

## CITYLINK LIMITED

### STANDARD TERMS AND CONDITIONS

#### 1. THE AGREEMENT AND THE SERVICES

- 1.1. CityLink will provide to the customer ("you") with dedicated fibre, ethernet, network or associated products and services on the applicable CityLink network in accordance with the service description applicable to those products and services as in force from time to time ("the Services").
- 1.2. These Standard Terms and Conditions, the terms contained in the relevant service description and any other relevant documentation as published by CityLink from time to time on its website ([www.citylink.co.nz](http://www.citylink.co.nz)) ("the Standard Terms") together with the provisions of your completed Customer Agreement Form ("the Application") as accepted by CityLink constitute "the Agreement" between you and CityLink in respect of the Services and supersede any previous CityLink quotation and correspondence.
- 1.3. This Agreement does not come into effect until CityLink confirms in writing that it accepts your Application. If you are an existing customer and have applied for additional Services, CityLink's obligation to provide those Services does not come into effect until CityLink confirms in writing that it accepts your Application for those Services.
- 1.4. Any terms in your Application as accepted by CityLink which expressly vary or modify any of these Standard Terms shall prevail in respect of the Services referred to in the Application including, if the Term is for a specified period, any monthly fees applicable to that period.
- 1.5. Unless CityLink and you agree otherwise in writing, CityLink may vary these Standard Terms, including the terms, availability and location of any Services, by posting an amended copy on its website or by notice in writing to you or and any amendments shall come into force and be binding upon posting on the CityLink website or upon receipt by you or such later date as specified by CityLink.

#### 2. CHARGES

- 2.1. You must pay the full amount of all charges ("the Charges") at the rate or rates in effect from time to time unless any of the Charges have been specifically amended by this Agreement in which case those become the applicable Charges.
- 2.2. Subject to clause 1.4, CityLink may amend any Charges by a notice posted on its website or by notice in writing to you and such Charges shall come into force and be binding upon posting on the CityLink website or upon receipt by you or such later date as specified by CityLink.
- 2.3. You agree to pay the Charges for any work which CityLink undertakes at your request and which is not covered by this Agreement.
- 2.4. Goods and services tax is not included in the Charges and is payable by you.

#### 3. ACCESS, EQUIPMENT AND ACCESS CHARGES

- 3.1. If CityLink's equipment is, or is to be, located on any premises which are owned or occupied by you ("Your Premises"):
  - (a) You must provide sufficient space on or in Your Premises for the mounting of connection boxes, routers and/or switches supplied and maintained by CityLink;
  - (b) You agree to provide reasonable access to Your Premises to CityLink's authorised employees and contractors for the purpose of network management, connection, maintenance, disconnection, configuration and repair at such time or times as reasonably required by CityLink; and
  - (c) You must take reasonable care of any of CityLink's equipment located on Your Premises and you must not damage or interfere with, or permit any other person to damage or interfere with, any of CityLink's equipment.

- 3.2. CityLink will provide the Services to the point where CityLink's equipment is connected to your equipment ("the Service Delivery Point") and will maintain and repair any equipment on its side of the Service Delivery Point. However, if you fail to take reasonable care of, or you cause or permit any of, CityLink's equipment to be damaged, CityLink may bill you, and you must pay, all costs associated with such repairs including any applicable call-out Charges.
- 3.3. You are responsible for the installation, repair and maintenance of all cables and equipment from your side of the Service Delivery Point.
- 3.4. CityLink is responsible for the installation, repair and maintenance of: all cables, poles, trenches and connectors in the streets; and CityLink's switches, routers and related equipment on CityLink's side of the Service Delivery Point.
- 3.5. You must comply with any reasonable instruction, order or regulation made under the Telecommunications Act 2001 and any other relevant legislation.
- 3.6. You agree to pay the full amount of the Access Charges or, if there is more than one CityLink customer in a building, then your proportionate share of the Access Charges (as determined by CityLink in its sole discretion) either directly by payment to the person imposing the Access Charge or by way of reimbursement to CityLink. An "Access Charge" is any charge imposed by any person to enable CityLink to install its equipment (including cabinets, switches, connectors and cables) in or over any property owned or controlled by third parties in order to provide Services in any building in which Your Premises are located, or to gain access to Your Premises, or to gain access to such equipment, or for the use of any utilities or services such as electricity and after hours entries.

