

Terms for your **Mobile Service**

Effective 29 April 2020



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Welcome to Trustpower

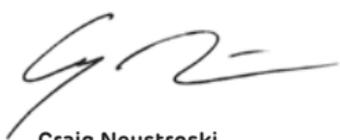
These Mobile Service Terms and Conditions contain the agreement between you and Trustpower.

It commits us to provide a professional and efficient mobile service to you in a fair and caring way.

It also sets out the responsibilities you have in return. Please read it through, and then keep it in a safe place. Of course, if there's anything here that seems unclear, or if there's any question you want to ask, please call us **Toll Free on 0800 87 87 87**.

We also have information and useful advice on our website. Please visit **www.ask.trustpower.co.nz**

We're here to help.



Craig Neustroski
General Manager, Markets



1. Getting started

Introduction

- 1.1 These Mobile Service Terms and Conditions, the Mobile Plan Terms and Conditions, the specific terms and pricing plans applicable to your Mobile Plan and any special terms (as notified by us to you) are together our agreement with you and apply to our supply of Mobile Services to you ("**agreement**"). The special terms (if any) and pricing plans will prevail if there is any conflict or inconsistency between them and this agreement.
- 1.2 This agreement commences from the earlier of the date that you become our customer in respect of the Mobile Services as specified on your Mobile Plan or you use the Mobile Services. You will only be liable for Charges from the date this agreement commences.

Becoming our customer

- 1.4 You may become our customer by making an application in a number of ways, including:
 - (a) in writing or online; or
 - (b) communicating with us or one of our authorised agents.
- 1.5 We may choose not to accept your application if:
 - (a) you fail to meet any of our criteria (for example, not meeting our payment criteria or not providing us with all information we need to set up your account); or
 - (b) you have a debt owing to us from a previous account with us.
- 1.6 Where you set up a new account with us, we may transfer to your new account any debt (including any collection and legal costs) owing to us by you (whether solely or jointly with any other person) from a previous account with us.
- 1.7 We may require you to enter into special terms if we consider this necessary.
- 1.8 There may be a Service Fee applicable for establishing your account.

Joint customers

- 1.9 More than one person may be named as our customer in relation to an account. In this case, each person who is named as an account holder on the account has all of the rights, obligations and responsibilities set out in these Terms (being, where there is only one named customer on the account the "**Account Holder**" or, where there are multiple named customers on the account, each being a "**Joint Account Holder**").

- 1.10 You must notify us if you no longer wish to be a Joint Account Holder or if you would like to make any other amendments to your account (for example, adding, amending or removing authority). We may elect to terminate this agreement with respect to the outgoing customer or require the remaining customers to enter into a new agreement, or both.

Authorised Persons

- 1.11 You may nominate a preferred account authority or authorities (such as a family member, friend or social agency) to make decisions and deal with us under this agreement. That person must be 18 years or older. Even if you do so, you remain responsible for meeting your obligations under this agreement.

2. Provision of Mobile Services

Our commitment to you

- 2.1 We will take reasonable care and skill to provide you with Mobile Services in a reasonable timeframe and take all reasonable efforts to ensure our Mobile Services do everything we say they will. However, we cannot guarantee those Mobile Services will be interruption or fault free. In particular, the Mobile Services may be affected by factors outside of our control including, but not limited to, geographic conditions and physical obstructions, weather conditions, the number of people trying to use the Network at the same time or faults in the Network used by us to provide the Mobile Services to you, as well as our Mobile Services' reliance on systems and other services that we do not own or control.
- 2.2 The quality, speed and coverage of the Mobile Services will vary and can be affected by external factors (such as weather), traffic congestion, the activities of our Network Service Providers and other outages. It may also be affected by the set up of you and your intended recipient's mobile devices.
- 2.3 The Mobile Services may not be available to all customers and not all Mobile Services will be available in all areas. Where information is readily available to us, we will endeavour to advise you of any such restrictions or limitations at the time you purchase the Mobile Service.
- 2.4 Not all mobile phones and devices can receive all of the Mobile Services. You are responsible for obtaining a compatible mobile phone or other device or equipment required to use the Mobile Services.
- 2.5 If you experience any issues with, or have any queries regarding, the Mobile Services, please contact us on **0800 87 87 87**.

