

## GENERAL TERMS AND CONDITIONS.

### INTERPRETATION

- 1.1 In this Agreement unless the context requires otherwise:
- "Agreement"** means the Agreement Form, the Schedules and these Standard Terms and Conditions.
- "Charges"** includes all fees, charges, costs and expenses payable by the Customer under this Agreement and includes Fixed Charges and Usage based Charges.
- "Commencement Date"** means the date described in Agreement Form.
- "Early Termination Charge"** the fixed charge imposed on customer for early termination of this agreement as specified in clause 18.2
- "Equipment"** means any equipment (including software) provided by Vodafone Samoa to enable the Customer to use any Service.
- "Fixed Charges"** means charges that are periodic and are the same amount upon every occurrence and "Fixed Charge" has a corresponding meaning.
- "Intellectual Property Rights"** means any and all intellectual property rights such as patents, design rights, service marks and copyright, registered or unregistered, anywhere in the world.
- "Force Majeure Event"** means any event or circumstances beyond our reasonable control, including acts of God, fire, flood, storm, earthquake or any natural disaster, any act of a public enemy, terrorism, sabotage, embargo, malicious damage, riot or war, any governmental intervention and any defect in or failure of any third party electricity network or infrastructure, but does not include a lack of funds for any reason.
- "Initial Term"** means the period specified in the Agreement Form..
- "Intellectual Property"** means any and all intellectual property such as patents, designs, service marks and copyright material, registered or unregistered anywhere in the world.
- "Invoice Date"** means the date of Vodafone invoice.
- "Network"** means any wire, radio, optical or other electromagnetic system for routing, switching or transmitting telecommunications services between network termination points.
- "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 any phone number allocated to the Customer to enable it to use the Services and includes short code numbers.
- "Premises"** means the Customer's premises as specified in the Agreement Form or any schedules and includes any adjacent premises where Equipment is installed on a common basis with other users of the building.
- "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 to materially alter our operations or structure.
- "Service"** means all or any part of a service described in the Agreement Form and schedules and any additional service provided to the Customer; and "Services" will have a corresponding meaning.
- "Term"** means the Initial Term and a term equivalent to the Initial Term as referred to in clause 2.1.
- "Usage based Charges"** means charges that are calculated based on the Customer's usage.
- "VAGST"** means value-added tax levied under the Value Added Goods and Services Tax Act 2015.
- "We"** or **"Us"** or **"Our"** means Vodafone Samoa
- "Working Day"** means a day (other than Saturday or Sunday) on which registered banks are normally open for business in Apia.
- 1.2 In interpreting this Agreement the following rules must be applied unless the context otherwise requires:
- headings to clauses are for reference only and are not an aid in interpretation.
  - references to clauses or schedules are to clauses of or schedules to this Agreement, and any schedules referred to form part of this Agreement.
  - references to a party are to a party to this Agreement and include that party's successors in title and permitted assigns.
  - a reference to any date which is not a Working Day will be deemed to be a reference to the next Working Day after that date.
  - words importing the plural include the singular and vice versa and words importing gender import all genders.
  - any obligation not to do something will be deemed to include an obligation not to suffer, permit or cause that thing to be done.
  - references to \$currency are to **Samoan Tala**.

### 2 TERM

- 2.1 The term of this Agreement is the Initial Term plus a further term equivalent to the length of the Initial Term (collectively referred to as "Term") if the Customer does not give notice to Vodafone Samoa prior to the expiration of the Initial Term that it does not wish to extend the Agreement. Service beyond the Term will be on a month to month basis until terminated in accordance with clause 17.

### 3 COMMENCEMENT OF SERVICES

- 3.1 Vodafone Samoa will commence providing the Services to the Customer in accordance with the timeframe specified in the Agreement Form or, if no time frame is specified, within a reasonable time from the Commencement Date.