#### **4. DISCONNECTION AND RECONNECTION FEES**

- 4.1. You must pay all applicable Charges for each Service for the entire Term.
- 4.2. If this Agreement or any Service is terminated before the end of the Term by you or by CityLink as a result of your breach of this Agreement, then you must pay a disconnection fee equal to the balance of all Monthly Charges due under this Agreement had the Service remained in place for the entire Term. .
- 4.3. If any Service is disconnected by CityLink by reason of your having breached your obligations under this Agreement and the Services is subsequently reconnected at your request, then you must pay a reconnection fee of \$250.00 for each such Service.
- 4.4. You acknowledge that the disconnection and reconnection fees are a genuine estimate of CityLink's actual losses and do not constitute a penalty

#### **5. TERM AND TERMINATION**

- 5.1. The Term of this Agreement is the term specified in the Agreement unless extended by agreement in writing signed by you and by CityLink (in which case reference to the "Term" includes any extended term).
- 5.2. If the Term is:
  - (a) Monthly, this Agreement will continue from month to month until it is terminated by either party on one month's notice in writing to the other, such termination to be effective at the end of the month following the month in which the notice is given; and
  - (b) If the Term is for a specified period, this Agreement will terminate at the end of that period. However, if you continue to use any Service after the end of the Term, the Services will continue on a monthly basis at the greater of the Charges then in effect under this Agreement and those currently in effect for monthly contracts (if any) for the Services.
- 5.3. CityLink may terminate this Agreement or the provision of any one or more Services under this Agreement, by notice in writing to you at any time if:
  - (a) You are in breach of your obligations under this Agreement; or

- (b) CityLink is unable to obtain, or loses the right to continue to utilise, any other rights (including access rights) or services required by CityLink to provide any of the Services or the cost of obtaining or continuing to utilise such rights or services is such that CityLink determines, in its absolute discretion, that it is uneconomic to continue to provide the Service.

## 6. PAYMENT

- 6.1. You must, without deduction or set off of any kind, pay all of the Charges for the Service by the 14th of the month following the date of each invoice (“the Due Date”).
- 6.2. If you do not pay all of the Charges by the Due Date, then you must pay:
  - (a) Default interest on all sums owing for the period from the Due Date to and including the date the Charges are paid. The default interest rate will be 2% per annum above the rate charged by CityLink’s bankers for unsecured overdraft facilities as at the Due Date [adjusted monthly]; and
  - (b) CityLink’s legal and other fees and expenses (including costs on a solicitor own client basis) incurred in respect of the recovery of any overdue Charges.
- 6.3. If any sum payable by you under this Agreement remains unpaid for 14 days after the Due Date, CityLink may disconnect any Service without giving notice to you.
- 6.4. Disconnection of any Service will not:
  - (a) Relieve you from having to pay any sum due and owing to CityLink, and
  - (b) Remove your obligation to pay the Charges for the Service to the end of the Term; or
  - (c) Restrict any other right or remedy of CityLink.
- 6.5. CityLink shall use its best endeavours to resolve any dispute it may have with you concerning the Charges within 60 days of being advised by you that there is a dispute.

## 7. NOTICES

- 7.1. A notice shall be deemed to have been validly given if it is in writing (which includes facsimile and e-mail) and is sent to the relevant party at any address, facsimile number or e-mail listed in this Agreement or subsequently notified by either party to the other in writing and shall be deemed to have been duly given or made:
  - (a) If by mail, on the second Working Day (being a day other than a Saturday, Sunday or a public holiday) after being posted by mail correctly addressed and stamped;
  - (b) If by hand, on personal delivery to the recipient or to such address; and
  - (c) If by facsimile or e-mail, when transmitted to the correct number or address with no indication of incomplete transmission to such address,

**PROVIDED THAT** if a notice is given by hand, facsimile or e-mail after 5PM on a Working Day or on a day which is not a Working Day it shall be deemed to have been received at 8AM on the next following Working Day.

