

## **Toll Free - Service Specific Terms and Conditions**

MyRepublic Toll Free (“**Toll Free**” or “**Service**”) is an inbound calling service offering within New Zealand consisting of MyRepublic-provided network services which includes: (i) the supply of one or more Toll Free numbers (0800/0508), (ii) the supply of inbound calling minutes to Toll Free numbers.

The Toll Free Specific Terms and Conditions (“**Toll Free Service Terms**”) set out the basis in which MyRepublic will provide the Service to you. These Toll Free Service Terms shall be read in conjunction with the MyRepublic General Terms and Conditions (“**General Terms**”). The Toll Free Service Terms, the General Terms and the order form signed between MyRepublic and Customer shall be referred to as the “**Agreement**”. Customer shall be bound by and shall fully observe and comply with the terms and conditions of the Agreement.

### **1. Definition and Interpretation**

1.1. In these Toll Free Service Terms, words and expressions shall have the following meaning:

“**Customer**” means the company, business or organisation that applies for and/or acquires services from MyRepublic; and “you” and “your” have corresponding meanings;

“**End User**” means the individual using the Service, e.g. an employee of the Customer;

“**Equipment**” means any equipment owned by either MyRepublic, or MyRepublic supplies that is used to provide the Service to you, and excludes any equipment that you have purchased from MyRepublic and have fully paid for, or is otherwise supplied by yourself to access the Service;

“**MyRepublic**” means MyRepublic Limited (NZBN: 9429041029671), and “we”, “us” and “our” have corresponding meanings;

1.2. For the purposes of interpretation and construction of the agreement:

1.2.1. words importing the singular or plural include the plural and singular respectively

1.2.2. headings are inserted for convenience only and do not affect the interpretation of this agreement;

1.2.3. words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation"; and

1.2.4. any reference to any statute or regulation is a reference to that statute or regulation as amended or replaced.

### **2. Service set-up**

2.1. To port in an existing Toll Free number, you will be required to provide us with your existing Toll Free number, your account number & name with your existing Toll Free provider, and your MyRepublic account number & name.

2.2. If you are requesting that MyRepublic provide a new Toll Free number, we will offer you a choice of numbers or alternatively you can ask us to confirm whether a particular number is available.

2.3. Because there can be a delay between when we book a Toll Free number and when it is allocated to us, we can't guarantee that a particular number will be available even if our initial checks indicate that it would be.

### **3. Pricing, Billing and Charges**

- 3.1. MyRepublic reserves the right to modify prices after the initial term. MyRepublic will provide Customer with ten (10) working days' notice of any price increases. Price reductions will be effective immediately without any written notification. If Customer elects not to accept a price increase, it may notify MyRepublic in writing of its intent to terminate the Service within ten (10) working days of receipt of the notice of the rate increase. After MyRepublic receives such notice, it will terminate Customer's Service within sixty (60) days of receipt. During that termination period, the original price shall apply. Customer's use of the Service after the expiry of the ten (10) working day notice period by MyRepublic will constitute its acceptance of the price increase and MyRepublic will charge and invoice the Customer the revised price accordingly.
- 3.2. Notwithstanding anything to the contrary in the Agreement, billing for the Service will begin on the commencement date of Service activation by MyRepublic, as agreed upon between MyRepublic and Customer at the time of entering into the Agreement. Should there be any delays to Service activation due to the Customer, MyRepublic reserves the right to commence billing on the previously agreed upon date.

