

Interpretation

"Agreement"	<i>means this Agreement between us, which includes these terms and the Application Form(s) for Services provided.</i>
"Application Form"	<i>means the form completed and signed by you describing the Services provided, the Site at which the Services are to be provided, and any other detail pertaining to the delivery of the Services as well as your billing details.</i>
"Customer" and "You"	<i>means the applicant or your permitted successors and associated companies (collectively "the Customer") who use the Services of UCS whether as principal or agent.</i>
"Equipment"	<i>means any equipment (including software) which we may or may not own which we or our Suppliers provide to you in connection with the provision of Services.</i>
"Initial Term"	<i>means the minimum period that both parties agree that this Agreement continues in force from the Service commencement date and in the absence of an explicit timeframe will be 12 months. The Initial Term may be updated by re-signing a renewed or updated Agreement and the new Initial Term will then supersede the original Initial Term.</i>
"Services"	<i>means any service or part of a service which we have agreed to provide to you on a business to business basis and may be directly provided by UCS or its Suppliers. Services provided directly by UCS include customer billing and 1st level customer support by phone.</i>
"VoIP"	<i>any telephony Service delivered via a data circuit utilising SIP Trunks.</i>
"Supplier"	<i>means any company which supplies services which UCS provides to you the Customer.</i>
"UCS", "we" and "us"	<i>means UCS Limited trading as Ufone.</i>

Invoicing and Payment

- 1.1 UCS will invoice the Services once a month as soon after the 1st of the month as practicable usually in advance for line rentals and other standing charges and in arrears for traffic charges and other one-off charges.
- 1.2 The Customer shall pay UCS all charges for the Services on a monthly basis unless otherwise stated on the Customer application form. Payment shall be made by the 20th of each month or as specified on the invoice.
- 1.3 You agree to pay each invoice by the payment date stated on the invoice without set-off, counterclaim or deduction.
- 1.4 To qualify for the prompt payment discount if offered by us, payment must be received by UCS by 5pm on the 20th of the month following supply of Services, or the due date as specified on the invoice.
- 1.5 The Customer shall pay a late payment fee on all overdue accounts not paid by the last day of the month following supply of Services, at a rate of \$10 or 1.5% of the outstanding amount per month whichever is greater.
- 1.6 The Customer is liable for all enforcement costs including on a solicitor/client basis, arising out of any breach of this Agreement by the Customer.
- 1.7 UCS reserves the right to alter or change rates and discounts without prior notification. All rates exclude GST and include a prompt payment discount unless otherwise stated.

Disputed Accounts

- 2.1 If the Customer believes that an invoice contains a mistake, the Customer must contact UCS as soon as possible and UCS will investigate the matter. The Customer may only withhold payment of the disputed amount and must pay undisputed amount by the due date.
- 2.2 If UCS agrees that there is a mistake in an invoice to the Customer, UCS will correct the mistake and the corrected full outstanding amount will be payable by the due date or if the due date is passed the full outstanding amount will be payable immediately.
- 2.3 UCS will only backdate credits to a maximum of 180 days.

Equipment

- 3.1 UCS or its authorised representatives may install Equipment to the Customer's premises for the sole purpose of connecting the Customer to the Telecommunications Network.
- 3.2 The Equipment remains the property of UCS or its Suppliers who shall be entitled to access the Customer's premises for the purpose of repairs and maintenance, and removal of Equipment in the event of non-payment or at the termination of the Agreement by either the Customer or UCS.
- 3.3 You agree that UCS holds a security interest in the Equipment and may register a financing statement on the Personal Property Securities Register (PPSR). You agree to sign any documents and provide such information as may be required to register a financing statement on the PPSR.