Your commitment to us

- 2.6 In return for us providing the Mobile Services to you, you agree to:
- (a) comply with your obligations in this agreement and follow our or our Network Service Providers' (where applicable) instructions and guidelines about using the Mobile Services;
 - (b) comply with the law and all the relevant codes and regulations and not use the Mobile Services in a way which we or our Network Service Providers consider, acting reasonably and in good faith, to be abusive or offensive or for an illegal or fraudulent purpose;
 - (c) only use Mobile Devices, SIMs (which you will need to be able to connect to the Mobile Services and Network), equipment and other accessories which are available and compatible for use with the Mobile Services;
 - (d) when using the Mobile Services, not interfere with anyone else's equipment or services, and respect our and our Network Service Providers' intellectual property rights. You must also respect our staff, and not threaten, bully or harass our staff, or anyone else (when using the Mobile Services);
 - (e) use the Mobile Services for only the purposes for which they are provided and in the ways that they are intended and only ever for your personal or household use (and do not sell the Mobile Services or commercially exploit them);
 - (f) pay for the Mobile Services that we provide to you and charge to your account by the due date shown on your bill (even if somebody else uses those Mobile Services, as such Mobile Services will be treated as having been used by you);
 - (g) keep confidential, and do not disclose to any other person, any password or PIN or other access code feature used by, or allocated to, you in connection with the Mobile Services. We recommend that you change this on a regular basis for security reasons. You must also change your password or PIN if we ask you to do so;
 - (h) provide us with all information we reasonably request in connection with this agreement and ensure that all information you give us and, where applicable, our Network Service Providers, is correct. Where any information you have supplied to us changes (such as contact details) you must provide us with updated information as soon as possible;
 - (i) not use the Mobile Services in any way that is unlawful, malicious, obscene or in a manner that could interfere with the Network (including our Network Service Providers' networks) or interfere with another customer's use of the Mobile Services. This includes any activities constituting Improper Use;

- (j) not use the Mobile Services in a way which could result in claims being made against us in connection with any content or services being used by you;
- (k) not use the Mobile Services in a manner that infringes on the privacy rights of any other person;
- (l) not sell or otherwise make the Mobile Services available to others or commercially exploit the Mobile Services in any way;
- (m) authorise us or a person approved by us (such as a Network Service Provider) to remotely access your Mobile Device in order to perform any tasks that are reasonably necessary to protect the integrity of the Network or the Mobile Services, in each case as determined by us or one of our Network Service Providers, or where required to do so by law;
- (n) authorise us to conduct a credit check on you from time to time when we consider, acting reasonably and in good faith, that it is appropriate;
- (o) make sure that any other person that uses the Mobile Services that we provide to you agrees to be bound, and also abides, by this agreement. If someone uses your account (regardless of whether or not they had your permission), it is your responsibility, unless we are the ones who caused it to happen;
- (p) ensure not to imply that Trustpower or any of our Network Service Providers have endorsed or sponsored you in any way, unless we have agreed to that; and
- (q) be bound by, and comply with, the terms and conditions of any of our Network Service Providers which we use to provide the Mobile Services and that our Network Service Providers may enforce those terms directly against you should you breach them. The Mobile Services are delivered by the Spark Mobile Network.

3. Protecting your personal information

Information from you

- 3.1 To enable us to supply you with the Mobile Services, and for credit reasons, we need personal information from you. It's important you tell us if any of this information changes.
- 3.2 If you provide us with the personal information of any other person in connection with your account, this agreement or otherwise in connection with the Mobile Services, you confirm that you have obtained that persons consent to you sharing such information with us to the extent necessary for us to provide the Mobile Services.

Storing your personal information

- 3.3 Our Privacy Policy is on our website. It sets out:
- (a) where you can get information about how we collect, store, use, disclose and match personal information; and
 - (b) how we comply with our obligations under the Privacy Act 1993.
- 3.4 By providing us with personal information, you consent, or where paragraph 3.2 applies you confirm that any other relevant individuals have consented to us using that information in accordance with our Privacy Policy. In addition, you consent to receiving marketing material and other electronic communications from us. For more detail on this, including how to unsubscribe from receiving such material, please refer to our Privacy Policy.
- 3.5 You will be able to access personal information we hold about you and if any information we hold about you is incorrect, we will correct it at your request.

Sharing information with our Network Service Providers

- 3.6 In order to fulfil our obligations under this agreement, we may also need to provide your information to our Network Service Providers (which may include personal information). You consent to us sharing information about you to our Network Service Providers to the extent necessary for the relevant Network Service Provider to provide services to us that enable us to supply you with the Mobile Services, including to enable such Network Service Providers to communicate with you in connection with the Mobile Services. Network Service Providers will hold, use and disclose such information in accordance with their privacy policy. The Mobile Services are delivered by the Spark Mobile Network.
- 3.7 We, and our Network Service Providers (where applicable), may monitor your use of the Mobile Services and any content made available by or to you through the Mobile Services in order to maintain the integrity of the Network and Mobile Services.

Public comments about us

- 3.8 If you make public comments or statements about the products or services we provide you, or the relationship we have with you, we reserve the right to make such public comments in reply as may be necessary to respond, or correct any misconceptions or errors of fact. If you make any public comments about your account then you agree to us replying as we think appropriate using the information that we have about your account.
- 3.9 We may record telephone conversations that we have with you so that we may maintain accurate records of our dealings with you. We may also use taped recordings to train our staff or to monitor the level of service that we are providing to you.

