

Evolution Networks Limited General Terms and Conditions

About this Agreement

Your use of services provided by Evolution Networks is subject to the Terms and Conditions of this Agreement. Please read this document carefully. By using the Service you confirm your acceptance of these Terms and Conditions and the terms of any customer contract entered into. We may change this Agreement at any time by sending you notification either in writing or by email or by publishing the updated Agreement to the "Terms and Conditions" page on the Evolution Networks web site; it is your responsibility to check this page for updates. If you continue to use our Service after such notification, then you are deemed to have agreed to the changes we have made.

Definition of Terms

Within this Agreement, the following words and expressions shall have meanings hereby assigned to them except where the context otherwise requires:

"Evolution Networks", "Evo" means Evolution Networks Limited;

"Service" means the Internet services provided by Evolution Networks to customers subscribing to the same;

"the client" means the party who enters into this agreement with Evolution Networks, specifically the individual or organisation name you provide to us for purposes of administering your account whether verbally or in writing;

"Reseller", means any Client who purchases Services for re-sale to others;

Scope of Service

Evolution Networks reserves the right to modify and withdraw the Service and alter policies and Service guidelines.

Providing you with Service

We strive to provide a reliable 24-hour-a-day Service although we do not guarantee that this will be continuous or fault free. If you experience a Service quality problem, we will do our best to resolve it to your satisfaction as soon as possible after notification of such problem by you. We agree to monitor servers, network routers and other critical components of our network and to attend to any faults with our hardware or software as a matter of urgency.

We are not responsible for fixing faults which occur:

- In your computer or communications equipment including any software used or stored in them;
- In communications networks owned or controlled by other Internet Service Providers or telephone service providers;
- In anything else not forming part of the Evolution Networks network;
- Because you use the Service incorrectly; or
- Because of any other event beyond our reasonable control.

Providing us with information

You agree to provide us with current and accurate information about yourself and your organisation. You agree to keep this information up to date by notifying us of any changes as soon as practicable.

You also agree to provide us with any information we might reasonably ask for to help us provide you with Service, including:

- Your full name, current street address, home phone number.
- How much you plan to use the Service.
- Evidence that you will be able to pay for our Services.
- The extent of your use of our Service, including amount of data transferred and web pages visited, may be logged by us.

Our use of information provided by you

We agree to keep information provided by you private unless you consent to its disclosure or we are legally required to disclose it. We agree to use such information for no other purposes than to:

- deliver Services you have ordered
- collect any money owed to us
- tell you about the Services we provide
- improve our existing Services and develop new Services.

Your use of our Service

You agree to ensure our Service is not used for any activity which is illegal in New Zealand or the country you connect to the Internet from or which could open Evolution Networks up to potential litigation including, but not limited to, copyright or trademark infringement, publication of obscene or defamatory material or material which is blatantly harmful to others, infringes the rights of others, or is likely to be misleading, deceptive or otherwise breaches the Fair Trading Act 1986.

You agree to ensure our Service is not used in an attempt to circumvent user authentication or security of any host, network or account. This includes, but is not limited to, accessing data not intended for your use, logging into a server or account you are not expressly authorised to access, password cracking, probing the security of other networks in search of weakness, or violation of any other organisation's security policy.

You agree to ensure our Service is not used in any way to attempt to interfere with or deny service to any user, host or network. This includes, but is not limited to, flooding, mail bombing, or other deliberate attempts to overload or crash a host or network.

You agree to ensure our Service is not used in any way which might have a detrimental effect on performance or pose a security risk including, but not limited to, testing code, installing web site content, code or data which presents an unacceptable security risk to us or degrades performance for other users.

You agree to ensure our Service is not used in connection with the transmission of spam, or substantially similar, unsolicited email messages. A message is considered unsolicited if it is sent to a recipient who has not requested or invited the message. For the purposes of this provision, merely making one's email address accessible to the public will not constitute a request or invitation to receive messages.

