



## 1. INTERPRETATION

1.1. In this Agreement, unless the context requires otherwise:

“**Agreement**” means these Terms, together with any applicable sign up form signed by you and any special terms applicable to any particular Service Plan;

“**Business day**” means any day other than a Saturday, Sunday or public holiday in Rarotonga;

“**Charges**” means:

- (a) our charges for the Services;
- (b) The charges for the Equipment (if applicable), plus any installation, freight and delivery costs;
- (c) The charges for additional services such as technical or administration support or remedial services;
- (d) Any taxes, levies, fees or other governmental charges relating to our Services; and
- (e) Any additional charges or fees payable by you under the Agreement, in each case as amended in accordance with the Agreement from time to time;

“**Customer Services**” refers to our customer services centre at Parekura, Rarotonga or on 123;

“**Data**” means internet data;

“**Email Instruction**” means an instruction to us to change any Service, which instruction is delivered by email from the email address we have for you in our records.

“**Equipment**” means devices, hardware and/or accessories approved and stocked by us unless we expressly say otherwise;

“**Initial Term**” means the initial term set out in the Service Plan applicable to you;

“**Intellectual Property**” means any and all intellectual property such as patents, designs, service marks and copyright material, registered or unregistered, anywhere in the world;

“**Parties**” refers to Vodafone and the Customer together, and “**party**” refers to either one of them;

“**Payment Date**” means the day of the month appearing on each Vodafone invoice as the payment date;

“**Phone Number**” means a phone number which is allocated to you by us;

“**Premises**” means the Customer’s premises;

“**Network**” means any wire, radio, optical or other electromagnetic system for routing, switching or transmitting telecommunications services between network termination points and “**our Network**” refers to Vodafone’s Network;

“**Regulatory Event**” means any legislative or regulatory change (including, any determination, direction or decision by a regulatory authority, or in the introduction of or change to any regulations, reference

offer or undertaking) that directly or indirectly has the effect of: altering the terms of the Agreement, making the operation of the Agreement impracticable; materially altering the burden (financial or otherwise) of us providing Services under the Agreement; making us incapable of performing the Agreement; or causing us (voluntarily or otherwise) to materially alter our operations or structure;

“**Renewal Term**” means the term starting on the day after the expiration of the Initial Term and ending twelve (12) months later or a subsequent twelve (12) months term;

“**Services**” means broadband and/or fixed line services and/or Equipment which we provide to you from time to time;

“**Service Plan**” means any Vodafone plan of entitlements, such as data, minutes and other benefits, included as part of the Services;

“**SIM card**” means a Vodafone Subscriber Identity Module card encoded with a Vodafone number;

“**Terms**” means these standard terms and conditions as amended from time to time;

“**User**” means an individual end user of our Services;

“**VAT**” means value-added tax levied under the Value Added Tax Act 1997;

“**We**” or “**us**” or “**our**” or “**Vodafone**”, means Telecom Cook Island Limited t/a Vodafone; and

“**You**” or “**Customer**” means the Vodafone customer responsible for paying the Charges for the Services, as set out in the Customer sign up form, and “**your**” has a corresponding meaning.

In interpreting this Agreement, the following applies, unless the context otherwise requires:

- (a) Headings to clauses are for reference only and are not an aid to interpretation;
- (b) References to a party include that party’s successors in title and permitted assigns;
- (c) Words importing the plural include the singular and vice versa;
- (d) Words importing gender import all genders;
- (e) Any obligation not to do something will be deemed to include an obligation not to suffer, permit or case that thing to be done;
- (f) References to currency or \$ are to New Zealand dollars.

## 2. OUR AGREEMENT

2.1. **Application:** These Terms apply if you have purchased the Services from us.



2.2. **Priority of documents:** If there is any inconsistency between the documents forming the Agreement, the following order of priority applies:

- (a) Special terms applicable to any Service Plan;
- (b) The Customer sign up form;
- (c) These Terms.

2.3. **Subject to change:** These Terms may change from time to time without prior notice to you. For the most up to date version of these Terms please visit our website <http://www.vodafone.co.ck/terms-and-conditions>.

### 3. TERM

3.1. **Term:** This Agreement will commence on the date you sign up to buy Services from us and continues until the Agreement is terminated in accordance with these Terms.