4. Service Availability

- 4.1 From time to time we may amend or discontinue our Mobile Services and our packages of Mobile Services. Subject to section 4.2 below, where we do this, we will endeavour to give you at least 10 working days advance notice.
- 4.2 We may need to amend or terminate the Mobile Services if our Network Service Providers are unable or unwilling to provide services to us. Where this occurs, we will provide as much notice as we are reasonably able to. If we, or we are required to, discontinue a Mobile Service or a package of Mobile Services, we will also endeavour to move you onto another comparable Mobile Service or package of Mobile Services.
- 4.3 Where you do not agree to the changed Mobile Service or package of Mobile Services, or us moving you onto another Mobile Service or package of Mobile Services, and this change or move disadvantages you then, notwithstanding anything else in this agreement, you may cancel that Mobile Service or package of Mobile Services (as applicable) within 5 working days of receiving our notice without incurring an early termination fee.
- 4.4 Notwithstanding the above, we are free to choose the manner in which and the technology by which we provide the Mobile Services. Where we change the manner or technology by which we provide the Mobile Services, provided the Mobile Services itself remains materially similar, this shall not be a reason for you to terminate the Mobile Services. We, and our Network Service Providers, also reserve the right to manage traffic at peak times, to ensure all customers get the best possible experience even at busy times. Overall, this should have a positive benefit for our customers. If we make any changes to this policy which will have a material impact on you we will let you know.
- 4.5 The Mobile Services may also be unavailable at times due to maintenance, repairs, upgrades or modifications to the Network used by us to provide the Mobile Services to you. Where it is within our control, we will try our best to give you notice and keep such unavailability to a minimum.
- 4.6 Roaming allows you to call or text or use mobile data in countries included in our roaming partner alliance. Roaming relies on the use of overseas telecommunications networks which we do not control and therefore we cannot offer any guarantees about the quality of Roaming services or the functionality that will be available using the same. The Roaming services that are available for you are dependent on the country you are visiting, the specific Mobile Device you use and your Mobile Plan. The use by you of overseas telecommunication networks may also be subject to the terms and conditions of the relevant network operator. Those terms and conditions will apply in addition to this agreement. Learn more about our Roaming including applicable countries and Charges on our website at www.trustpower.co.nz/mobile

5. Mobile specific terms

Plans

- 5.1 For advice about the Mobile Services and any specific terms and conditions relating to the same, including an up to date list of Mobile Plans and Charges please call us on **0800 87 87 87** or visit our website at **www.trustpower.co.nz/mobile**
- 5.2 Additional Charges and Service Fees (including transfer fees if you are on a fixed term contract) may apply if you wish to change between our Mobile Plans. For more information regarding this, please check your Mobile Plan, call us on **0800 87 87 87** or visit our website.
- 5.3 You agree that we can act on any verbal instructions you give us in relation to the Mobile Services.

Phone numbers

- 5.4 You can Port your mobile phone number to us from a previous provider or we will allocate a mobile phone number to you for use with your Mobile Device or SIM. While you are with Trustpower, your mobile phone number does not belong to you and remains our property.
- 5.5 If you are Porting a mobile phone number for use with Trustpower from another service provider you confirm that you have the authority to request the Porting of that mobile phone number, or have the relevant consent from the individual who has the rights to that mobile phone number, to request the Porting of that mobile phone number. You will be liable for any loss or damage resulting from breach of this obligation.
- 5.6 We, or our Network Service Provider, (as applicable) may be required to change the mobile phone number you use with your Mobile Device. We would only do so very rarely in unusual circumstances and, if so, we will give you reasonable notice of this change beforehand. If you disagree with the way we have allocated phone numbers our decision will be final, as long as it is reasonable and we have acted in good faith.
- 5.7 You may Port your mobile phone number from us to another mobile service provider. To do this you will need to tell the other service provider, take all other necessary steps and pay any associated costs. If your number is not Ported before your agreement with us ends, it won't be available for you to take with you and we may reallocate that number to another customer.

Mobile Device and SIM

- 5.8 Any SIM we supply to you remains our property and must be returned to us if requested. You must keep any SIM we supply to you in a good condition. You cannot connect our SIM to another telecommunications network unless we have advised otherwise.