### 4 VODAFONE SAMOA'S OBLIGATIONS

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

### 5 CUSTOMER OBLIGATIONS

- 5.1 The Customer agrees that it will not use the Services or Equipment or permit the Services or Equipment to be used in any way which:
- Is illegal;
  - Breaches the Intellectual Property Rights of Vodafone Samoa or any third party;
  - Breaches any Acceptable Use Policy issued by Vodafone Samoa;
  - Interferes with the privacy and property of any person;
  - Gives rise to a claim for libel or defamation;
  - Could damage Vodafone Samoa's network or other property or the network or property of any other operator; or
  - Could bring Vodafone Samoa's reputation, brand or business into disrepute.
- 5.2 The Customer will ensure that all information it gives to Vodafone Samoa is accurate.
- 5.3 The Customer will use the Services and the Equipment for the purposes for which they are provided and in accordance with any reasonable directions given by Vodafone Samoa.
- 5.4 The Customer will not resell the Services or the Equipment to any third party.

### 5.5 Cooperation and Assistance.

- (a) You will ensure that all information you give to Vodafone Samoa is accurate. You must update us when your 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.
- (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.
- 5.6. **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 authorized 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.
- 5.7. **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 breach.

### 6 CHARGES

- 6.1 The Customer will pay Vodafone Samoa's Charges for the Services and Equipment as set out in the Agreement Form and any other Charges that may become due for any services provided to the Customer additional to the Services. The Charges set out in the Agreement Form are subject to amendment in accordance with the provisions of this Agreement. Any other Charges are based on Vodafone Samoa's schedule of charges as amended from time to time at its sole discretion. Unless otherwise stated all Charges shown include VAGST. The Customer must pay any VAGST payable on the Services.
- 6.2 Vodafone Samoa will send the Customer a monthly invoice for all Services provided to the Customer and which Vodafone Samoa's records show are chargeable to the Customer's account.
- 6.3 Fixed Charges, including one time fees, will be invoiced in advance. Usage based Charges will be invoiced in arrears.
- 6.4 The Customer must pay all Charges by the Payment Date.
- 6.5 Vodafone Samoa may set-off any sums owing to the Customer, under this Agreement or otherwise, against sums owing to Vodafone Samoa under this Agreement.

### 7 LATE PAYMENT AND SUSPENSION OF VODAFONE SAMOA SERVICE

- 7.1 Vodafone Samoa may charge the Customer interest at a rate of 1% per month on accounts which remain unpaid after the Payment Date. Interest will not be payable on amounts in dispute under clause 8.1, provided the dispute is resolved in favour of the Customer. Interest will accrue from the Payment Date until the date of actual payment.
- 7.2 If the Customer fails to make payment to Vodafone Samoa for any Service by the Payment Date Vodafone Samoa may suspend the provision of that and/or any other Service without notice.
- 7.3 Vodafone Samoa may require the Customer to pay a deposit as a condition of lifting any suspension imposed under clause 7.2.

### 8 DISPUTED ACCOUNTS

- 8.1 If the Customer wishes to dispute any item appearing on an invoice, the Customer must write to Vodafone Samoa Customer Services within 30 days of the Invoice Date; and seek resolution of the disputed amount. Any dispute raised by the customer after 30 days will not be accepted. The Customer must pay any undisputed amount by the Payment Date. If Vodafone Samoa agrees there is a mistake it will correct the bill. If Vodafone finds there is no mistake, the Customer will pay the outstanding amount immediately on being notified of Vodafone's finding, or by the Payment Date, whichever is the later.

### 9 REBATE FOR DISRUPTED SERVICE

- 9.1 If any Service for which a Fixed Charge is payable is unavailable for more than 24 continuous hours, other than due to any act or omission of the Customer or any circumstance covered by clause 14, then Vodafone Samoa will give the Customer upon request a proportionate rebate of the applicable Fixed Charge for the period of unavailability.

