



## MynxNet Broadband Terms and Conditions

Updated 21/11/16

### Introduction

These terms form the basis of the services provided by MynxNet (referred to as "Mynx", "Mynxnet", "we", "us", or "our") to yourself and your residence alone, they apply to all goods, products and services of any kind provided to you by MynxNet, a division of Vibe Communications Limited.

By signing up with MynxNet you are accepting and agreeing to all terms and conditions ("Customer Terms") stated on this document. Our services are provided to you, as an individual, for use at one place of residence for legitimate uses only.

### 1. Our Commitment to You

- 1.1. Provide services to your residence with reasonable care and skill. We will use all reasonable effort to ensure that services are reliable at all times although we do not guarantee that services will be continuous or fault free.
- 1.2. Endeavor to remedy any fault or outage with the service provided within a reasonable timeframe, we will keep you up to date with our progress if there are faults and ensure you are aware of what is happening to restore your services.
- 1.3. Owing to operational or other reasons, we may need to restrict or suspend a service. In these circumstances we will give you as much notice as possible, at least 24 hours, and will endeavor to ensure that restrictions/suspensions take place during the night when traffic on the service is likely to be less busy. Services may also change with network expansion or reconfiguration.
- 1.4. We may need to change the terms of this agreement from time to time by changing or removing existing terms or by adding new ones. Changes may take the form of completely new terms. If we decide a change is to go ahead, we will in good faith, give you at least two weeks notice of the change to be made. We will email you to notify you of changes, and the new agreement will be published on our website. Your continued use of MynxNet services after notification of changes indicates your acceptance of these changes.
- 1.5. We will always try to provide you with the quickest possible broadband service. However, broadband is not available in all areas and speeds do vary. Factors which impact speed include but are not limited to how close your premise is to an exchange, your modem, connection and wiring, the websites you are viewing, and any software you have downloaded (malicious or otherwise). Day to day speed may also be affected by the number of uses online in your household at any one time.
- 1.6. We offer support via our online ticketing system, available on our website ([www.mynxnet.com](http://www.mynxnet.com)) or you can leave a message on our voicemail system by phoning (09) 222 0210. We endeavor to reply to all support messages within 24 hours.
- 1.7. We will contact you by email, post or by publishing notices on our website.

## 2. Your Commitment to Us

- 2.1. You agree not to use the services provided to you in any way which is illegal, abusive or which constitutes harassment or may cause damage to another person or business.
- 2.2. Not to use the services in any way that could damage the MynxNet network or that of any other operator.
- 2.3. To only use the services we provide for the purposes they are intended.
- 2.4. If you do not agree with any changes to the terms and agreement conditions, you may terminate your services with us.
- 2.5. It is important that you know that MynxNet broadband services do not have data caps and that the service is only for residential purposes. It is not intended for business purposes, running server farms, or the like. We expect you to use our services in a responsible and fair manner so that you do not impact other customers. When using MynxNet broadband services you should think about:
  - 2.5.1. The effect your use of our services may on networks, equipment and other parties; and
  - 2.5.2. Compliance with "netiquette" and internet conventions; and
  - 2.5.3. The fact that your usage must not interfere with the availability of any of the services to others or any other services offered by us, other internet providers and carriers to others.
  - 2.5.4. Illegal uses – You must not use our services in ways that constitute criminal or civil breaches of any statute, regulations, government requirements or any other law (including general and common law) of any country. Those breaches include, without limitation, breach of intellectual property rights (such as copyrights, trademarks, patents etc.); defamation; breach of obscenity laws and laws as to objectionable publications, such as pornography and hateful materials; fraud; theft; misappropriation of money, credit card details or private information; breaches of privacy; and breaches of trade practices legislation, for example the Fair Trading Act and Consumer Guarantees Act (NZ).

## 3. Charges, Invoicing and Payments

- 3.1. We may change the amount we charge you from time to time. If we decrease charges for any Mynx Service this will happen immediately and we will email you to notify you of the change as soon as possible. We will also publish the change on our website.