3.2. **Services Term:** For the Services:

- (a) The Initial Term will commence on the date we start providing the Services to you and continues until the expiry of the Initial Term; and
- (b) At the end of the Initial Term or a Renewal Term, a Renewal Term will automatically commence and thereafter automatically renew for another Renewal Term unless terminated by you giving at least sixty (60) days' prior written notice to Vodafone before the end of the Initial Term or then current Renewal Term. The Services will then terminate on the last day of the Initial Term or then current Renewal Term as applicable.

### 4. VODAFONE OBLIGATIONS

- 4.1. Vodafone will provide the Services to you in accordance with the terms set out in this Agreement.
- 4.2. Vodafone will provide the Services with reasonable care and skill. We will use all reasonable efforts to ensure that the Services are reliable at all times but we do not guarantee that the Services will be continuous or fault free.
- 4.3. Where Vodafone performs work for you in connection with the provision of the Services, we will ensure that all work is carried out by competent and suitably qualified personnel and in a professional manner.

### 5. CUSTOMER OBLIGATIONS

5.1. **Use of Services:** You agree that you will:

- (a) not use the Services or permit the Services to be used in any way that is illegal or unlawful. Furthermore, you will only use the Services for the purposes for which they are provided and in accordance with our reasonable instructions and the terms of this Agreement;
- (b) not use the Services in any way that could damage our Network or other property, including any of our Equipment at your Premises, or the Network or

property of any other operator, or interfere with another customer's enjoyment of our services;

- (c) not use or install any device and/or hardware in connection with the Services, that is not pre-approved by us, or which masks or in any way alters the true origin or termination of any call or other transmission; and
- (d) only use the Services for your own personal or business use and not resell, rebill or otherwise provide any of the Services to anyone else without our prior written consent.

5.2. **Cooperation and assistance:**

- (a) You will ensure that all information you give to Vodafone is accurate. You must update us when your contact information changes;
- (b) If we are required to access your Premises in order to provide the Services, then you will give our representatives safe access to your Premises, including access to install, inspect, maintain, investigate a fault related to, replace, update or remove our Equipment;
- (c) If you are in rented Premises, then you will, before we install any Equipment, obtain the agreement of the owners for us to access and locate Equipment on the Premises and that the owners will have no ownership or other rights to our Equipment;
- (d) You will be responsible for obtaining any third party authorisation, licence, consent or acknowledgement that is required in connection with the provision of the Services and location of the Equipment, such as a building consent; and
- (e) You will be responsible for keeping any password, PIN or security code we give you confidential and update it in accordance with prudent security practices.

5.3. **Acknowledgements:** You acknowledge and agree that:

- (a) Vodafone is not responsible for ensuring that the Services are unable to be misused by you or any third party; and
- (b) You are responsible for your misuse of the Services and for any use of the Services by any user or third party, whether authorised by you or not. You must therefore pay any Charges incurred from the use of the Services by any user or third party, whether authorised by you or not.

5.4. **Remedies for breach:** If you breach this clause 5, and we incur costs as a result of your breach, you will, reimburse us for our reasonable costs in relation to that breach. Any reimbursement under this clause is without prejudice to any rights we may have against you and is not a release of any claim for loss or damage we may have against you for the breach.

### 6. CHARGES, INVOICING AND PAYMENT

6.1. You will pay and are responsible for the Charges for the Services and/or Equipment that we provide you in accordance with this Agreement, irrespective of who ultimately uses them.



- 6.2. All Charges are subject to VAT.
- 6.3. We will send you a monthly invoice for the Services by email. We will not provide a paper invoice unless you specifically request one, and any such invoice incurs a printing Charge.
- 6.4. Every invoice is payable by the Payment Date. Non-receipt of invoice is no excuse for non-payment of our Charges.
- 6.5. You will pay each invoice without set off, counterclaim or deduction.
- 6.6. Invoices that remain unpaid after the Payment Date may be charged a late payment fee.
- 6.7. Our Charges can be found on our website here <http://www.vodafone.co.ck/broadband>
- 6.8. You will reimburse us for any costs we incur, including legal fees, to recover money you owe us under this Agreement.

