

NewTel Communications Limited
STANDARD TERMS AND CONDITIONS

These Terms and Conditions apply, where applicable, in conjunction with NewTel's Broadband Terms and Conditions, Broadband Bundle Terms and Conditions, The Price List and Fair Usage Policy, as detailed on www.newtel.ie

1. Definitions

"Access Provider" shall mean the company that provides the physical telephone line(s) to Customer and associated telephone number(s).

"Affiliate" shall mean a holding company, group company, or subsidiary direct or indirect, or a company which is under the common control with the company concerned.

"Agreement" shall mean these terms and conditions, NewTel's tariffs for the Residential Line Rental or Line Rental with CPS and the Customer Sign Up Form which together constitute a legally binding agreement between NewTel and the Customer. The Agreement shall come into force once the Customer commences to use the Service as determined by us. NewTel reserves the right to amend the Terms and Conditions of this Agreement from time to time.

"Ancillary Services" means call management services such as call waiting, call forwarding or similar services applied to the telephone line and including CPE, rental products for example telephone fixtures and accessories.

"Carrier Pre-Selection" or "CPS" shall mean the service whereby the Customer is able to pre-select a service provider other than the Access Provider for his or her telephone calls according to the all calls option 'All Calls'.

"Charge" means the monthly charge payable by the Customer to NewTel to obtain the Services.

"Contract" means a binding agreement between you and NewTel for the provision of any Service for which you agree to enter into a Contract

"CPE" means customer premises equipment.

"Customer" shall mean the person using the Service ("Customer" or "you"). You may only obtain the Services if you are an existing CPS only customer of NewTel or new telephone Customer of NewTel selecting both this service and CPS.

"Equipment" means a telephone or other service provider equipment, including any modem or filters, that is located on the Customer's premises,

"Fair Usage Policy" shall mean the usage policy as displayed on NewTel's web site at www.newtel.ie. (or available on request to the NewTel Customer Service Department). This policy may be amended by NewTel from time to time.

"Line Maintenance" means the maintenance of the line in relation to faults or additional fixtures and accessories.

"Minimum Period Agreement" means a period of 6 or 12 months commencing from the Start Date, depending on the Contract agreed

"Network" shall mean the telecommunications system owned and operated by any third party telephone network provider that NewTel may contract with.

"NewTel", "we", or "us" shall mean the provider of the Service, which is NewTel Communications Limited, whose registered address is 3006 Lake Drive, Citywest Business Campus, Dublin 24 and postal mailing address is P.O. Box 10328, Dublin 24, Ireland.

"Office of the Director of Telecommunications Regulation" or "Director of Telecommunications Regulation" or "ComReg" shall mean the National Regulatory Authority for the telecommunications market in Ireland.

"Service" shall mean the Service, the Ancillary Services, CPS, Single Bill Service, Broadband or any other Service that NewTel may offer from time to time.

"Single Bill Service" means the service package whereby the Customer can opt for "all Calls" CPS in tandem with single bill including all call types, line rental and Ancillary Services in accordance with the regulations governing such service set out by ComReg and any other amending or additional regulations or legislation or Codes of Practice applicable to Single Bill Service.

"Start Date" means the date when the Broadband Service is first made available to you or when you first start to use the service, whichever is earlier

"Customer Authorisation" means the agreement made between the customer and NewTel for provision of the Service. This agreement can be printed, electronic, verbal, or other methods as approved by regulation.

"Rate Sheet" means the printed document which includes information concerning the charges for the Service This Rate Sheet may not be a full itemisation of all charges applicable to the Services provided by NewTel and also may change from time to time.

2. Service

2.1. For technical, operational and commercial reasons we shall be entitled to vary the Service and any aspect thereof at any time

2.2. The Customer shall have the right to cancel the Agreement within 10 days or other such period and in a manner as specified by regulations applicable to the method of Customer Authorisation between NewTel and the Customer.

2.3. NewTel shall endeavour to provide the Service on the telephone line(s) as specified in the Customer Authorisation within 30 days.