#### **4. Termination**

- 4.1. We may terminate all or any part of the Service or terminate this agreement with immediate effect without compensation and without prejudice to our rights to damages for any antecedent breach by you of this agreement if:
  - 4.1.1. you breach any of the terms and conditions of this agreement or any other agreement you have with us;
  - 4.1.2. you become or threaten to become bankrupt or insolvent, or die;
  - 4.1.3. you make any arrangement or composition with or assignment for the benefit of your creditors or go into either voluntary or compulsory liquidation or a receiver, trustee, judicial manager or administrator is appointed over any of your assets;
  - 4.1.4. the equivalent of any of the events under the laws of any relevant jurisdiction occurs to you;
  - 4.1.5. you provide incorrect, false or incomplete information to us;
  - 4.1.6. we suspect that you are using or allowing the Service to be used for fraud, misconduct or any other illegal or improper purpose;
  - 4.1.7. the requirements of any relevant regulatory authority or the compliance with directions or guidelines issued by them resulting in us having to stop providing the Service to you;
  - 4.1.8. if you are likely to create imminent harm to our network or any third party's networks or systems or our provision of the Service, or defraud us, or are likely to create imminent harm or are abusive to our personnel; or
  - 4.1.9. for any reason beyond our control (including loss of any licence, wayleave or easement, requirements of any governmental or regulatory authority or orders by the court and cessation or failure to deliver by a third-party supplier) we are unable to provide the Service.
- 4.2. MyRepublic reserves the right to determine, in its sole reasonable discretion, not to arrange for or to discontinue provisioning of such Services and to terminate the Agreement for any reason whatsoever by giving Customer not less than ten (10) working days prior written notice thereof and without being liable for any kind penalty charges or damages. Such Service termination by MyRepublic may be based upon, but not limited to, a determination that the rules, regulations or policies of New Zealand regulatory entity, or any other applicable governmental agency or entity may cause the provisioning of such Services to be unlawful, unprofitable, impractical or

undesirable in the sole determination of MyRepublic. For the avoidance of doubt, in the event of such a termination, early termination charges shall not apply.

- 4.3. If the Service is terminated all sums due, accruing due or payable to us in respect of the Service and if applicable, the Equipment, up to the date of termination (including late payment charges) will, upon the termination, become immediately due and payable to us. There will be no refund of any charges paid to us for any equipment (including the Equipment) purchased from us.
- 4.4. The termination of this agreement will not affect any accrued rights or remedies of either party against the other party.
- 4.5. If you want to retain your Toll Free number when terminating the service, you must advise us at the time you make the service termination request. If we do not receive such advice, we are required by the Toll Free Number Administration Scheme (TNAS) General Terms and Conditions to return relinquished numbers to the pool of numbers operated by TNAS for possible reallocation.

## **5. Your Acknowledgements**

- 5.1. You acknowledge that:
  - 5.1.1. MyRepublic has no ownership rights in any number or numbering scheme;
  - 5.1.2. you are not conferred ownership rights in a number if it is allocated to you;
  - 5.1.3. MyRepublic and other telecommunications providers have equal access to available numbers on a first in first served basis;
  - 5.1.4. you will ensure that, to your best ability, the use of your number/s and your use of any Toll Free services provided to you will not cause interference with any other Toll Free service or users of Toll Free services; and
  - 5.1.5. service disruption may occur as a result of TNAS's behaviour or error, and we will not be responsible for any damage or loss you may suffer resulting from this.
- 5.2. You are solely responsible to keep secure any access credentials of the Service.

## **6. Matters beyond Our Control**

- 6.1. We will not be liable for any delay or failure in performance under this agreement resulting from matters beyond our control. These include acts of God, requirements of any governmental or regulatory authority, war, national emergency, accident, fire, lightning, equipment failure, computer software or software malfunction, electrical power failure, faults, interruption or disruption of the MyRepublic network or the networks of other service providers or of your equipment or the equipment of any third party, riots, strikes, lock-outs, industrial disputes (whether or not involving our employees) epidemics of infectious diseases or acts of terrorism.
- 6.2. Without prejudice to Clause 6.1 above, we will not be liable for any delay or failure in performance under this agreement resulting from any delay or failure of any third party (including any supplier) to deliver or provide any facilities, infrastructure, equipment, or services to us.

## **7. Indemnity**

7.1. You must indemnify us, our affiliates, employees, directors, agents and suppliers against all claims, damages, losses, and liabilities resulting from your use of the Service, your negligence, omission, act, or breach of this agreement.