- 7.2. A notice sent by e-mail from a party’s e-mail domain that states on its face that it is from a particular person shall be “signed” by that person for the purposes of this Agreement.

## 8. CONSUMER GUARANTEES ACT

You acknowledge that if you are acquiring the Services for the purposes of a business the provisions of the Consumer Guarantees Act 1993 do not apply to this Agreement or to the supply of any of the Services.

## **9. NO REPRESENTATIONS AND WARRANTIES**

- 9.1. CityLink shall not be bound by any representation, warranty, description or condition as to suitability, fitness for purpose or otherwise (whether express or implied) except as expressly set out in this Agreement.
- 9.2. You acknowledge that you are relying on your own assessment of the Service to be provided.

## **10. SERVICE LEVELS AND SUPPORT SERVICES**

- 10.1. The CityLink network is constantly evolving and while CityLink will use its best endeavours to provide a continuous and fault free service, CityLink does not guarantee that the Service will be available at all times and in all places.
- 10.2. Any planned outage of a CityLink service or connectivity will be notified to you at least 5 working days in advance. Any planned outages will also be posted on the CityLink website under "Scheduled Outages," a service to which you can subscribe.
- 10.3. A specific outage needed for urgent remedial work or inside CityLink's standard maintenance window will not necessarily be notified. CityLink's standard maintenance window is the 1st and 3rd Sunday of each month between the hours of Sunday 18:01hrs to Monday 06:00hrs.
- 10.4. CityLink will endeavour to keep outages to a minimum.
- 10.5. CityLink will use its best endeavours to provide the Support Services in accordance with, and within the time frames, specified in the Support Service Terms attached as a schedule to these Standard Terms and Conditions.

## **11. LIMITS OF LIABILITY**

- 11.1. No claim may be made by you against CityLink of any kind or nature unless you notify CityLink in writing within 30 days of the date on which the claim first arises.
- 11.2. Except as provided in this clause, CityLink will not be liable to you or to any other person in any way whatever and however arising, whether in contract, tort, or otherwise, and whether for direct, indirect, consequential or any other type of loss (including loss of profits and claims by third parties) for any type of loss or damage resulting from failure or the quality of the Service or CityLink's network. This limitation also applies to the representations, warranties, descriptions or conditions referred to in clause 9.
- 11.3. If the Service does not function in accordance with this Agreement due to a fault for which CityLink is responsible, then subject to this clause 11 and in lieu of any other liability, CityLink may give a credit to you for the period during which the Service did not function. The credit will be equal to the portion of the Charge applicable to the affected Service for the period beginning at the time you notify the fault to CityLink until the Service is restored.
- 11.4. CityLink will not be responsible for any loss or damage incurred by you or by any other person caused by the failure of any nature on the part of the your service supplier, to supply you with sufficient services and connections, to maintain the quality of service or network that CityLink may be endeavouring to supply.
- 11.5. In all circumstances of whatever nature and however arising, CityLink's maximum liability to you (including for any credit) will be no more than \$200 for each event or series of related events and is subject to a maximum liability of \$500 in any calendar year.

## **12. PROHIBITED USE OF SERVICE AND NETWORK**

- 12.1. You may not use the Service other than for your own use for the purposes of signalling, communication and entertainment.
- 12.2. You may not on-sell or re-sell access or any unused portion of access to the Service or any part of CityLink's network without the express prior written agreement of CityLink.

