

Standards Terms for Schools

1. Introduction

These Standard Terms form part of any Agreement with you and will apply to all Services that we provide to you from time to time. Please read these carefully as they contain important information about our Services and the responsibilities of both parties in relation to them.

Additional terms apply to our Services and are contained in any Service Offer we make to you.

2. Definitions and interpretation

In these Standard Terms we have used “*we*”, “*our*” or “*us*” for Vector Communications Limited, “*you*” or “*your*” for the school and “*Service*” or “*Services*” to cover all goods and services of any kind we provide to you as specified in a Service Offer.

Agreement means the relevant Service Offer, these Standard Terms, the Service Levels and the Service Specification.

Business Day means a day on which registered banks are open for general banking business in Auckland, excluding Saturdays, Sundays and public holidays.

Commencement Date means the date on which the provision of a Service is deemed to have commenced and shall be the earlier of:

- the date on which we notify you that the Service is available; or
- the date on which we notify you that the Service will be available upon you performing certain specified actions required for us to make the Service available to you,

provided that this date is no earlier than the date on which you requested the Service to commence. Where Services are provided for a specific term, the term begins on the Commencement Date.

Demarcation Point means the last piece of network equipment or cable owned by us or provided by a third party on our behalf, as more specifically defined in the Service Offer. The Demarcation Point is where our responsibility ends and your responsibility begins.

Credit Note means a credit note that complies with section 25 of the Goods and Services Tax Act 1985.

GST means Goods and Services Tax payable in accordance with the Goods and Services Tax Act 1985.

Service Levels means the standard that applies to each of our Services as specified at www.vectorcommunications.co.nz or other website advised to you.

Service Offer means the written offer by us to provide you with any Services.

Service Specifications means the Service Description and Service Attributes that apply to each of our Services as specified at www.vectorcommunications.co.nz or other website advised to you.

Standard Terms means these standard terms.

Tax Invoice means an invoice that complies with section 24 of the Goods and Services Tax Act 1985.

In the event of a conflict the following order of precedence will apply:

- Service Offer
- Standard Terms
- Service Specifications
- Service Levels

3. Our commitment to you

We agree to:

- provide the Services to you with due care and skill to a standard meeting or exceeding that which can reasonably be expected from a service provider providing the same or similar services
- commence providing the Services in a timely manner
- ensure our Service Specifications are adhered to
- use reasonable endeavours to achieve or better our Service Levels
- credit your account where we do not meet our Service Levels with the amount detailed by those Service Levels (if any)
- be available to fix any service interruption that occurs in the Services
- use reasonable endeavours to minimise the duration of all Service interruptions
- ensure that any scheduled maintenance is scheduled at a time so as to minimise inconvenience to the majority of affected customers and use reasonable endeavours to give you the advance notice as specified in our Service Levels
- have all work that we perform carried out by competent and suitably qualified personnel
- use reasonable endeavours to answer any question or resolve any complaint which you may have about our Services in a timely manner.

4. Your commitment to us

You agree to:

- use our Services for lawful purposes only
- not use the Services in any way which could damage or interfere with our (or another operator's) network or other customers' use of our Services
- follow our reasonable directions about the use of our Services
- make sure all information you give us is correct and complete
- promptly advise us in writing if any information changes (such as change of address or contact phone numbers)
- obtain, or assist us to obtain, any third party authorisation, licence or consent that we reasonably require for us to provide the Services to you
- promptly advise us in writing if you have any complaint about our Services
- pay for the Services by the due date

5. No Resale

You are not permitted to resell any of the Services or any capacity that is provided as part of those Services to any other person.

6. Our charges

The prices for Services will be detailed on the Service Offer. You agree to pay for the charges for all the Services - no matter who uses them nor to the extent that they are used. You also agree to pay any GST payable. Charges begin from the Commencement Date.

If Services are provided for a specific term and that term has ended and both parties wish for the Services to continue, the parties will agree on a new term and price for the Services and execute a new Service Offer accordingly. If, for any reason, a new term has not been agreed and the Services have not been terminated then we will continue to invoice you at the original agreed price and the Agreement shall continue to apply.

If Services are provided to you on an open term, we reserve the right to change the price of those Services. We will give you not less than 30 days written notice of any price change.

7. Billing

We send you monthly Tax Invoices for our charges. Unless agreed otherwise, fixed charges are payable in advance and other charges are payable in arrears. Each invoice will tell you the due date for payment. You agree to pay the Tax Invoice by that date and without deduction (with the exception of any validly disputed amount). Payment is to be by direct credit into our bank account (our bank is ASB Bank and the account number is 12 3113 0003615 00). Part payment of your Tax Invoice will not amount to full and final settlement unless we have agreed to this in writing. Clerical errors or omissions in any Tax Invoice are subject to correction by us.