- 5.9 You must keep your Mobile Device and the SIM secure at all times. We recommend that, in order to prevent unauthorised use of the Mobile Services, you use, where available, PINs, passwords, toll barring options and other access code features provided with your Mobile Device and SIM to ensure that only you are able to access and use the Mobile Services. You must keep all such PINs, passwords and access codes confidential at all times. While we will use security screening checks where available, we may assume that any request or instruction we receive is authorised by you if it is made from your Mobile Device.
- 5.10 If your PIN is entered incorrectly three times in a row, the SIM will automatically block and it will not be possible to use it unless it is unblocked. To unblock the SIM you will need a PUK1 Code, which you can obtain from your SIM packaging or by contacting us on **0800 87 87 87**. If you continue to block your SIM by incorrectly entering the PUK1 Code the SIM will be rendered useless after 10 attempts and you will lose names, numbers and other information stored on it. Because of the nature of the SIM technology we will not be able to get this information back for you and you will need to purchase a new SIM if you wish to continue using the Mobile Services.
- 5.11 We are not responsible for any equipment that you use in connection with the Mobile Services that has not been provided by us. Where such equipment does not work properly, you must consult with the relevant supplier or manufacturer about the problem. Please refer to your warranty or sales agreement for details regarding our responsibility to you for any equipment provided by us.
- 5.12 If your Mobile Device or the SIM we have supplied to you is lost, stolen or damaged you must immediately let us know. To prevent further unauthorised use of the Mobile Services or the accrual of further Charges under your Account, you must suspend the SIM by calling us on **0800 87 87 87**. You can also blacklist your Mobile Device by calling us on **0800 87 87 87** if it is lost or stolen. By blacklisting your Mobile Device, no person will be able to use it on any New Zealand mobile network. You can cancel the blacklisting at any time by calling us on **0800 87 87 87**.
- 5.13 You will remain liable for all Charges incurred in relation to the use of your Mobile Device or the SIM up to the time you inform us that your Mobile Device or SIM is lost or stolen and we activate a suspension on your SIM and block on your Mobile Device unless you were unable to notify us as a result of our services being unavailable (for example, because our call centre was closed) or we are satisfied that you did not authorise the Charges. If your Mobile Device is lost, stolen, damaged or destroyed, you will need to purchase a new Mobile Device and/or SIM if you wish to continue using the Mobile Services.

- 5.14 If your Mobile Services are suspended, disconnected or terminated by us for any reason in accordance with this agreement, you may lose your mobile number and any data stored on your SIM or voicemail account.
- 5.15 You don't have any title, interest or intellectual property rights in the Networks or any part of them. This also applies to the Mobile Services we provide and anything we or our partners make available to you when we provide you with Mobile Services. You have some obligations about intellectual property too – see section 2.6(d) above.

6. Fees and charges

Our charges

- 6.1 For advice and an up to date list of Mobile Plans and Charges for Mobile Services please call us on **0800 87 87 87** or visit our website at **www.trustpower.co.nz/mobile**
If you request a product or service that will involve additional cost to you we will endeavor to advise you of that cost at the time. Where it is not possible for us to provide you with the cost at the time of enquiry we will provide an estimate of the cost or arrange to contact you in a reasonable timeframe with that estimate before the product or service is provided.
- 6.2 If any circumstances arise, or are likely to arise, where you may be charged a Service Fee we will give you reasonable notice of those circumstances before the fee is incurred. We will also advise you where it is possible how those Service Fees can be avoided.
- 6.3 If, for any reason, the Charges for Mobile Services are going to increase, and the increase will affect you, we will notify you at least 30 days prior to that change either in writing, by email, by SMS or published on our website or in the local newspaper. If you are on a fixed price plan and you want to end it because a change under this clause disadvantages you, we won't charge you an early termination fee. We will also explain the reasons for the increase. We can reduce the Charges or Service Fees at any time.
- 6.4 You are responsible for all Charges under these terms whether incurred by you or someone else using your Mobile Device or SIM (regardless of whether you consented to such use or not) and including while Roaming.

Roaming Charges

- 6.5 The Charges for Roaming are in addition to the other Charges applicable to your Mobile Plan. The Roaming Charges are set by us, and our Network Service Providers (including the applicable overseas operator). The Charges for Roaming vary depending on the service and by location (otherwise referred to as a zone), but do not

typically attract GST. Please see our website for our current Roaming rates. The Charges for Roaming and the applicable zones may be amended by us from time to time in our discretion.

- 6.6 There may be a delay between your use of Roaming services and us billing you for Roaming services. Any delay in billing doesn't change our right to charge you for your Roaming and you will still need to pay all Charges in full when they're due.

Your monthly accounts

- 6.7 Unless otherwise agreed, every month we'll send you an account for payment or a notice that your account is available by post or email, or online if you have chosen online billing. Your account will list the previous month's transactions as well as the current month's Charges, Service Fees and charges for other services that we (or our Network Service Providers, for example in respect of Roaming) have provided to you (if any).
- 6.8 There are a number of ways you can pay our invoices. Some of these options attract a Service Fee. Please call us on **0800 87 87 87** or visit **www.trustpower.co.nz** for details and explanations on our payment options.
- 6.9 If any of the payment methods relevant to you are to change we will provide you with not less than 30 days' notice of that change and explain why the change is being made.
- 6.10 Sometimes Charges will not show on your bill until some time after the month in which they were incurred (for example, charges for tolls to some overseas destinations or possibly to 018 or 0900 services). You will still be liable for such Charges.

Credit checks

- 6.11 You give us permission to run credit checks on you occasionally when we think, acting reasonably, that it's appropriate. If you don't meet our standard credit check requirements, we might restrict your Mobile Services or stop providing it to you.
- 6.12 Credit reporting agencies may record some information about you in their databases and share this information with others who'd like to run a credit check on you. This information could include your past credit checks, repayment history and any times you've missed a payment to us. We'll also keep this information for our records.