- 12.3. No connections, other than those which CityLink has expressly agreed to provide to you in this Agreement, may be made by you, or through your connections, to the Service or any part of the CityLink network.
- 12.4. You may not use nor permit anyone else to use the Service for any unlawful purpose or in a manner which interferes with the provision of service to third parties.
- 12.5. You must not use any equipment which would, or configure any software or equipment in such a way as to, cause any damage or impairment to, or interfere with, any of CityLink's equipment or with any other person's use of any of CityLink's Services.
- 12.6. CityLink may, by notice in writing, terminate the Service if it reasonably believes you have breached this clause.
- 12.7. You hereby indemnify CityLink (and the providers of services to CityLink) from and against any loss, cost (including costs on a solicitor own client basis) or expense arising from or out of any claims that may be brought against any of them in respect of the use of the Service by anyone accessing the Service from your side of the Service Delivery Point, whether or not they were authorised by you.

### **13. ASSIGNMENT**

- 13.1. You cannot transfer your benefits and obligations under this Agreement without the prior written permission of CityLink which will not unreasonably be withheld.
- 13.2. CityLink may assign its benefits and obligations under this Agreement.

### **14. FORCE MAJEURE AND DELAY OR REDUCTION IN PROVISION OF SERVICE**

CityLink shall not be in breach of this Agreement and shall not be liable for any delay or reduction in the Service (or inability to provide the Service) caused by any of the following:

- (a) Any event or circumstance (including fire, earthquake and adverse weather conditions) which is outside of CityLink's reasonable control;
- (b) Late delivery of equipment or materials to CityLink for reasons beyond the reasonable control of CityLink;
- (c) Industrial or legal action which obstructs or prevents continuation of the Service;
- (d) Operational and technical difficulties such as radio interference, atmospheric conditions, network conditions, maintenance, outages, and obstructions to a signal path beyond the control of CityLink; or
- (e) Any of CityLink's agreements, licences or consents which enable it to operate its network is ended or suspended.

### **15. CUSTOMER INFORMATION**

You authorise CityLink to:

- (a) Collect and store information about you from any other person;
- (b) Use any information it holds about you; and
- (c) Disclose information about you to any person in the course of CityLink's business, including credit assessment, debt collection, direct marketing and for assessing customer satisfaction.

## SCHEDULE: SUPPORT SERVICE TERMS

CityLink provides two levels of Support Services: Business Hours Service Support and 24 x 7 Service Support. Unless the applicable service description or the Application as accepted by CityLink specifies otherwise, the Business Hours Support Service applies to all Services provided under this Agreement.

### 1. CityLink Service Assistance:

- 1.1. In the case of faults or suspected faults with any Services which require the assistance of CityLink personnel, CityLink will respond to requests for assistance logged with CityLink's telephone service on 0800 424 895.
- 1.2. You must identify such calls as fault calls, so that the appropriate level of urgency can be applied.
- 1.3. In the case of requests for assistance which are made After Hours:
  - (a) If the Business Hours Service Support is applicable, then the request will be recorded and passed on to CityLink support personnel at the beginning of Business Hours on the next Working Day and will be deemed to have been logged by you at that time; and
  - (b) If the 24 x 7 Support Service is applicable, the request will promptly be forwarded to CityLink support personnel and will be deemed to have been logged by you when the request is received.
- 1.4. "Business Hours: are the hours of 08:30 to 17:00 on days which are Working Days in Wellington and any other times are referred to as "After Hours."

### 2. Your Responsibility:

- 2.1. You will promptly report any observed fault or problems with CityLink's Service to CityLink's help desk at 0800 424 895 and provide all relevant details which CityLink requests.
- 2.2. You acknowledge that abuse of this support facility will lead to degradation in service to other customers.
- 2.3. CityLink may, at its sole discretion, invoice you for, and you agree to pay, a call out charge at CityLink's then applicable rates and all costs incurred by CityLink if you report a fault or problem that is caused by failure of any equipment or service which is not provided by CityLink to you or the incorrect operation of equipment supplied by CityLink to you.