Term and Termination

- 4.1 This Agreement commences on the date the Services commence and remains in force for the Initial Term from that date and also continues after the expiry of the Initial Term subject to clause 4.2.
- 4.2 On expiry of the Initial Term provided that neither party has given notice of termination in accordance with this clause, this Agreement will continue in full force and effect for a further 12 month term. Either party may terminate this Agreement at the end of the current term by giving at least 30 days notice in writing to the other party.
- 4.3 In the event that the Customer decides to discontinue the Services UCS provides, and changes to an alternative provider (subject to clause 4.1 and 4.2) then the Customer is solely responsible for connecting to the alternate provider and is liable to UCS for all charges incurred until the Customer is connected to the alternate provider, irrespective of the notice to terminate the service provided by UCS or its Suppliers. To avoid confusion UCS will not action the disconnection or transfer the Customer's connection, the Customer is responsible for actioning this and the Customer is liable for all traffic charges through UCS and Service charges until that happens.
- 4.4 UCS enters into this Agreement and calculates its charges on the basis that the Agreement will continue, and each of the Services supplied from time to time will continue to be supplied, for at least the Initial Term. The Customer agrees that if the Customer wishes to terminate this Agreement before the end of the Initial Term or any subsequent term, then the Customer must pay all charges for the unexpired portion of the then current term of the contract as calculated by UCS,

and any special offers or conditions provided will be re-billed by UCS at the normal rate and payable immediately, without prejudice to the right to recover Equipment as per clause 3.2 or any other rights of UCS. If the Customer wishes to terminate some but not all of the Services, then the Customer must pay all charges for the terminated Services for the unexpired portion of the then current term of the contract as calculated by UCS and any special offers or conditions provided in relation to the terminated Services will be re-billed by UCS at the normal rate and payable immediately.

- 4.5 Termination of this Agreement for whatever reason is without prejudice to the accrued rights and obligations of either party including without limitation your obligation to pay any amounts to us that are unpaid at the time of termination.

UCS Commitment to Customer

- 5.1 Where the Services are provided by a Supplier other than UCS then UCS will use its reasonable efforts to ensure that the Supplier carries out its responsibility in providing the Services with reasonable care and skill. The Supplier will use all reasonable efforts to ensure that the Services are reliable at all times but does not guarantee that the Services will be continuous and fault free.
- 5.2 Where UCS performs work for the Customer in connection with the provision of Services, it will ensure that competent and suitably qualified personnel carry out all work, in a professional manner and in accordance with appropriate standards and regulations.

Customers Commitment to UCS

- 6.1 The Customer warrants that all information provided to UCS is accurate and agrees to notify UCS immediately of any changes to those details.
- 6.2 The Customer agrees that UCS has the first right to equal or better any offer that is made in writing by another telecommunications provider.
- 6.3 The Customer shall supply all equipment and services to enable installation and operation of the Services.
- 6.4 The Customer agrees it will not use the Services or permit the Services to be used in any way, which is illegal or could damage the Telecommunications Network.
- 6.5 The Customer agrees it will use the Services in accordance with any reasonable directions given by UCS.
- 6.6 The Customer is liable for and indemnifies UCS and its authorised representatives against any costs, expenses or damages incurred by UCS or its authorised representatives as a result of the Customer failing to comply with its obligations under this Agreement.

Faults, Outages and Suspension of Services

- 7.1 Where any Service has a fault or outage UCS will use reasonable endeavours to remedy that fault or outage within a reasonable time frame.
- 7.2 Where remedial action is required as a result of any act or omission of the Customer, UCS may charge the Customer at its standard rates for the cost of remedying the fault or outage.
- 7.3 UCS or its Suppliers may from time to time be required for operational or other reasons to suspend or restrict service. In those circumstances UCS will give the Customer as much notice as is reasonable possible and UCS will use reasonable endeavours to ensure that the suspension or restrictions take place outside normal business hours. Neither UCS, its Franchisees or its Suppliers shall be liable whatsoever for any damage, loss or injury arising from the suspension and/or restriction and this is without limitation to the already stated disclaimers of liability within this Agreement.
- 7.4 The Customer specifically acknowledges that the delivery of Services by UCS is necessarily dependant on third party and public network Agreement, and that the UCS Service levels are also necessarily conditional upon appropriate standards and Services being provided by upstream Carriers and third parties.