2.4. The Service will be provided by NewTel once the line has been transferred from the Access Provider on terms acceptable to NewTel.

2.5. All faults or requests will be reported to NewTel by the Customer but may require a site visit by the Access Provider. The relevant charges, if any, for Line Maintenance carried out on the line(s) will be billed to the Customer by NewTel.

2.6. Calls to all carrier selection codes will be barred by the Access Provider on Single Billing Service line(s).

2.7. NewTel's customer care number is free phone 1-800-639-835 or such other number as may be advised from time to time.

2.8. The NewTel Code of Practice which outlines our complaints and dispute resolution procedure is available on www.newtel.ie or upon written request

2.9. Any Service will be charged in accordance with the rates and methods provided to the customer. These charges may be provided in a Rate Sheet, our web site, by contacting NewTel Customer Care, by any other methods if available, or within these Terms and Conditions.

3. Payment

3.1. NewTel's tariffs for the Service(s), as amended from time to time, also form part of the Agreement and are set out on our website at www.newtel.ie. We reserve the right to alter such tariffs and shall notify the Customer via the web site within a reasonable period in advance of the effective date. All quoted tariffs are inclusive of Value Added Tax (VAT) unless otherwise

3.2 All sums due to us shall be paid in full by the due date by means approved by NewTel. Provision of the Service or the Single Bill Services shall be conditional on the Customer making all necessary arrangements to pay for the Service by such means. NewTel shall charge a late fee per month every month there is a past-due balance.

3.3 Existing Customers of NewTel who take the Service, the Single Bill or Broadband Services agree to pay for all their NewTel services through their NewTel telephone bill and hereby agree to an amendment of their existing telephone services terms and conditions with NewTel to include this Agreement for local line rental or line rental with CPS and Broadband services, if applicable.

3.4 Service customers shall be charged monthly in advance for their monthly Service. If you activate the Service during any calendar month, you will receive an initial bill for the remainder of that calendar month and an additional month in advance on your first billing for such services. For the Single Bill Service the CPS long distance charges will be billed monthly in arrears.

3.5 When a Customer transfers to the Single Bill Services, all Ancillary Services will also be transferred to NewTel at the applicable NewTel tariff rate for such Ancillary Services.

3.6 For the avoidance of doubt, you will receive a bill from NewTel for calls. You will be charged for line rental and Ancillary Services when the line has been transferred from the Access Provider to NewTel. You may continue to receive a bill from your Access Provider prior to or while services are being transferred to NewTel or for any services or calls not covered by the Agreement. In a NewTel Bundle you will not be charged for your Broadband until it is activated.

3.7 Should you disagree with any charges, you are requested to write or phone us before the date that payment is due. If the charges are incorrect, we shall amend with a new date for payment of the full amount remaining due.

3.8 Other than in a case of manifest error by NewTel, all charges shall be calculated by reference to the data recorded or logged by NewTel. NewTel's determination in respect thereof is final.

3.9 Any credit promotion requires that a customer maintain service with NewTel for additional 90 days of service from date of credit promotion. If customer chooses to cancel agreement within 90 days of said promotion, customer will be charged on their final bill relevant promotion amount.

4. Use of the Service –General

4.1 The Customer undertakes not to use the Service, the Single Bill Services or the Equipment (collectively the Service):

4.1.1 for any improper, immoral or unlawful purpose, nor cause any nuisance by the use of the Service, nor allow others to use the Service for any of the foregoing purposes; or

4.1.2 for the transmission of any material which is, may be or is intended to be a hoax or is of a defamatory, offensive, abusive, obscene or menacing nature; or

4.1.3 for the infringement of intellectual property rights or trade secrets of another party; or

4.1.4 for the processing of automated personal data as defined in the Data Protection Act, 1988.

4.1.5 in a manner which in the opinion of NewTel in its absolute discretion makes abnormal demands on the Service or NewTel's Network or facility from a single connection.

4.2 You shall ensure that all persons having access to the Service comply with the terms and conditions herein stated.

4.3 You are bound to observe the confidentiality of the connection details and are therefore responsible for the security thereof.