### 10 CREDIT ARRANGEMENTS.

- 10.1 Vodafone Samoa may require that you provide us with a bond.
- 10.2 Vodafone Samoa may pass your information to credit reporting organisations, financial institutions or other organisations with customer credit related data (together referred to as "organisations" so that they can run credit checks on our behalf at any time. Vodafone Samoa may also let those organisations know that if

- you have not paid our Charges. At any time, those organisations may pass on to us information about you that they hold. Vodafone Samoa will use that information to make decisions about providing or continuing to provide you with Services. Those organisations may keep any information about you that we have passed on to them and use it for the purposes of their business, which may include supplying it to other entities that use their services.
- 10.3 Vodafone Samoa may suspend or stop providing Services to you if we receive an unsatisfactory credit check about you.
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- 11 USE OF SERVICES BY THIRD PARTIES**
- 11.1 The Customer acknowledges that it is responsible and will pay for any use of the Services by any third party (whether authorised by the Customer or not) on the Customer's Premises or over whom the Customer otherwise has control.
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- 12 EQUIPMENT**
- 12.1 To provide Services to the Customer it may be necessary for Vodafone Samoa to install and maintain Equipment on the Premises. Except as otherwise agreed in writing, Vodafone Samoa will retain ownership of the Equipment installed or located on the Premises.
- 12.2 The Customer will provide Vodafone Samoa access to the Premises at all reasonable times and on reasonable notice (subject to compliance with the Customer's reasonable security and health and safety requirements) to install, inspect, remove and maintain the Equipment.
- 12.3 The Customer will not interfere with the Equipment in any way.
- 12.4 The Customer will:
- provide a suitable operating environment for the Equipment;
  - take reasonable precautions to protect the Equipment from theft or other loss or damage including when the Equipment is installed in a common IT equipment room or is shared with another customer of Vodafone Samoa;
  - follow Vodafone Samoa's reasonable directions when using the Equipment;
  - remove any equipment from Vodafone Samoa's network upon notification from Vodafone Samoa that it believes the equipment may cause or have caused damage or disruption to Vodafone Samoa's network. Vodafone Samoa may disconnect any equipment or suspend Service if it deems it necessary to safeguard any service or its network;
  - take reasonable precautions to protect the Equipment from radio or electrical interference and power fluctuations; and
  - if required by Vodafone Samoa, obtain and maintain insurance to a reasonable value as determined by Vodafone Samoa, with a reputable insurance company against any loss or damage to any Equipment while under the Customer's control or on the Premises. The Customer, if required by Vodafone Samoa, will ensure that Vodafone Samoa's interest is noted on the policy;
  - not detain the Equipment against the wishes of Vodafone Samoa for any reason and expressly waives any right it may have to a lien over the Equipment arising in relation to this Agreement or any other agreement, contract or arrangement with Vodafone Samoa.
- 12.5 Vodafone Samoa will ensure that all Equipment is safe, of merchantable quality and fit for the purpose for which it is provided.
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- 13 PHONE NUMBERS**
- 13.1 Vodafone Samoa may allocate Phone Numbers to the Customer to enable it to use the Services. The allocation of Phone Numbers does not confer any ownership rights in those numbers and the Customer may not transfer those numbers to anyone else.
- 13.2 If it is necessary to do so for operational reasons, Vodafone Samoa may change any Phone Number allocated to the Customer. However Vodafone Samoa will give the Customer as much notice as is reasonably possible of its intention to do so.
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- 14 FAULTS, OUTAGES AND MAINTENANCE**
- 14.1 Where any Service has a fault or unscheduled outage Vodafone Samoa will use reasonable endeavours to remedy that fault or outage.
- 14.2 Where remedial action is required as a result of any act or omission of the Customer, Vodafone Samoa may charge the Customer at its standard rates for the cost of remedying the fault or outage.
- 14.3 Vodafone Samoa will give the Customer three (3) business days' notice of any scheduled maintenance operations affecting the Services and will provide the Customer with information about Vodafone Samoa's method of operations for such scheduled maintenance. Vodafone Samoa will, where practicable, coordinate scheduled maintenance at times that minimize interference with the business of the Customer.
- 14.4 Scheduled Work Outages: Where scheduled work outages are planned, each Party will provide a minimum of three (3) working days' notice to the other party of the scheduled work outage with full details of the event. Notice will be by e-mail to the contact person described in the Agreement Form. The receiving party must acknowledge to the originating party receipt of the advice by e-mail within one working day of receipt of the notice.
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- 15 FORCE MAJEURE**
- 15.1 Neither party is liable to the other for a breach of contract for failing to meet its obligations under this Agreement to the extent that the failure was caused by an act of God or other circumstance beyond its reasonable control ("force majeure").
- 15.2 Where a party is unable to perform its obligations under this Agreement as a result of a force majeure, that party must immediately upon becoming aware of the force majeure inform the other party.
- 15.3 Where a party has been unable to perform its obligations for a period of at least thirty (30) days as a result of a force majeure the other party may immediately terminate this Agreement by giving notice in writing to the first party.
- 15.4 Nothing in this clause will excuse the Customer from any obligation to pay Vodafone Samoa for Services provided to the Customer under this Agreement.
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- 16 SUSPENSION OF SERVICES**
- 16.1 Vodafone Samoa may from time to time be required for operational or other reasons to suspend or restrict a Service. In those circumstances Vodafone Samoa will give the Customer as much notice as is reasonably possible. Vodafone Samoa will use reasonable endeavours to ensure that suspensions or restrictions take place outside normal business hours.
- 16.2 We reserve the right, at any time and without notice, to suspend any Service 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, or if requested by Government authority in the interests of national security.