Terms of payment

You agree to pay to Evolution Networks the Service fee as advertised at the time of ordering the Service. Evolution Networks may increase the Service fee at any time by providing 30 (thirty) days' prior written notice thereof to the client. The Service fee does not include any applicable sales or other tax imposed by any taxing authority with respect to the Service (excluding any tax on Evolution Network's net income). All such taxes will be added to Evolution Network's invoices as separate charges to be paid by the client.

You agree to pay the amount owed in full by the due date for all Services billed to your account. If you fail to pay by the due date, then you will have 5 (five) working days from notification by us of the account becoming overdue to make payment, after which your account may be suspended until payment has been received. Notification of an account becoming overdue will be made by email; you are responsible for ensuring that we know your current email address (see 'Providing us with information' above) and for checking your email account regularly.

Upon suspension of a Service you will become liable for a further setup fee of \$25.00 or the current advertised setup fee for that type of account, whichever is the higher, to re-activate the Service. If we are forced to pass your account to our debt collection agency you will also be liable for these collection costs.

Cancellation of Service

You may cancel the Service at any time on written notification to us. Where you have agreed to take the Service for a minimum period, charges for the Service will continue until the end of that period.

Indemnity

You agree to indemnify us and our employees, servants and agents from and against any lawsuits, demands, liabilities or costs resulting or arising from or connected with your use of our Service or by any person with knowledge of a Username allocated to your customer account.

Limit of liability

Evolution will not be liable to you if it is prevented from providing the services by reason of any act of God, act of state, riot, insurrection, civil commotion, strike, sanctions, boycott, embargo, adverse weather conditions or any other circumstance (including a network failure) beyond our reasonable control. If such an event occurs, Evolution will endeavour to advise you of the existence of the event and the effect of such event on the provision of the services.

Evolution excludes all liability we may have to you or anyone claiming through you whether in contract, tort, equity or otherwise relating to any indirect or consequential loss, damage or expense of any kind whatsoever arising under or in respect of this Agreement including, without limitation, any economic loss, loss of use, loss of profits, loss of income, or increased or alternative costs, however caused. This exclusion applies to any claim you may have for any damages whatsoever and applies for the benefit of the following people:

- Evolution and any of its related companies;
- Evolution employees, contractors, officers and agents
- Any network operator or other person whose services we use to provide services to you (or any of their employees, contractors, officers and agents).

Right to refuse Service

Evolution Networks may at any time and without notice suspend, cancel or refuse to continue providing you with our Service without liability if you or any other user on your connection fail to comply with any obligation in accordance with our Terms and Conditions of Use. This right will not be unreasonably exercised. Termination under this Clause shall not release the Client from liability for any monies due and payable.

Right of inspection

Evolution Networks may at any time and without notice check the manner in which you use its Service, for the purposes of ensuring that you are not breaching these Terms and Conditions, or for accessing any charges which may be payable by you.

Resellers

Resellers and their customers are bound by the same Terms and Conditions, Policies, Guidelines and Disclaimers. By reselling and purchasing our Services you agree that Evolution Networks will not be held liable for any promises or failure of same that you extend to your customers including, but not limited to, quality of service, financial obligations, financial losses or any other claim NOT provided to Reseller in writing by Evolution Networks. It is the legal duty and obligation of the Reseller to provide these Terms and Conditions to its customers.

Applicable Law

This Agreement shall be deemed to be an Agreement made in New Zealand and shall be subject to, governed by and interpreted in accordance with the laws of New Zealand.

Disclaimer

Evolution Networks shall not be liable for any damages suffered by any user of these Services, nor be liable for any claims or damages whatsoever or howsoever caused, including without limitations to property damage, loss of profits, interruption of business, loss of data, intellectual property infringement, personal injury, or for any special, consequential or incidental damages, whether arising out of the client's inability to use the Service, breaching of warranty, contract, liability or otherwise.

You shall be deemed to have read this Agreement and agree to be bound by this Agreement. This Agreement shall supersede all proposals or prior agreements, oral or written, and all other communications between the parties relating to the subject matter of this Agreement.