8. Disputed accounts

You agree to let us know in writing if you dispute any aspect of your Tax Invoice before the due date for payment. We will investigate the matter without delay. While we are doing this you do not need to pay the disputed amount, but are required to pay any amount due that is not disputed. If we agree with your assessment then we will send you an amended Tax Invoice, and if necessary a Credit Note without delay. If we don't agree with your assessment and you still dispute the account you agree to follow the process specified in clause 17 (Resolving disputes).

9. Overdue accounts

If you do not pay an invoice by the due date for payment:

- we may charge you interest on the unpaid amount from that date until you pay it (the interest rate is the average 90 day bank bill rate published in New Zealand on the Reuters screen BKBM at 11:00am on the first Business Day of that month plus 3.0 percentage points)
- you may be required to pay any costs that are incurred by us (including our agents) in recovering the money you owe us
- we may withhold, suspend or restrict any Services we provide for you; however we will give you 10 Business Days written notice of this.

This will not apply to the portion of any bill that is disputed in accordance with clause 8.

10. Termination of Services

If a Service is provided to you for a specific term and you terminate the Service during that specific term you agree to give us not less than 30 days written notice and pay the termination fee as specified in the Service Offer.

If a Service is provided to you for a specific term and we terminate the Service during that specific term due to your breach of the Agreement you agree to pay the termination fee as specified in the Service Offer.

If a Service is provided to you on an open term (or if the Service was provided to you for a specific term but that term has since expired) either party may terminate the Service by providing the other party with not less than 60 days written notice.

Either party may by written notice to the other party terminate any or all Services immediately where the other party commits a material breach of this Agreement that is not capable of being remedied or materially breaches this Agreement and has failed to remedy that breach within 30 days of receipt of written notice from the other party identifying the breach and requiring it to be remedied.

Termination due to breach will not affect a party's other rights and remedies. If the Services are terminated due to breach, both parties agree to immediately pay the other party all money due and return all equipment owned by the other party or allow the other party to retrieve their equipment.

11. Our equipment

We will supply and install any equipment needed to provide the Services, unless agreed otherwise. Acquiring our Services does not give you any proprietary rights to any part of our network or equipment. Any software we provide to you is licensed to you only for your use with the Services.

You agree to:

- follow our directions when connecting anything to our network or equipment
- not damage or interfere with our equipment
- notify us as soon as reasonably practicable if there is any failure of, or damage to, our equipment.

12. Your equipment

You agree to:

- make sure any of your network equipment or cabling that is connected to the Demarcation Point is installed to our Service Specifications
- pay us any reasonable expense that we incur due to service interruptions occurring on your side of the Demarcation Point when we invoice you
- disconnect your equipment from our network once the Service has been terminated

These Standard Terms do not give us any proprietary rights to any part of your network or equipment.

13. Service Levels

The Service Levels that apply for each of our Services are those published on our website. They apply to each Service on a “per Service” basis. When providing the Services we will use reasonable endeavours to achieve or better those Service Levels.

If we fail to achieve the Service Level then we will credit your account with the amount in respect of that Service Level provided that the failure is not a direct consequence of:

- any event beyond our reasonable control (including but not limited to loss of power to our network equipment and not being able to access any site we do not control)
- any act or omission by you or any third party for whom you are responsible
- any failure of any Service or equipment provided by you or any third party for whom you are responsible.

14. Service interruptions

We do not guarantee that the Services provided will be free from interruptions. We reserve the right to temporarily suspend the Services or restrict access to our network for planned and unplanned maintenance or repair. We will be available to fix any service interruption in accordance with the Service Levels and will use reasonable endeavours to minimise their duration. There is no charge for this except where you (or anyone for whom you are responsible) cause the interruption.

Please report any service interruption by calling 0800 826 436. We are available 24 hours a day, seven days a week.

15. Compensation and liability

Our maximum aggregate liability to you under all Agreements, in tort (including negligence) or otherwise for all events occurring in any 12 month period will be the lower of the amount paid for the affected Services during the preceding 12 month period, or \$50,000, excluding GST if any.

We will not be liable to you (or any person that you authorise to use our Services) in tort (including negligence), contract or otherwise for any indirect loss or damage, loss of data, loss of profits or anticipated savings, loss of revenue, or for any economic loss or consequential damage.

No third party supplier (including their officers, employees, contractors and agents) of any part of the Services will be liable to you for loss or damage of any kind arising from your use of the Services.