When we increase charges to our services and you are affected by the change, we will give you one month's notice of these changes. We will notify you of these changes by emailing you and publishing the changes on our website.

- 3.2. We may occasionally change our MynxNet broadband services. If we in good faith, decide that the change is likely to benefit or have no impact on you we will make the change immediately and tell you via email and publishing on our website the information as soon as the change has occurred. Examples of changes we may make are: additional benefits to existing plans, or changing the name of your service with us.

- 3.3. If we alter our services in a way that negatively impacts the service we provide to you and the change was within our control we will provide you with one month's notice. However, if the change is outside our control, and it is possible, we will notify you of the change as soon as possible before the changes occur. If the change is outside our control, and we are unable to provide you notice before the change occurs, we will provide you with notice as soon as possible after the changes have occurred via email and by publishing the changes on our website.
- 3.4. Monthly prepaid customers will be charged for MynxNet broadband services on the date they sign up for services with us. Your first payment will be taken from your nominated debit/credit card on the day you sign up, in accordance with the plan you have chosen, and on the same date every month following or on the next business day in the event of a public holiday or other interruption.

For example if you connect with MynxNet on the 12 December 2015, your payment for the 12 Dec 15 – 12 Jan 16 will be taken on the 12 Dec 15. Your next payment will be on the 12 Jan 16 and will cover the period from the 12 Jan 16 – 12 Feb 16.

If payment fails (e.g. due to credit card expiry, no available funds etc.) we will attempt to take payment the next day and the day after. If your account remains overdue for more than 5 business days, your account with us will be suspended. We will try and contact you during this time to organise another form of payment to bring your account up to date. After 10 Days, your services with MynxNet will be cancelled. If your account remains unpaid after 1 month, your account may be sent to a debt collection agency who will try and recover funds on our behalf.

- 3.5. If you have signed up for MynxNet services on a contract term and for whatever reason you choose to change providers or cancel your services with us during the contracted term you have signed up for with MynxNet, you will be charged a non-negotiable charge of \$30 per month, for each month remaining on the contract that you wish to cancel.

For example, if you have signed a 12 month contract and cancel two months into the contract, you will be charged \$300 to cover the remaining 10 months of the contract.

- 3.6. Any changes made to decrease your plan will be actioned at the next billing date. If you wish to upgrade your plan, this will be done immediately, however, extra charges will not be incurred until your next billing date.
- 3.7. Any money paid is not refundable in the event that you decide to leave Mynx before the end of your billing month.
- 3.8. In most cases, if your account has been suspended or restricted you will still be charged your normal monthly fees.

#### **4. Getting Set Up**

- 4.1. Customers wishing to sign up for MynxNet services must do so through the online sign up form found at [www.mynxnet.com](http://www.mynxnet.com)

- 4.2. MynxNet broadband is naked broadband by default, so when you connect to us, your landline will be disconnected. This means that any additional services you have running over your landline, such as voicemail and caller display is likely to stop working. You may choose to connect a landline through MynxNet if you would like one.

This also means that landline dependent services such as medical alarms, pay per view items for Sky boxes and fax machines will no longer work. It is your responsibility to let us know if you have any landline dependent services before you sign up with MynxNet.

- 4.3. Points to Note:

- 4.3.1. Activation of your MynxNet services will result in you experiencing temporary loss of your broadband connection. Normal service is usually resumed within an hour.
- 4.3.2. If, despite our reasonable efforts, your MynxNet installation fails, you will not be charged for the installation.
- 4.3.3. If you move house, we cannot guarantee that MynxNet broadband services will be available in your new location.

## 5. Your Equipment

- 5.1. Can be adversely affected by radio interference, atmospheric conditions, geographical factors, network congestion, maintenance, outages on other networks, configuration imitations and more, this may affect our ability to provide services to you, however, your choice to have a connection with us, and by signing up with and agreeing to the Customer Terms indicates you have understood this and that MynxNet is not liable for costs or loss of service if this occurs.

- 5.2. You will provide your own modem to use MynxNet services. We do not supply them, however, we can purchase one on your behalf and at your expense.