Paying your account on time

- 6.13 Our accounts must be paid on or before the due date shown on your bill.
- 6.14 If you do not pay your bill by the due date we may:
- (a) charge you a late payment fee to reflect our costs to recover the money you haven't been paid;
 - (b) impose a credit limit or toll bar on your account;

- (c) withhold or cancel any rebate, discount or similar incentive which would otherwise be available to you;
 - (d) suspend your Mobile Service (see section 8.4(a));
 - (e) require you to put in place a direct debit payment arrangement for payment of our bills;
 - (f) charge you any disconnection or reconnection fees; and
 - (g) if you are disconnected, pass your debt to a debt collection agency.
- 6.15 You will be responsible to pay any costs we incur in collecting your outstanding accounts. These may include, without limitation, costs such as debt recovery costs, credit agency fees and legal and court costs. These will be added to your account and will be payable by you to us. We may use any bond or advance payment made by you to pay these amounts. We may also charge Service Fees for the administration of late payments.

Bond

- 6.16 We may ask you for a bond. Generally, we need a bond if you do not have a satisfactory payment record. If we need a bond, we will provide you with the reasons why. We may use the bond to recover any amount owing to us by you.
- 6.17 The terms of your bond will be explained to you at the time we request it, but will typically be refunded after 12 months of satisfactory payment performance.
- 6.18 We will repay your bond, less any amounts you owe us, by crediting your account with us or refunding you directly if you are no longer our customer.

7. Bundle discounts

- 7.1 When you take up a Mobile Service with us, if you have or take up energy or broadband services with us we may apply a discount to the Charges for Mobile Services applicable to your chosen Mobile Plan. This is known as a "Mobile Bundle Discount".
- 7.2 We cannot confirm the continued availability of the Mobile Plan you have chosen, or that the Mobile Bundle Discount will apply to packages we offer in the future.
- 7.3 The Mobile Bundle Discount will continue to apply to your account as long as you continue to meet the requirements of the Mobile Plan you have chosen.
- 7.4 The Mobile Bundle Discount may not be available on promotional offers. If you take up a promotional offer and have the Mobile Bundle Discount already you may be required to forfeit the Mobile Bundle Discount.

8. Termination and Suspension

Termination

- 8.1 A minimum term may apply for some or all of our Mobile Services – if a minimum term applies, we will tell you. Where a minimum term applies, this agreement will continue to apply after expiration of that term, until you give us notice to terminate this agreement.
- 8.2 Where there is no minimum term, you may ask us to stop the particular Mobile Service or terminate this agreement at any time and for any reason by giving us 5 days' notice. If a minimum term applies to a Mobile Service, you may stop that Mobile Service at the end of the minimum term by giving us 5 days' notice prior to the end of the minimum term.
- 8.3 Where a minimum term applies, if you cancel this agreement before the end of the minimum term (or if we do so for any of the reasons specified in sections 8.4 and 8.5 before the end of the minimum term), you may incur a termination fee(s). For additional information regarding termination fees please check the terms of your Mobile Plan, contact us on **0800 87 87 87** or visit our website.
- 8.4 We may stop or suspend the Mobile Services, or terminate this agreement, at any time if:
- (a) you do not pay for any Mobile Services by the due date shown on your bill;
 - (b) you give us incorrect information;
 - (c) you have not given us a prepayment or bond we have asked for;
 - (d) you have not complied with this agreement, any additional terms or the end-user terms of our Network Service Providers (which can be provided on request);
 - (e) we suffer a force majeure event (defined in section 10.6);
 - (f) we consider that you may not be able to pay the Charges, for example if you become insolvent or bankrupt;
 - (g) our Network Service Provider stops or suspends services required for us to provide you Mobile Services; or
 - (h) as otherwise set out in this agreement.
- 8.5 We may stop or suspend the Mobile Services or terminate this agreement after any agreed term has expired, so long as we have given you reasonable notice.
- 8.6 If you terminate this agreement, or if we terminate this agreement for one of the reasons listed above, you will:
- (a) be liable for any applicable early termination and disconnection and termination fees, unless you are terminating under section 6.3 because we have increased the Charges for the Mobile Services;