4.4 You shall observe the provisions of NewTel's Fair Usage Policy as amended from time to time.

4.5 You shall ensure that all Equipment provided by you for accessing the Service is maintained and kept in good working order.

4.6 You shall comply and are bound by all conditions of the licence under which the Equipment is provided.

4.7 You shall comply with all reasonable instructions given to you by us in relation to the use of the Services.

4.8 You shall inform NewTel of change of name, address, email address and/or telephone number.

4.9 You shall indemnify and hold us harmless against all liabilities, claims, damages, losses, expenses and proceedings howsoever arising from or in any way connected with the use of the Service by anyone.

5. Liability

5.1 We shall use all reasonable endeavours to ensure that the Service is available for use by you in accordance with the standards for the time, being relating to the Service as set out in NewTel's service literature, but shall not be liable for any delay, failure, interruption, or deterioration therein, howsoever arising.

5.2 NewTel shall make reasonable efforts to prevent unauthorised access to the Service by third parties but shall have no liability to the Customer for any unauthorised access to the Customer's Equipment or premises.

5.3 We shall not be liable for any loss or damage of any kind caused by the failure of the Service or Equipment due to the incompatibility with the Service of hardware, software, and/or equipment supplied by you. Neither shall any third party, including without limitation, any other telecommunications company with whom NewTel or any of its Affiliates have entered into arrangements with for the provision of Services, networks, equipment, or rights of passage, have any liability to you, howsoever arising, as a result of the failure, interruption or delay connected with or involving any of the aforementioned.

5.4 We shall not be liable to you or any third party in contract, tort or otherwise for any financial loss whatsoever or for any indirect or consequential loss howsoever arising in relation to the use of the Service or the Equipment or any failure or error or default by us in the provision thereof, or otherwise in connection with this Agreement. Without prejudice to the generality of the foregoing, any and all liability arising under the Sale of Goods and Supply of Services Act 1980 is excluded to the fullest extent permitted by law.

5.5 We shall have no liability under this Agreement for the acts and omissions of other telecommunication operators.

5.6 We shall not be liable for claims arising out of a breach in the security or privacy of messages transmitted using the Service provided by us unless the breach results from a wilful act or omission of NewTel or its employees.

5.7 This Clause 5 shall continue to apply notwithstanding termination of this Agreement.

6. Terms and Termination

6.1 Unless in Contract the Customer may cancel this Agreement at any time. If you cancel your account, NewTel may not cancel the connection and you must contact the new Access Provider to have your calls, local line rental and Broadband transferred to the new Access Provider.

6.2 NewTel may terminate this Agreement at any time without reason. Notwithstanding such termination any Customer of the Service who seeks to terminate shall be liable to pay for any outstanding or incurred charges for the Service, including termination charges if within the Minimum Period Agreement. If NewTel terminates the Service for any reason, the Customer shall only be obligated to pay his, her or its actual charges up to the date of termination by NewTel.

6.3 Without prejudice to its rights under this Agreement NewTel shall have the right to terminate this Agreement forthwith by seven days written notice in the event that you are in material default of any of your obligations under this Agreement. In such case Customer will still be liable for all charges incurred through the date of actual termination of Service. If the Customer breaches the terms of clause 4.1, NewTel may terminate Service immediately without advance notice.

6.4 NewTel shall have the right forthwith to suspend the Service or terminate the Agreement if a Customer fails to pay for the Service in accordance with these terms.

6.5 We shall have the right forthwith to terminate the Agreement for due reason, including, but not limited to if:

6.5.1 The Customer is in breach of Clauses 4 and 5 above or of the Equipment contract; or

6.5.2 The Customer is in breach of any term of the Agreement or any information supplied by the Customer to NewTel is false or misleading; or

6.5.3 We are obliged to comply with an order, instruction or request of Government, the Director of ComReg, an emergency service organisation or other competent authority ;or

6.5.4 You are suspected of involvement with fraud or acts, which are of defamatory, offensive, abusive, obscene, menacing, unsuitable or unlawful character in connection with use of the Service.