We are not responsible for your modem (without limiting your rights under the Consumer Guarantees Act 1993 or the Fair Trading Act 1986), if you require support in regards to the use/set up/installation of your modem you may be charged.

For more information on the type of modem you will need, for the connection you would like please see our FAQ's page on the website.

- 5.3. The configuration and set up of your computer, modem, or other communications equipment you use to receive our Internet services may affect not only your ability to use our services, but our ability to provision it.

Our services will only be delivered to you when you have the required connection available to receive MynxNet services, and will be subject to service availability limitations and any functionality limitations of your systems.

## 6. Suspension and Termination

- 6.1. If you do not agree with any changes made in accordance with items discussed in point 3, you have the right to terminate this agreement by cancelling your



services with MynxNet.

- 6.2. If your services with MynxNet are terminated due to non-payment of your account, you will be unable to sign back up with MynxNet for a period of 2 weeks. You will be required to pay any outstanding invoices on sign up before your new broadband connection commences.
- 6.3. If you continuously default on your payments, wait 2 weeks then sign up and then default again, MynxNet has the right to deny you services with us.
- 6.4. Please be aware that any Mynx accounts that are inactive, have expired, were terminated, disconnected, suspended or blocked are not entitled to any credit remaining on the account.
- 6.5. You acknowledge that we reserve the right to suspend, sign out, disconnect, terminate, restrict or delete your MynxNet services accounts (and any sub accounts) that are inactive for a period of time. "Inactive" means that you have not used a particular service for a continuous period of 6 months or more.
- 6.6. You may end this agreement at any time by cancelling your services with us.

## **7. Confidentiality, Publicity and Privacy**

- 7.1. Your use of MynxNet broadband services involves the collection of personal information about you, such as your email address, name, home/work/cell number. We may also at times request information in regards to your demographics such as age, gender or preferences. Information collected by us may be combined with information obtained by our related companies.

The information we collect is used by us to maintain the quality of MynxNet services, to provide us with general statistics on our services and to assist us with our ability to provide customized content and advertising for our customers.

- 7.2. You may choose not to provide MynxNet broadband services with personal information. However, if you do not provide it, we may not be able to provide our broadband services to you.
- 7.3. You may ask to see any information about you that we hold, we will provide you with it as long as we have it and it is readily retrievable. You may also ask us to correct any incorrect information we have on record about you. MynxNet reserves the right to charge you for the time and costs involved with retrieving information for you.
- 7.4. Occasionally, MynxNet broadband services may monitor telephone calls between existing and new customers and our personnel to provide better customer service. We may also monitor communications between our customers and third parties to maintain and support our systems and to safeguard the security and integrity of our services.
- 7.5. We may provide your personal information to our related companies, our contractors, credit reference and debt collection agencies, communication network operators and selected business partners to:
  - 7.5.1. Recover money you owe

- 7.5.2. Keep you informed of and conduct, sales and marketing activities in relation to services available to, or planned for, you from us and other people.
- 7.5.3. Exercise any lawful right we or any of our related companies, contractors, credit reference or debt collection agencies, communication network operators or selected business partners have.
- 7.6. MynxNet broadband services may publish aggregated information relating to your use of our services, we will not disclose information in any form that could reasonably be expected to identify you, without your permission.
- 7.7. MynxNet may disclose information about you or your use of our services without your prior permission if we have, acting reasonably, and in good faith believe that such action is necessary to:
  - 7.7.1. Conform to legal requirements.
  - 7.7.2. Protect our rights or property or those of related companies
  - 7.7.3. Act to protect the interests of our, or our related companies, customers or others.

We do not sell, rent or lease our customer information to third parties.