- (b) still have to pay for all Mobile Services that we provide to you up until the effective date of termination;
 - (c) pay any recurring charges or charges that are subsequently billed that are incurred by you prior to the effective date of termination or the end of your current billing period (whichever is later), unless you are terminating because we have changed a Mobile Service; and
 - (d) be liable for any subsequent reconnection fees.
- 8.7 In addition to our rights to stop or suspend the Mobile Services, or terminate this agreement described in sections 8.4 and 8.5 above, we can, at our discretion, immediately restrict, suspend or disconnect the Mobile Services provided to you at any time if:
- (a) we, or our Network Service Providers, consider it necessary to protect or maintain the Network or the network of our Network Service Providers, external parties or customers;
 - (b) we believe that you have breached this agreement, or any additional terms;
 - (c) you go over a credit limit that we have set for you;
 - (d) you have made multiple complaints without a reasonable basis for doing so, and you continue to make complaints without any reasonable basis after we have requested you to stop;
 - (e) your account has unusually high data, calling or Roaming Charges; or
 - (f) we, or our Network Service Providers, consider that you (or anyone using your Mobile Services) have engaged in Improper Use of our Mobile Services.
- 8.8 Where you have not met a responsibility you have to us, and as a result we have withheld, suspended or restricted any or all of your Mobile Services, you will remain liable for all monthly or other periodic Charges during this period.
- 8.9 Where we suspend or terminate your Mobile Services as a result of you not meeting a responsibility you have to us, we may require you to pay a reconnection charge before you can use the Mobile Service again. Your account will also need to be paid in full or you will have to negotiate a payment with us. The reconnection will be subject to our standard credit approval.
- 8.10 We will always try to contact you before we restrict, suspend or disconnect your use of the Mobile Services, however, you acknowledge and agree that sometimes we or our Network Service Providers may need to suspend, pause, restrict, end or slow the Mobile Services straight away and that we have no liability to you for any failure to notify you of the same.
- 8.11 If we have disconnected or suspended your Mobile Services for non-payment and you have satisfied our requirements for reconnection, we will restore the Mobile Services as soon as reasonably practicable.

- 8.12 Termination or expiry of this agreement does not affect any accrued rights or liabilities of any party nor does it affect any provision which is expressly or by implication intended to survive termination.

9. If you have a question or complaint

- 9.1 If you have a question or a complaint about the Mobile Services, please contact us on **0800 87 87 87**. We will try to resolve the matter as soon as we can.
- 9.2 If we have not been able to resolve a complaint you may at your discretion refer the dispute to the Telecommunication Dispute Resolution ("**TDR**") who provides a free and independent dispute resolution service and whose contact details are:
- Telecommunication Dispute Resolution
Freepost 214075
PO Box 5573
Wellington 6011
- Free phone: 0508 98 98 98
Fax: 04 918 4901
Email: contact@tdr.org.nz
Website: www.tdr.org.nz
- 9.3 Please note that before contacting the TDR, any complaints must be registered with us first.

10. Loss or damage

- 10.1 The Mobile Services that we supply to you and our obligations to you under this agreement will comply with the standards required under the Consumer Guarantees Act 1993 and all other legal obligations and relevant regulations. The rights which you may have under this agreement do not detract from, and are not in substitution of, any rights you may have under the Consumer Guarantees Act 1993 or the Fair Trading Act 1986. If, however, you are a customer who acquires or holds yourself out as acquiring Mobile Services for the purposes of a business, the provisions of the Consumer Guarantees Act 1993 shall not apply.
- 10.2 The Mobile Services may provide links to third party websites. These are provided for your convenience only and we are not responsible for any such links or the content provided via any such links.
- 10.3 You are responsible for ensuring that your Mobile Device has appropriate protections in place to protect against unwanted or unauthorised access to your Mobile Device.
- 10.4 While we take reasonable security precautions, due to the nature of mobile services, we cannot guarantee the

confidentiality of any calls or transmissions you make using our Mobile Services or that the Mobile Services will always be virus-free or secure.

- 10.5 Neither us nor you will be liable to the other (in contract or in tort) for any loss or damage the other may suffer (including any actual damage to property) unless this arises due to:
- (a) a failure to comply with this agreement (or, in your case the terms of any of our Network Service Providers); or
 - (b) a negligent act or negligent omission of (as the case may be) us or you (or any person, agent or assignee for whom we or you are responsible); and that loss or damage is:
 - (i) reasonably foreseeable and is directly caused by the failure, or negligence; and
 - (ii) not caused by an event or circumstances beyond (as the case may be) our or your control (a force majeure event).
- 10.6 An event or circumstance beyond a party's control (a force majeure event) includes, but is not limited to, acts of God, strike, lock out or other industrial disturbance, act of a public enemy, or declared or undeclared war, threat of war, terrorist act, blockade, revolution, riot, declared civil defence emergency, epidemics or disease, insurrection, civil commotion, public demonstration, sabotage, act of vandalism, acts of animals, lightning, fire, storm, flood, earthquake, accidental collisions, accumulation of snow or ice, explosion, fault or failure of any plant or equipment which could not have been reasonably mitigated against by the affected party.
- 10.7 If we are unable to carry out any of our obligations to you because of a force majeure event, this agreement shall remain in place except our obligations shall be suspended without liability for a period equal to the period of the continuing force majeure. If we suffer a force majeure event that will last for a significant period of time we will endeavour to notify you of this at the earliest practical time.
- 10.8 We won't be liable to you for any indirect or consequential loss, or for any loss of profits, revenue, data, business or anticipated business, goodwill or anticipated savings or for any business interruption, whether direct or indirect and whether or not that loss was or ought to have been contemplated by us.
- 10.9 We will not be liable to you for any loss or damage you may suffer due to some act or omission of, or due to the negligence of, a third party.
- 10.10 You agree that our Network Service Providers shall have no liability to you arising out of or in connection with the Mobile Services under this agreement and you further agree not to bring any claim, suit or action against any of our Network Service Providers.