Liability

- 8.1 Services provided are subject to availability of facilities and it is not guaranteed that the Services will be continuous or fault free.
- 8.2 Except for such guarantees and warranties as cannot be excluded as a matter of law, all warranties, descriptions, representations or conditions whether implied by law, trade, custom or otherwise are hereby excluded and all liability of UCS or its Suppliers whether in tort including negligence or otherwise is expressly excluded to the full extent permitted by law.
- 8.3 The Customer agrees it will use the Services for business purposes and that the guarantees implied by the Consumer Guarantees Act 1993 are expressly excluded.
- 8.4 UCS or its Supplier's liability arising from any cause (including the negligence of UCS or any of its employees or agents) in the provision of the Services or any failure to provide the Services under this Agreement shall be limited to the re-supply of the Services, or at the option of UCS the cost of the re-supply of the Services.
- 8.5 In respect of defects in Services or goods supplied by UCS or its Suppliers, UCS's liability shall be limited to the replacement of the Services or goods. In no case, in respect of Services or goods supplied, shall UCS or its Suppliers be liable for any consequential, direct or indirect or special damage loss or injury of any kind suffered by the Customer or any other person notwithstanding that UCS may be aware or ought to have been aware of the possibility of damages, loss or injury.
- 8.6 The Customer will indemnify UCS, its agents, Franchisees and Suppliers from any loss, damage, liability or expenses incurred by any other person arising from the use or attempted use of the Service through the Customers equipment.
- 8.7 The Customer shall not rely upon any warranty or other representation other than specifically expressed in these terms and conditions and UCS shall not be bound by any unauthorised representations.
- 8.8 The Customer acknowledges that a UCS Franchisee is not an agent or partner of UCS and that UCS relies solely in the terms of this Agreement when providing Services.
- 8.9 The total liability of UCS to the Customer arising from or in relation to this Agreement will not exceed the amount paid by you to UCS during the Initial Term.

Restriction or Suspension of Services

- 9.1 UCS may suspend or restrict Services without notice if Customer credit is unsatisfactory or the Customer defaults in payment.
- 9.2 UCS may suspend or restrict Services without notice if the Customer uses the Services in any way which is illegal or unlawful.

- 9.3 UCS may suspend or restrict Services without notice if the Customer uses the Services in any way which could interfere with or damage the network, or any other operator's network, or any other customer's enjoyment of our Services.

Security

- 10.1 You must keep confidential any password or PIN number which is used by you to access our services. We recommend you change your password or PIN number on a regular basis, and ensure your password or PIN is sufficiently difficult to guess or hack.
- 10.2 The Customer is at all times responsible for its own Internet security requirements and precautions, including firewall and other security devices unless these devices are supplied and managed by UCS.