## 8. **Liability**

8.1. The Service is provided on an "as is" and "as available" basis and you agree that you use the Service or rely on any Content obtained through the Service at your sole risk. MyRepublic provides, and you hereby accept, any MyRepublic or third-party hardware or software provided to or used by you in connection with the Service "as is" with no express or implied warranties of any kind, whether express or implied, including implied warranties of merchantability, satisfactory quality, fitness for a particular purpose and non-infringement, to the fullest extent allowed by law. No advice or information whether oral or written, obtained by you from us or through the Service will create any warranty not expressly set out in this agreement. Nothing herein shall be interpreted to enhance or create any warranty with respect to any third-party software. MyRepublic disclaims any and all liability arising out of the delivery, installation, support or use of any software. MyRepublic assumes no obligation to correct errors in any software. You understand and accepts all responsibility for any software meeting your requirements or expectations. Without prejudice to the foregoing, we will not be liable for any delay or failure to provide the Service, or any interruption or degradation of the Service quality which may arise from the following:

- 8.1.1. an act or omission of an underlying carrier, service provider, vendor or other third party;
- 8.1.2. third-party equipment, third-party network or facility failure;
- 8.1.3. third-party equipment, third-party network or facility upgrade or modification;
- 8.1.4. force majeure events such as (but not limited to) acts of God, acts of nature, strikes, fire, war, riot, acts of terrorism and governmental actions;
- 8.1.5. service, equipment, network or facility failure caused by the loss of power to you;
- 8.1.6. any third party's service, equipment, software, network or facility; or
- 8.1.7. any other cause that is beyond our control, including, without limitation, the failure of an incoming or outgoing communication, the inability of communications to be connected or completed, or forwarded.

8.2. Without prejudice to clause 8.1 above, we make no warranty that the Service will be uninterrupted or available at all times.

8.3. Except as set out in this agreement and to the extent permitted by law, we expressly exclude all other liability we may have to you, including all liability in contract, tort, negligence, misrepresentation, strict liability, or statute. This exclusion applies for our benefit and that of all companies, directly or indirectly owned, wholly or partly owned or controlled by us or any of these parties, and all their officers, employees, contractors and agents or anyone else to whom we or these parties are responsible ("**the Relevant Parties**") and whether it relates to anything caused by or resulting from anything any of us does or does not do or delays in doing (even if done, omitted or delayed fraudulently, wilfully, recklessly, maliciously or negligently), whether or not it is contemplated or authorised by any agreement you have with us.

8.4. Under no circumstances will we or any of the Relevant Parties be liable for any special, incidental, indirect, consequential, or punitive damages, losses, costs or expenses, even if such damages, losses, costs or expenses were caused wilfully, recklessly or negligently.

- 8.5. Under no circumstances will we or any of the Relevant Parties be liable for any lost profits, revenue, business, or anticipated savings, even if such damages, losses, costs, or expenses were caused wilfully, recklessly, or negligently.
- 8.6. If we or any of the Relevant Parties are liable to you and we cannot, for any reason, rely on the exclusion of liability set out in clause 8.3 to 8.5 herein, then in no event will our liability for damages, losses, costs or expenses suffered or incurred by you and anyone else (whether in contract, tort, negligence, misrepresentation, strict liability or statute or otherwise) exceed \$5,000 for any event or series of related events and \$10,000 for all events occurring in any 12-month period during our Agreement. We will not be liable for any loss of data, profits or any consequential, indirect, or special damage, or any loss to the extent that it is caused by you, for example through your negligence or breach of our Agreement. This limitation does not apply to any claim, damages, loss, or expense caused by fraud, wilful breach, or wilful damage.
- 8.7. The limitations and exclusions of liability in this agreement shall not apply to any liability we or any of the Relevant Parties may have in respect of any death or personal injury resulting from our negligence.

## **9. General**

- 9.1. Currency: Unless otherwise stated, a reference to dollars or \$ is a reference to New Zealand dollars.
- 9.2. GST: Unless stated otherwise, all advertised prices for business Services are exclusive of GST.
- 9.3. No waiver: No failure or delay by us to exercise or enforce any of our rights under our Agreement will operate as a waiver of such rights nor will such failure or delay in any way prejudice or affect our rights at any time thereafter to act in strictly in accordance with our rights under our Agreement.
- 9.4. Severability: If any provision of our Agreement is held to be invalid, illegal or unenforceable, whether in whole or in part, such provision shall be deemed modified to the extent, but only to the extent, of such invalidity, illegality or unenforceability and the remaining provisions of our Agreement shall not be affected.
- 9.5. Reliance on verbal instructions: You agree that we can act on any verbal instructions you give us in relation to the Services.
- 9.6. Governing law: Our Agreement is governed by the laws of New Zealand. You and we submit to the exclusive jurisdiction of the courts of New Zealand.