- 10.11 In addition to sections 10.9 and 10.10, you agree that you have no claim against any of our service providers, employees, agents, representatives and contractors except to the extent that such claims cannot be excluded by law. Where our representatives and contractors are unable at law to exclude their liability, any liability they may have to you for an event or series of closely related events shall not exceed \$5,000 in value (unless at law their liability cannot be limited to such sum).
- 10.12 Except in the case of supplies to which the Consumer Guarantees Act 1993 applies and the payment of your Charges to us, our liability to each other for breach of contract, negligence or any other circumstance arising out of or in connection with this agreement is limited to:
- (a) \$5,000 for any event or series of related events; and
 - (b) a total of \$10,000 in respect of all events in any 12 month period.
- 10.13 The limits set out in this section 10 are the maximum amounts payable (they're not automatically payable if one of us does something wrong), and any claim for loss must be made within 12 months after the person making the claim becomes aware of the event.
- 10.14 The limits set out in this section 10 do not limit your responsibility to pay any outstanding Charges you owe us and also don't apply when it comes to any loss or damage caused by you or us for fraud, wilful breach or wilful damage.
- 10.15 In addition, except as expressly set out in this agreement, all warranties, guarantees or obligations imposed on us, or a Network Service Provider in relation to goods or services provided by us, or the Network Service Provider by the Consumer Guarantees Act 1993 or any other law, are excluded to the maximum extent permitted by law.
- 10.16 Notwithstanding any provision to the contrary in this agreement, nothing in this agreement will exclude or limit the application of any law in New Zealand, or any other services we supply, to the extent that to do so would:
- (a) contravene that law; or
 - (b) cause any part of this liability section to be void.
- 10.17 We are not responsible for, and make no representations in respect of, any content you access or make available through your use of the Mobile Services, or any unauthorised access to your Mobile Device and any loss that you suffer in connection with the same (such as corruption of information you store on your Mobile Device). We are not responsible for any communications or transactions between you and other parties, or for the services or information you receive from them. If you use equipment on the Network that we haven't said is ok to use, we won't be responsible if it doesn't work, gets damaged or is found to be illegal. We also do not have to make it possible for you to use the Mobile Services with equipment from other parties.

11. Changes to this Agreement

Making changes to this agreement

11.1 We may from time to time change the terms of this agreement. Where minor changes are made to the terms of this agreement or changes to reflect mandated requirements, no notice of the changes will be given to you, but the revised terms shall be made available on our website. This is only so long as the changes made are beneficial and/or of immaterial consequence to you. Otherwise we will give you no less than 30 days' notice of the changes by at least one of the following methods:

- (a) advertising in your local daily newspaper;
- (b) putting a notice on our website;
- (c) sending you a letter or email;
- (d) notifying you by other electronic means (e.g. SMS);
- (e) including a statement on your invoice; or
- (f) a combination of the above.

If the changes that are made are of a material nature we will send the notice of the change to the last postal or email address you have given us.

11.2 Unless you are notified otherwise, those changes will come into effect at the end of the notice period.

11.3 Changes to our Charges and Service Fees will occur as set out under the heading "Our Charges" in this agreement.

12. General

Notices

12.1 Unless otherwise set out in this agreement, our accounts or notices to you will be:

- (a) delivered to your property;
- (b) mailed to the latest postal address you have given us;
- (c) sent to the latest email address you have given us or, in the case of billing, made available online where you have selected online billing;
- (d) sent to you by electronic means (e.g. SMS); or
- (e) by telephone call in case of urgent requirements.

12.2 Notices will be considered to have been received by you three days after being mailed by us or our mailing agent, on the day of delivery if delivered to your property, on the day of transmission if sent email or other electronic means (e.g. SMS).