6.5.5 If for technical reasons it is not possible to provide the Service.

6.6 The Termination of this Agreement or default of the Customer hereunder shall not affect any obligation of the Customer under the Equipment contract.

7. Force Majeure

In the event of Force Majeure, neither party shall be held in breach of its obligations hereunder (except in relation to obligations to make payments) nor be liable to the other party for any loss or damage which may be suffered by the other party due to any cause beyond its reasonable control including, without limitation, any act of God, war, terrorist act, failure, interruption of power supplies, flood, drought, lightning or fire, strike, lockout, trade dispute or labour disturbance, acts or omissions of Government, highway authorities or other circumstances beyond the control of the parties.

8. Transfer of Line

Where

8.1 The Customer wishes to terminate an agreement in respect of the Service with NewTel; and the new Customer is willing to accept liability for the Service provided by NewTel to the Customer on terms which are acceptable to NewTel, consistent with the NewTel terms and conditions for such Service, NewTel may transfer the Service to the new Customer.

9. Assignment

9.1 NewTel may assign this Agreement to any party without consent of Customer.

9.2 Customer shall not assign this Agreement in whole or in part without prior written consent of NewTel.

10. No Waiver

10.1 Failure by either party to exercise or enforce any right conferred by this Agreement shall not be deemed to be a waiver of any such right and does not operate so as to bar the exercise or enforcement thereof, or of any such right or any other right on any later occasion.

10.2 Any deficiency in the Customer's authority to avail of the Service or to use the Equipment shall not preclude reliance by NewTel on any of its rights under this Agreement.

11. Notices

11.1 NewTel shall send all notices either to the Customer's billing address as provided on registration or place same on the NewTel web page (www.newtel.ie).

11.2 NewTel's address for service of any notice hereunder shall be such address as appears on the last written correspondence rendered to the Customer or such other address as may be prescribed by NewTel for the purpose.

11.3 All written correspondence from NewTel shall be deemed served 48 hours after posting or on earlier proof of delivery.

12. Data Protection and Credit Checking

12.1 In accordance with the provisions of the Data Protection Acts 1988 and 2003 (the "Acts"), any information (such as contact and direct debit details) obtained by NewTel or through the use of the Service the Single Bill Service or the Equipment and (subject to the right of the Customer to request otherwise), may be used by NewTel to identify other products and services, which may be offered to the Customer by NewTel or selected third parties.

12.2 In accordance with the Acts and the Carrier Pre-Selection Code of Practice, any information obtained by NewTel through an application for or the use of the Service may be accessed and used by NewTel and its Affiliates for the purposes of accurate billing, efficient operation and the provision and administration of the Services. By signing the [customer application form]1 the Customer shall be deemed to have given consent for the use of his/her information for such purposes. The use of such information for purposes other than administration and operation shall be subject to the Customer's consent

12.3 Any information so obtained from the Customer may be transferred and disclosed by NewTel to parties (including internationally) for the provision and administration of the Service, the Single Bill Service, the Equipment or to any third party who assumes the rights of NewTel under this Agreement. The Customer's information may also be disclosed to credit reference or, credit collection agencies in connection with Service.

12.4 You may request a copy of the information NewTel holds about you. NewTel may charge a fee for this which will not exceed €6.35. Customer may also access his/her data, have changed any inaccuracies, object to the use of data and block any specific uses, by means of a request in writing to NewTel.

13. Miscellaneous

13.1 If any provisions of the Agreement are held to be unenforceable, illegal or void in whole or in part the remaining portions of the Agreement shall remain in full force and effect.

13.2 This Agreement shall be governed by and construed in accordance with Irish law and the parties hereby submit to the exclusive jurisdiction of the Irish courts located in Dublin, Ireland.

13.3 Any dispute that arises between the Customer and NewTel shall be resolved according to the dispute resolution procedures set forth in the NewTel Code of Practice applicable to its telecommunications customers. The dispute resolution sections of that agreement are incorporated by reference into this Agreement. You may obtain a copy of those dispute resolution provisions by contacting the NewTel customer care department or on the NewTel web site, the location of which is set forth in clause 4 of this Agreement.