## 7. CREDIT MANAGEMENT

Our Credit Management Policy applies to you. You can view the policy on our website <http://www.vodafone.co.ck/credit-management-policy>

## 8. FAULTS, OUTAGES AND MAINTENANCE

- 8.1. Where any Service has a fault or unscheduled outage, Vodafone will use reasonable endeavours to remedy that fault or outage within a reasonable time.
- 8.2. Where remedial action is required, we may charge you at our standard rates for the cost of remedying the fault or outage.
- 8.3. We will notify you regarding any scheduled maintenance operations affecting the Services and an estimate of the length of any outage or other impact. Notice may be by way of public announcement in the media, on our website and Facebook page.

## 9. EQUIPMENT

- 9.1. **Your Equipment:** As required under clause 5.1(c) you must not use any device and/or hardware in connection with the Services without our preapproval (in this clause "your equipment"). Where, with our approval, you are using your equipment with the Services, you will follow our reasonable instructions about modifications that you may need to make to your equipment so that you can use the Services. Such modifications may include modifications to avoid any danger or interference your equipment may cause to the Services, our Equipment or our Network.
- 9.2. **Our Equipment:** To provide the Services, it may be necessary for us to install and maintain Equipment on the Premises (e.g. we lease you a modem for your broadband connection). Except as otherwise agreed in writing, Vodafone will retain ownership of the Equipment installed or located on the Premises. You

will not deal with our Equipment in a manner that is contrary to our legal title to it (e.g. sell or give it away). If the Equipment is faulty, you must notify us immediately and we will, as soon as practicable, either repair or replace it at our discretion. If you are responsible for any loss or damage to our Equipment, we will charge you the repair or replacement cost as applicable.

- 9.3. **Risk and ownership:** Any Equipment you arrange to purchase from us is your responsibility from the time you take delivery of the Equipment. Where we install the Equipment at your Premises, this is considered as you taking delivery. Any such purchase is non-refundable. Ownership in the Equipment does not pass to you until it is fully paid.
- 9.4. **Inspection and rejection:** When you take delivery of any Equipment from us that you have arranged to purchase, you must promptly inspect the Equipment and notify us of any visible damage to the Equipment within seventy-two (72) hours of receipt (in this clause "notice period"). Provided the damage was not your responsibility, we will, as soon as practicable, either repair or replace the Equipment at our discretion. If you do not notify us within the notice period, we will not be liable to repair or replace the Equipment without cost and you will be charged the repair or replacement cost as applicable.
- 9.5. **Equipment warranty:** Where we have a product warranty specific to any Equipment, the terms of that product warranty will apply. We will pass on the full benefit of any manufacturer's warranty for Equipment purchased by you.

## 10. SIM CARDS, PHONE NUMBERS, ADDRESSES AND OTHER CODES

- 10.1. **Allocation and ownership:** We may allocate SIM cards, Phone Numbers, and other codes to you. You do not own these and must only use them in accordance with these Terms.
- 10.2. **Publication of Phone Numbers:** Your Phone Number may be displayed to emergency services. Also the number may be displayed on the mobile or telephone of the party called if that person uses caller ID. If you have fixed line services with us, you will be given the opportunity to have your number displayed in our directory. If you do not want your number displayed you must inform us.

## 11. CUSTOMER PRIVACY

Our Privacy Policy applies to you. You can view the policy on our website <http://www.vodafone.co.ck/privacy-policy>

## 12. INTELLECTUAL PROPERTY RIGHTS



- 12.1. **Our intellectual property:** You acknowledge that all rights to Intellectual Property contained in or relating to the Services and/or Equipment (including any improvements or changes to any Service or to the Equipment) belong to us or to our licensors.
- 12.2. **Licence:** We license you to use Intellectual Property that we provide to you in connection with the provision of the Services on a non-exclusive and non-transferable basis for the term of the Service to which it relates; and in respect of any software that we provide to you in connection with the Services, any terms upon which the software is ordinarily licensed or which we notify to you.
- 12.3. **Software:** If we provide you with any software in connection with the provision of the Services, you must not copy, modify or reverse assemble the software.
- 12.4. **Warranty as to third party infringement:** Each party warrants to the other party that any materials proprietary to a party and provided to the other party for the purposes of the Agreement will not infringe the intellectual Property rights of any third party, provided that the other party:
- Uses such materials in accordance with the terms of the Agreement and any terms notified in writing by the disclosing party; and
  - Does not in any way modify or alter the materials, other than as permitted under the Agreement.
- 12.5. You agree to indemnify Vodafone from and against any and all liability arising from a breach by you of the Intellectual Property rights in the Services and/or Equipment belonging to any third party.