### 3. CityLink Response Times and Procedures:

- 3.1. To report a fault you must call CityLink's help desk at 0800 424 895. CityLink's help desk is consistently manned during Business Hours.
- 3.2. CityLink personnel will endeavour to respond within the following time-frame guidelines.

#### *Time-Frame Guidelines*

<i>Time-Frame Guidelines</i>	<b>Fault logged during Business Hours</b>	<b>Fault Logged After Hours where 24 x 7 Support Service applies</b>
CityLink acknowledgement*of <u>logged fault</u>	Immediately the request is received by CityLink support personnel	30 min
Fault Identification by CityLink	30 min	120 min
Equipment fault: repair time from fault Identification	3 hours	4 hours
Cable fault: repair time from fault Identification	4 hours	6 hours
Major Fibre Cable Failure: repair time from fault identification	12 hours (approx)	16 hours (approx)

\* Faults reported After Hours where Business Hours Support Service applies are deemed to be logged at the beginning of Business Hours on the next Working Day.

- 3.3. CityLink will provide a fault number at the time of the fault acknowledgement; this number should be quoted during the fault event.
- 3.4. If you are needed, to localise or define the fault condition further, you will be contacted by CityLink and you shall be available and provide all assistance which CityLink reasonably requests.
- 3.5. A CityLink engineer will be allocated to deal with the fault call.
- 3.6. The CityLink Engineer will manage the fault to conclusion and will use reasonable endeavours (to keep you informed of the nature of the fault when it is discovered, the likely time of its clearance (if known) and when it is cleared.
- 3.7. CityLink's Fault Call Register will be signed off by CityLink upon satisfactory fault clearance.
- 3.8. If the Business Hours Support Service applies and you report a fault or problem and CityLink, at your request, provides Support Services After Hours, CityLink may, at its sole discretion, invoice you, and you agree to pay, for all costs incurred by CityLink and a call-out Charge at CityLink's then applicable rates. .
- 3.9. Any Access Charges incurred by CityLink in attending to faults will be charged to and paid by you.
- 3.10. You must make your premises and equipment available to CityLink. CityLink may, at its sole discretion, invoice you for, and you agree to pay, a call out Charge at CityLink's then applicable rates and all costs incurred by CityLink for any time greater than half an hour spent by CityLink's personnel waiting for access to your equipment.

#### **4. Customer Owned Equipment Failure:**

- 4.1. Where CityLink has sold and supplied specific equipment, and CityLink has entered into a specific support agreement with you, CityLink will, during the term of that specific support agreement, use all reasonable endeavours to carry sufficient equipment support spares to enable your equipment to be replaced on-site in the event of equipment failure. This support equipment will be provided for use by you on a no-cost loan basis until your failed equipment is repaired or replaced.
- 4.2. If, the CityLink equipment support spares are already in use or are unavailable, CityLink will use all reasonable endeavours to restore your equipment as quickly as possible, or where practicable, to provide an alternate network solution.
- 4.3. In the event of equipment failure, the equipment will be returned to the supplier (*importer or manufacturer*) for repair or replacement. If the equipment is outside the manufacturer's warranty period (typically 12 months), CityLink may, at its sole discretion, invoice you for, and you agree to pay, any repair costs (including freight, shipping costs, and any other reasonable cost associated with the repair) at cost, plus 10% for CityLink handling.

#### **5. CityLink Network Equipment Failure:**

CityLink will carry sufficient suitable equipment support spares to enable the installed CityLink owned equipment to be replaced on-site in the event of equipment failure.

#### **6. CityLink Network Cable Failure:**

- 6.1. CityLink personnel will attempt to restore service by means of alternate cable paths within the network as a first line of repair.
- 6.2. Should a major cable be damaged, CityLink will use all reasonable endeavours to provide repair and restoration, within a 6 to 8 hour timeframe after CityLink becomes aware of the damaged cable. However, this time may realistically extend to or beyond 16 hours, dependant on particular location issues, nature of actual problem, cause, etc