## **8. Security**

- 8.1. We may withhold, restrict, suspend or terminate your use of any or all of the MynxNet services without warning if:
  - 8.1.1. You or anyone in your house uses MynxNet services in any way that does not comply with these Customer terms and conditions or other terms and conditions relating to MynxNet services or puts our services at risk.
  - 8.1.2. You harass, abuse or threaten our staff.
- 8.2. We may end this agreement immediately without notice if you:
  - 8.2.1. If you have not rectified any breaches to clause 9.1 within a two week period.
  - 8.2.2. You breach this agreement in a material way (for example, if you do something that could negatively impact on our services or our network) and do not put it right within 48 hours of us asking you to.
- 8.3. You must not use MynxNet broadband services to breach, or attempt to breach, the security and operation of any network, equipment or other system. This includes hacking; cracking into; monitoring, or using systems without authority; scanning ports; improper configuration of mails servers and FTP servers enabling distribution of spam or unlicensed materials by others; interference of services to any other user or network including mail-bombing, flooding, deliberate attempts to overload a system and broadcast attacks; unnecessary excessive traffic (including excessive pings); distributing viruses, or other harmful materials or software; or use our network in any way as a staging ground for those breaches or to disable or "crack" other systems.

## **9. Liability**

- 9.1. We do not and cannot supervise, edit or control the what in which you or other end users use the content, information or other material accessed through the MynxNet broadband internet services provided to you.

You acknowledge this and agree that we will not be held accountable in any way for content, information or other material accessed or provided by means of MynxNet services. You are responsible for all content, information and material that you upload, download, post, email and otherwise transmit, access or make available through the use of our services.

We have not reviewed any of the sites linked to MynxNet services and we are not responsible for the content of those sites.

9.2. To the fullest extent permitted by the law, you agree that MynxNet will not be responsible for unauthorized access to or alteration of your communications or data, any material or data sent or received, or not sent or received, any transactions entered into through the use of MynxNet broadband services or our websites, any threatening or defamatory, obscene, offensive or illegal content or conduct of any other party or any infringement on another's rights, including intellectual property rights. You also agree that MynxNet broadband services are not responsible for any content sent, using or including in, MynxNet services or websites by any third party.

9.3. Your liability to us:

- 9.3.1. You accept your liability to us for breach of contract or negligence, and
- 9.3.2. You are not liable for any loss to the extent that it is caused by us

9.4. Our liability to you:

- 9.4.1. We accept our liability to you for breach of contract or negligence subject to clause 22.9, and for our breach of consumer protection laws, such as the Consumer Guarantees Act 1993 and the Fair Trading Act 1986 to the extent that they apply to you, and
- 9.4.2. We are not liable for any loss to the extent that it is caused by you.

9.5. No other Vibe Communications Company, network operator and/or third party supplier (including their officers, employees, contractors and agents) will be liable to you for loss or damage of any kind arising from your use of MynxNet services. This clause creates a right and benefit that other Vibe companies, network operators and/or suppliers can enforce as a defense to any claim.

9.6. We or any other parties listed in clause 9.5. above are only ever liable to you for up to one months service at our discretion.

## **10. Entire Agreement, Variation and Conflict**

10.1. Each term of this agreement is separately binding. If for any reason the term is not legally effective, all other terms shall remain binding and we can replace the term that is not legally effective with a term of similar meaning that is lawful and effective.

## **11. Forced Majeure**

11.1. MynxNet aims to provide a quality services to you at all times, and exercise reasonable skill and care in performing our obligations to you. However, if we are prevented from performing any obligation in these terms and conditions by

reason of any act of God, act of State, riot, insurrection, civil commotion, strike, sanctions, boycotts, embargo or any other circumstances beyond our reasonable control, we will try to advise you of the existence of the circumstances and its expected duration, and the fact that our obligations to you have been impacted by the circumstances.

We are not liable to you for any failure or delay in performing any obligation set out in these customer terms, under clause 11.1. You will not be required to pay any charges for MynxNet broadband services if services are not provided to you due to circumstances described in clause 11.1.

## **12. Waiver**

12.1. A failure or delay by you or us to enforce any rights or powers under this agreement shall not operate as a waiver of that right or power. A waiver of any breach of this agreement shall not be deemed a waiver of any other subsequent breach.

## **13. Jurisdiction**

13.1. The laws of New Zealand govern this agreement and you submit to the exclusive jurisdiction of the courts of New Zealand in respect of any dispute or proceeding arising out of it.