### 13. LIABILITY AND INDEMNITY

- 13.1. **Limitation on liability:** Subject to clause 13.3, in no event will either party's liability under or in connection with the Agreement (whether in contract, tort (including negligence) or otherwise exceed:
- The total Charges paid by you in the twelve (12) calendar months immediately prior to the occurrence of the event(s) giving rise to the claim; or
  - If the Agreement has not been in effect for twelve (12) months prior to the occurrence of the event(s) giving rise to the claim, the average monthly Charges paid by you for the months from the date of the Agreement until the occurrence of the event(s) giving rise to the claim.
- 13.2. **Exceptions:** Nothing in this Agreement shall limit either party's liability (as applicable):
- To pay the Charges;
  - For any loss or damage which is finally judicially determined to have resulted from that party's fraud; or
  - For death or personal injury which is finally judicially determined to have resulted from an act or omission of that party.
- 13.3. **Network operators and other suppliers not liable:** All liability of any kind (including but not limited to

negligence) on the part of any third party network operator, its officers, employees, contractors and agents, however arising in the provision of services by such network operator to Vodafone is expressly excluded. This exclusion is included by Vodafone as the agent of such persons for their benefit and may be enforced by them as a complete defence to any claim.

### 14. SUSPENSION OF SERVICE

- 14.1. **Suspension for breach:** If you fail to make payment to us for any Services by the Payment Date or we believe you are otherwise in breach of this Agreement, we may restrict or suspend the provision of Services to you without notice.
- 14.2. **Disconnection and reconnection charges:** We may require you to pay a reconnection Charge as a condition of lifting any restriction or suspension imposed under clause 14.1.
- 14.3. **Suspension of services to prevent damage or loss:** We reserve the right, at any time and without notice, to suspend any Services in order to protect our Network or the Network of a third party operator from any actual or perceived security risk, unlawful or undesirable activity (in this clause the "risks"), or if requested by any Cook Islands Government authority in the interests of national security.

### 15. TERMINATION

- 15.1. **Licence suspension or termination:** If any of our licences or rights required to operate our Network or to provide the Services are terminated or suspended, or any agreement with any of our third party operators is suspended, expires or is terminated or there is a Regulatory Event and we cannot, as a result, continue to provide some or all of the Services or determine in our discretion that it would not be commercially viable or prudent for us to do so under the current terms of this Agreement, we may cease providing any Services or terminate our Agreement immediately. If this happens we will give you written notice.
- 15.2. **Our termination notice:** If the Initial Term for any Services has expired, we may cease providing the Services by giving you twenty (20) Business days' notice.
- 15.3. **Fraud:** We may terminate this Agreement immediately if we reasonably suspect you are in breach of this Agreement or are using the Services for an unlawful purpose.
- 15.4. **Consequences of termination:** Where this Agreement or any of the Services is terminated:
- You will be disconnected from our Network so that you are no longer able to receive the relevant Services;
  - You will remain liable for any Charges incurred prior to the termination.

### 16. DISPUTES



Our Complaints and Disputes Procedures apply to the Services. You can view these procedures on our website [www.vodafone.co.ck/contact-feedback](http://www.vodafone.co.ck/contact-feedback)

## 17. OTHER TERMS

- 17.1. This Agreement contains all of the terms, representations and warranties made between the Parties and supersedes all prior discussions and agreements covering the subject matter of the Agreement, whether oral or written or partly oral and partly written.
- 17.2. No variation or waiver of any provision of this Agreement will be recognised or binding on the Parties unless reduced into writing and acknowledged by both Parties. Vodafone may accept Email Instructions. You will be bound by any changes to the Services authorised by Email Instruction. You will promptly notify us of any change in your authorised email address for Email Instructions.
- 17.3. If any term of this Agreement is determined by order of the High Court of the Cook Islands to be void or unenforceable, this Agreement will operate and be binding as if that term was severed and not part of the Agreement.
- 17.4. A right of a party of this Agreement can only be waived by express notice of the party to the other party.
- 17.5. This Agreement is governed by the laws of the Cook Islands.

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