means goods and services tax or value added tax as applicable under the relevant jurisdiction.</p>
<b>Hardware</b>	<p>means any hardware or equipment supplied by us and purchased by you (or any of your Related Companies) under our Agreement but excludes any Equipment.</p>
<b>Insolvency Event</b>	<p>means in relation to a party:</p> <p>(a) a receiver, receiver and manager, trustee, administrator, other controller (as defined in the Companies Act or similar official is appointed over any of the assets or undertaking of the party;</p> <p>(b) the party suspends payment of its debts generally;</p> <p>(c) the party is or becomes unable to pay its debts when they are due or is or becomes unable to pay its debts or is presumed to be insolvent within the meaning of the Companies Act;</p> <p>(d) the party enters into or resolves to enter into any arrangement, composition or compromise with, or assignment for the benefit of, its creditors or any class of them;</p> <p>(e) the party ceases to carry on business or threatens to cease to carry on business;</p> <p>(f) a resolution is passed or any steps are taken to appoint, or to pass a resolution to appoint, an administrator;</p> <p>(g) an application or order is made for the winding up or dissolution of the other party, or a resolution is passed, or any steps are taken to pass a resolution, for the winding up or dissolution of the other party, otherwise than for the purpose of an amalgamation or reconstruction that has the prior written consent of the first party; or</p> <p>(h) the party threatens to do any of (a) – (g).</p>
<b>IPR</b>	<p>means:</p> <p>(a) rights in, and in relation to, any patents, registered designs, design rights, trade marks, trade and business names (including all goodwill associated with any trade marks or trade and business names), copyright, moral rights, databases, domain names, topography rights and utility models, and includes the benefit of all registrations of, applications to register and the right to apply for registration of any of the foregoing items and all rights in the nature of any of the foregoing items, each for their full term (including any extensions or renewals thereof) and wherever in the world enforceable;</p> <p>(b) rights in the nature of unfair competition rights and rights to sue for passing off; and</p> <p>(c) trade secrets, confidentiality and other proprietary rights, including rights to know how and other technical information.</p>
<b>Mobile Services</b>	<p>means the Services that we provide you in accordance with the relevant Mobile Service Schedule.</p>
<b>Network Operator</b>	<p>means an entity with whom we have entered into an agreement or arrangement for:</p> <p>(a) interconnection or international roaming (directly or indirectly) providing for the passing of customer generated or customer destined communications between us and that entity; or</p> <p>(b) the access of wholesale services.</p>

<b>Our Network</b>	means our network infrastructure, including network hardware such as routers, switches, cabling that are essential in facilitating the exchange of data communications.
<b>Premises</b>	means any premises at which we provide the Services, require access to supply the Services, or deliver and install the Equipment or Hardware, as specified in a Service Order.
<b>Related Company</b>	has the meaning given in the Companies Act 1993.
<b>RFS Date or 'ready for use'</b>	means: (a) in relation to a Mobile Service, the date of Activation of the first Connection; and (b) in relation to any other Service, either: (i) the date we notify you as the RFS Date; or (ii) if we have not notified you of the RFS Date, the earlier of the date on which we first make the Service available to you or the date you begin using the Service.
<b>Services</b>	means services provided to you under our Agreement as set out in a Service Order.
<b>Service Level Agreement</b>	means the 2degrees service level agreement, which sets out the service levels for the Services (based on access type), as amended by us from time to time and published at <a href="https://business.2degrees.nz/legal-contracts">business.2degrees.nz/legal-contracts</a> .
<b>Service Order</b>	means an order (in a form approved by us) that is agreed by both parties, which sets out the Services, Equipment and/or Hardware being provided to you, including the Charges, and any Fixed Term or special conditions that apply to those Services, Equipment or Hardware.
<b>Service Schedule</b>	means a 2degrees service schedule, which sets out the specific terms relating to an individual Service, as amended by us from time to time and published at <a href="https://business.2degrees.nz/legal-contracts">business.2degrees.nz/legal-contracts</a> .
<b>Third Party EULA</b>	means in respect of any Third Party Software, the licence terms that apply to your use of that Third Party Software.
<b>Third Party Suppliers</b>	means any Network Operator, 2degrees Related Company or other third party we engage to provide services, systems, products and infrastructure that form part of, or are used by us to provide, the Services, Hardware and Equipment to you.
<b>Third Party Software</b>	means any software we use or make available to you in connection with the Services.
<b>Third Party Software Licensors</b>	means the licensor of Third Party Software.