Other matters

- 12.3 Termination or expiry of this agreement will not affect any legal remedies we may have.
- 12.4 Any provision of this agreement which expressly or by implication is intended to continue in force after termination or expiry of this agreement shall remain in full force and effect.
- 12.5 If any terms of this agreement are, or become, invalid, it will not affect the remaining terms of this agreement, which will remain in effect.
- 12.6 Subject to any changes that may be made to this agreement from time to time as advised to you, this agreement constitutes the entire agreement between you and us and supersedes all previous agreements and undertakings.
- 12.7 We may transfer or assign any or all of the obligations that we have under this agreement to someone else where in good faith we do not believe it would be detrimental to you (including another service provider) or the transfer is of a debt you owe to us to a debt collection agency pursuant to section 6.14. Where we do this we will notify you of the transfer and will let you know where you can access the information that you need to contact the other party and when the transfer will take place.
- 12.8 You may not assign any rights, obligations or responsibilities set out in this agreement to any other person.
- 12.9 Those terms of this agreement which confer a benefit on a third party (for example a Network Service Provider and their and our representatives) are enforceable by such third parties pursuant to the Contract and Commercial Law Act 2017, but may be amended by us without their consent.
- 12.10 We may subcontract or delegate the performance of any of our responsibilities under this agreement.
- 12.11 If either of us fail or are slow to enforce any rights or power we have under this agreement, it won't mean we're waiving those rights or power.
- 12.12 This agreement will be subject to, governed and construed in accordance with the laws of New Zealand and the parties submit to the exclusive jurisdiction of the Courts of New Zealand.

Customer competitions

- 12.13 Trustpower may run competitions for its customers from time to time. To the extent it does so, information on the competitions, including terms and conditions, can be found at **www.trustpower.co.nz/customercompetitions**

13. Definitions and interpretation

- 13.1 Clause and other headings must be ignored in construing this agreement and references to the plural include the singular and vice versa. In this agreement, Trustpower, we, our, or us are used when referring to Trustpower Limited (or any assignee), and we say you when referring to you, our customer. If we use the word "including" or "for example", this applies as if the words "but without limitation" were also set out. Where the following terms are used in this agreement, they have the following meanings:

"Charges" means the charges for your access to and use of the Mobile Services provided to you by Trustpower, our Network Service Providers and Roaming partners, together with any third party charges paid for services and content accessed by you using the Mobile Services (such as premium or special numbers).

"GST" means goods and services tax under the Goods and Services Tax Act 1985.

"Improper Use" means any use of the Mobile Services which is, in our reasonable opinion, illegal, infringes anyone's rights (including intellectual property rights), is malicious, obscene, offensive or otherwise causes detriment to us, our customers, our Network Service Providers and/or third parties. Specific activities that will be considered "Improper Use" include (without limitation): multiple simultaneous calling, re-supply, call centre usage, telemarketing, bulk messaging, application-to-person communication, continuously call forwarding, auto-dialling, machine to machine communication (including by using the SIM card in any other device), Cellular Trunking Units (CTUs), illegal downloading, including but not limited to in breach of the Copyright Act 1994; sending unsolicited electronic messages (spam) including but not limited to in breach of the Contract and Commercial Law Act 2017, offensive or objectionable messages or publications, threats, unsolicited bulk email chain letters, pyramid schemes or hoaxes; knowingly receiving, transmitting or distributing signals, spam, worms or viruses, or otherwise using Mobile Services in a way which is intended to or may damage or compromise the security of the Network or anyone else's network; or making any kind of deliberate attempt to overload the Network or anyone else's network, including mail bombing, excessive pings or otherwise causing excessive Internet traffic or connecting devices to or that affect our equipment that are not compliant with New Zealand standards. Improper Use also means any use of the Mobile Services which we, or our Network Service Providers, considers is a use for which the Mobile Services were not intended.

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

"Mobile Plans" means your chosen base plan and any extras and other plans you subscribe to from time to time and **"Mobile Plan"** means any one of those plans.

"Mobile Plan Terms and Conditions" means the terms and conditions relevant to your Trustpower Mobile Plan, available on our website at www.trustpower.co.nz/terms

"Mobile Services" means the mobile telecommunication services provided by us or our Network Service Providers to you pursuant to this agreement and includes Roaming and any other services provided to you by Trustpower in connection with the mobile telecommunication services.

"Network" means the telecommunications network which we and our Network Service Providers use to provide the Mobile Services to you and other customers.

"Network Service Provider" means any third party which provides equipment or services to us to allow or facilitate our supply of the Mobile Services to you.

"person" includes a corporation.

"PIN" means a personal identification number which is necessary for protection from non-sanctioned access to your SIM.

"Port" or **"Porting"** means the process of transferring your mobile phone number from one mobile service provider to another mobile service provider.

"representatives" means employees, agents, contractors, professional advisors, invitees, or other authorised persons, or persons for whom any of the foregoing is responsible including sub-agents and sub-contractors.

"Roaming" means a service that allows you to use your Mobile Device and SIM in countries other than New Zealand.

"Service Fees" means any additional fees for the provision of the Mobile Services, but excludes the Charges.

"SIM" means any subscriber identity module that we may have provided to you which enables you, when used with a Mobile Device, to access the Mobile Services on the Network.

"SMS" means a short message service, which is a form of text messaging on mobile phones.

Our contact details

You can email questions to enquiries@trustpower.co.nz or call us on **0800 87 87 87**.

You can write to us at:

Trustpower Limited
Private Bag 12023
Tauranga Mail Centre
Tauranga 3143

Our website is:

www.trustpower.co.nz

You can contact us on web chat at:

www.ask.trustpower.co.nz



trustpower.co.nz