Internet and VoIP Services

- 11.1 This Clause 11 applies when we provide Internet access and or VoIP Services to You.
- 11.2 You must not knowingly transmit any software 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 and we may disconnect you without notice if we have reason to believe that you are in breach of this clause.
- 11.3 Acquiring our Products or Services does not give you any proprietary rights to any part of our Service or Equipment. Equipment is provided on a rental basis and remains the property of UCS, unless agreed in writing otherwise.
- 11.4 You agree to provide a safe and secure operating environment for our equipment; follow our directions when connecting anything to our network or equipment; not damage or interfere with our equipment; and notify us as soon as reasonably practicable if there is any failure of or damage to our equipment.
- 11.5 You agree to pay for any damage or loss to our equipment caused by any reason other than normal wear and tear.
- 11.6.1 You agree to provide us access to any premises where our equipment is located or due to be located for the purposes of installing, maintaining, replacing, or retrieving that equipment. We will endeavour to provide at least 24 hours' notice of requiring access to your premises.
- 11.6.2 You acknowledge that UCS is not responsible for the performance of our services when third party equipment is used, or the customer's internal network is managed by a third party.
- 11.7 You acknowledge that we are not in control of the information that can be accessed via the Internet and accordingly we are not responsible for any inaccurate, illegal or offensive information which may be obtained from your use of our Services.
- 11.8 You acknowledge that your use of the Internet is at your risk and notwithstanding that we may provide you with filtering and virus protection we are not liable for any damage which may result as a consequence of your use of the Internet via our Service.
- 11.9 Where we provide you email Services you are responsible for downloading to your computer any email that you wish to keep and we may without notice you to remove and delete any email information which remains on our servers for more than 90 days.
- 11.10 The customer will ensure that all faults and Service requests are reported promptly to the UCS helpdesk or customer service team.
- 11.11 Unless otherwise specified the Customer will provide premises wiring and equipment appropriate to the requirements of the UCS Service, as defined by UCS, acting reasonably.
- 11.12 In order to ensure the reliability of the UCS Service, the customer agrees to provide rights of access to UCS Service personnel for any and all equipment located on customer-controlled premises as required by UCS. Where UCS is required to formalise arrangements with a property owner to ensure that the integrity of UCS network can be maintained, the customer undertakes to facilitate and do all things necessary to support access arrangements.
- 11.13 The Customer acknowledges that UCS does not guarantee network access speeds except where legislated minimum speeds apply.
- 11.14 With respect to International Internet access bursting speeds are subject to bandwidth availability, and cannot be guaranteed at any time.
- 11.15 Where You subscribe to a service with a monthly cap included in your plan, all traffic (both uploaded and downloaded) will be counted towards that volume. Where that volume exceeds your monthly capped amount you will be charged for the excess traffic.
- 11.16 You agree to use the Internet in a reasonable that responsible manner and in accordance with our Acceptable Use Policy.
- 11.17 Internet access may include the provision to You of an IP address. We may at our sole discretion change that IP address. We will endeavour to inform You before changing your IP address.
- 11.18 You may not on-sell, re-sell or in any other way supply Internet access or use the Internet to supply such a service to a third party. Notwithstanding any other rights that we may have, we may restrict or terminate the supply of your Internet access if we believe you are not complying with your obligations under this clause.
- 11.19 We, in our absolute discretion, reserve the right to limit your access to bandwidth if in our opinion you are using your Internet connection unreasonably.
- 11.20 Where we have provided equipment on a lease or rental or free basis including Access Modems, Firewall Devices, PBX Servers and Devices, Phone Equipment or any other equipment, this equipment remains the property of UCS and upon termination of this Agreement, we may remove any or all the Equipment from your premises.
- 11.21 The Customer acknowledges that UCS makes no warranties or claims of any kind whatsoever in respect of any software product or Services provided by third party vendors which are in excess of, or which supersede in any way, the warranties provided by such vendors. At all times UCS will provide software products subject to the specific software warranties, performance standards and licenses that subsist in those products. Copies of the relevant vendors' warranties and licenses are available on request from UCS. Nothing in this clause however derogates from UCS's obligations to use professional care in the choosing and management of software products or services.

Risk and Insurance

- 12.1 UCS shall arrange such insurance cover as it, in its sole discretion, may deem necessary over all plant, equipment, and hardware, together with all accessories and associated items, which are rented to, leased by, or hired or lent to the Customer by UCS. The cost of such insurance cover shall be paid for entirely by the Customer.
- 12.2 The Customer shall be solely liable for any excess, which may be applicable under any insurance policies arranged under Clause 12.1 above. Such excess shall be immediately payable by the

Customer to UCS upon settlement of any claim/s by any insurance company.

- 12.3 The insurance cover arranged by UCS specifically excludes certain risks. The customer accepts that such exclusions do not affect any liability that the Customer might have to UCS to pay compensation for any loss arising out of any breach of this Agreement. UCS will supply a copy of such insurance cover to the Customer at commencement date and at any time thereafter such cover is altered.
- 12.4 Each Party shall maintain sufficient current Public Liability insurance to indemnify the other Party in respect of its legal liabilities together with costs and legal expenses. The minimum sum insured shall be \$5 million.

Phone Numbers, Addresses and Other Codes

- 13.1 We or our Suppliers may allocate phone numbers, electronic addresses and other codes to you. You will not have ownership rights in those numbers, addresses and/or codes allocated to you and you may not transfer them to anyone else.
- 13.2 If required by law or if it is necessary to do so for operational reasons, we (or our Suppliers) may change any phone number, electronic address or code allocated to you however we will endeavour to give you as much notice as possible of any such change.