16. Force Majeure

Neither party will be liable for any failure or delay to perform its obligations under any Agreement caused by any circumstance beyond its reasonable control provided that party uses its reasonable endeavours to perform despite the cause. This provision does not apply to lack of financial resources or disputes with a party’s own personnel and nothing in this clause will excuse a party from an obligation to make a payment when due under an Agreement.

The party failing to perform will:

- promptly give written notice to the other party specifying the cause and extent of its failure to perform

- take all reasonable steps to remedy or abate the cause and extent of its failure to perform
- resume performance of its obligations as soon as possible

17. Resolving disputes

If any dispute arises out of any Agreement, neither party is to commence proceedings, other than for urgent equitable relief, unless that party has first complied with this clause.

A party claiming a dispute has arisen is to give written notice to the other party specifying the nature of the dispute. On receipt of that notice the parties will use all reasonable endeavours to resolve the dispute by discussion or negotiation.

If the parties do not resolve the dispute within 10 Business Days of the receipt of the notice then either party can, by writing to the other, require that the dispute be mediated in accordance with the standard mediation agreement of LEADR New Zealand Incorporated, and the Chair of LEADR will select the mediator and determine the mediator's fee.

18. Consumer Guarantees Act

You acknowledge that you are acquiring the Services for your school and the Consumer Guarantees Act 1993 does not apply.

19. Confidential information

You must, during and after any Agreement, keep confidential any information you receive from us that is confidential or commercially sensitive. Any pricing or network or equipment design information must be treated as confidential. You may only disclose confidential or commercially sensitive information if you are required to by law; but you must tell us when you are going to do this.

20. Intellectual property

You acknowledge that you do not, as a result of any Agreement with us, acquire any intellectual property rights from us (including in relation to any confidential information).

21. Assignment

You may not assign or have someone else perform your side of any Agreement you have with us without first obtaining our written approval, which we will not unreasonably withhold.

We may assign and have someone else perform our side of any Agreement you have with us.

22. Subcontract

We may subcontract any or all of our obligations under any Agreement you have with us without your consent, provided that we will remain ultimately responsible to you for carrying out those obligations.

23. Changing these terms

We may change these Standard Terms, Service Levels and Service Specifications. We will always consult with you before making any material change. We will always tell you about any changes by providing you with at least 30 days written notice.

Any changes to the terms of any Service Offer must be in writing and signed by both parties.

24. Notices

We will send invoices and other notices to the last address you have given us. Please inform us in writing if you change address.

Our address and contact details are as follows:

Physical Address	Postal Address
Vector 101 Carlton Gore Road Newmarket Auckland	Vector Communications Limited PO Box 90624 Auckland
Other	
Phone: 0800 826 436	
Facsimile: (09) 978 7503	
Email: contactus@vectorcommunications.co.nz	
Website: www.vectorcommunications.co.nz	

Either party can assume any invoice or notice to have been delivered:

- in the case of personal delivery, when received
- in the case of facsimile, when a transmission confirmation slip is received
- in the case of posting, on the third Business Day after posting
- in the case of email, when the sender's information system states that the invoice or notice has been sent (provided that no message stating that the email has not been delivered is received on the sender's information system).

25. No waiver

If either party delays or fails to enforce any of its rights or remedies under any Agreement you have with us, this will not constitute a waiver by that party of that or any other right or remedy available to it.

26. Invalidity and severance

If any provision of the terms of any Agreement is unlawful and unenforceable, it will be severed from the rest of the terms of the Agreement to the extent it is unlawful and unenforceable. The rest of the terms of the Agreement will remain in force. Each term of every Agreement you have with us is separately binding. If for any reason either party cannot rely on any term, all other terms remain binding.

27. Rights and responsibilities that continue

The ending of any Agreement you have with us does not affect any rights and responsibilities that have accrued as at the end of that Agreement or are intended to continue or come into force afterwards.

28. Time Limits

No action arising out of any Agreement, regardless of form, may be brought by any party against the other more than 1 year after the cause of action arose.

29. Entire agreement

Each Agreement supersedes all prior agreements, discussions and arrangements between you and us with respect to the subject matter of that Agreement.

30. No partnership/agency

Nothing contained in any Agreement we have with you is deemed to constitute you and us as partners or constitute either of us as the agent or legal representative of the other.

31. Third party rights

Third parties may take the benefit of rights expressed in these Standard Terms to be for their benefit in accordance with the Contracts (Privity) Act 1982.

32. New Zealand law applies

All our Services are provided under New Zealand law. You may take action against us only in a New Zealand court.