Privacy

- 14.1 We may store your personal information that you provide us or that we obtain from your use of our Services.
- 14.2 You agree that we may use such information for credit checking and collection and to communicate with you about our current and future Services.
- 14.3 We may disclose this information to a third party where this is required for us to provide you with Services, or where we are required to for legal reasons.
- 14.4 Any such information will be kept at our head office wherever that may be at the time and you are entitled to view such information and to request that any incorrect information be corrected, although you must pay any reasonable charge we may levy for making this information available.
- 14.5 We may record or monitor calls between you and us to verify information and for staff training and monitoring purposes.

Notices

- 15.1 Any notice given pursuant to this Agreement must be in writing and delivered, or sent by post or facsimile to the other parties contact address as set out below.
UCS Ltd. Level 2, 93 Dominion Road, Mt Eden, Auckland.
PO Box 8898, Symonds Street, Auckland 1150. Facsimile: (09) 308-9708
You: as set out on the Application Form or updated from time to time.

Fair Use Policy

- 16.1 Your use Internet Services and/or Business VoIP or Phone Services, must be fair, reasonable and not excessive, as reasonably determined by us by reference to average and/or estimated typical customer usage of Business Services. We will consider your usage to be excessive and unreasonable where it materially exceeds the average and/or estimated use patterns over any day, week or month (or other period of time as determined by us).
- 16.2 Any entitlements included under our Business Services are offered for your own use and benefit only. It does not allow activities aimed at making profit by reselling Business Services, or using the Business Services in an unfair or excessive way. Any such use by you is a breach of this Agreement. For the avoidance of doubt, fair use of our Business Services excludes activities such as auto-dialling, continuously call forwarding, telemarketing, and call centres or other activities that use our services for commercial gain unless explicitly agreed in writing.
- 16.3 If in our reasonable opinion we consider your usage to be unfair, unreasonable and/or Excessive Usage we may immediately suspend, modify or restrict your Business Services or withdraw in full or in part your access to the Business Services without notice to you.
- 16.4 We may charge you at our discretion for Excessive Usage, which if we do so will be at our standard rates.

General

- 17.1 These terms and conditions which are published online at our website (www.ufone.co.nz) and updated from time to time represent the entire agreement between the parties and prevail over any other terms and conditions previously provided.
- 17.2 UCS reserves the right to change these terms and conditions from time to time and will provide the new terms with at least seven (7) days written notice before they take effect. These terms and conditions can only be altered by the written consent of UCS.
- 17.3 UCS reserves the right to change the pricing of services from time to time and will provide the new pricing with at least seven (7) days written notice before it takes effect.
- 17.4 You may assign any of your rights and obligations under this Agreement to any other person provided that you have obtained our prior written consent as well as provided us with the written consent of the 3rd party being assigned to.
- 17.5 We may assign any of our rights and obligation under this Agreement without your consent.
- 17.6 This agreement is between UCS and the Customer and does not provide, grant or confer the Customer with any benefit, right or privilege by any 3rd party Supplier.
- 17.7 Force Majeure. Neither Party shall be liable for any act, omission or failure to perform any obligation under this Agreement, other than an obligation in relation to the payment of money to the other Party, if such act, omission or failure arises or continues from any cause beyond the control of that Party, and the relevant Party could not take reasonable measures to prevent such act, omission or failure.
- 17.8 The Customer confirms that it acquires all UCS Services for the purposes of a business as defined in the Consumer Guarantees Act 1993.
- 17.9 This agreement is governed by the laws of New Zealand. The parties agree to submit to the non-exclusive jurisdiction of the courts of New Zealand.
- 17.10 A delay in exercising any right under this agreement 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 at a time in the future.
- 17.11 Any services or hardware provided by UCS which are not explicitly specified in a service order or service application will be deemed "out of scope" and will be charged at the current prevailing rate.