**17. TERMINATION**

- 17.1 You may terminate this agreement at any time after the Initial Term, by notifying Vodafone Customer Services. The agreement will end and Charges will stop 30 calendar days after we receive your notification.
- 17.2. You may terminate this agreement before the Initial Term has ended if you pay us all Charges that are due under this Agreement
- 17.3 If the Initial Term of a Service has expired, we may cease providing that Service by giving you 20 Business Days' written notice.
- 17.4 Subject to clause 17.2, you may terminate any Service for convenience by giving 20 Business Days' written notice to us at any time, provided that you pay any Early Cancellation Fee. You must pay our Charges through the 20 Day notice period, even if termination is after the end of the Initial Term.
- 17.5 If you are in material breach of the Agreement, we may give you written notice to remedy the breach. If the breach is incapable of remedy or is not remedied within 20 Business Days of the notice, then we may give you written notice immediately terminating the Agreement.
- 17.6 Fraud or Insolvency: We may terminate the Agreement immediately if we reasonably suspect fraud or either party becomes Insolvent.

**18. CONSEQUENCES OF TERMINATION**

- 18.1 Consequences: When the Agreement is terminated (a) you will be disconnected from the Network; (b) clauses 17 to 24 (inclusive) together will remain in effect; (c) you must immediately return to us any information, equipment or item which is in your possession and belongs to us.
- 18.2 You will be liable to pay **Early Termination Charges** if any Service is terminated prior to the expiry of the Initial Term: (a) by you under clause 17.4 (termination for convenience); or (b) by us under clause 1.5 (your material breach) or clause 14.6 (your insolvency). "Early Termination Charges" include the full outstanding value of this agreement being calculated as a delta from the date of termination until the initial term completion date; plus the retail value of any equipment not returned by the Customer to Vodafone.
- 18.3 Early Termination Charges not payable: You will not be liable to pay us Early Termination Charges if any Service is terminated prior to the expiry of the Initial Term for that Service: (a) by you under clause 17.3 (right to terminate), clause 17.4 (our material breach) or clause 17.6 (our insolvency); (b) by us due to licence suspension or termination; or (c) by either party due to force majeure.
- 18.4 Termination of Services: Termination of the Service(s) provided under the Agreement will have the effect of terminating the Agreement in its entirety.
- 18.5 No prejudice: Termination and the rights set out in this clause 15 are without prejudice to any other rights, remedies or obligations either party may have under the Agreement or at law.

**19. CONFIDENTIALITY AND PUBLICITY**

- 19.1 Subject to clauses 19.3 and 19.4, neither party may reveal any information concerning this Agreement or its subject matter or the business of the other party to any third party other than:
- As required by law;
  - In good faith and in proper furtherance of the objects of this Agreement;
  - To its professional advisers; or
  - Information already in the public domain.
- 19.2 The Customer may not issue any press release or announcement concerning this Agreement or its subject matter or the business of Vodafone Samoa to the news media without the prior written approval of Vodafone Samoa.
- 19.3 Vodafone Samoa may collect and disclose information or opinions about the Customer from or to any credit agency, bank, financial institution or business for the purpose of giving or obtaining advice about the Customer's creditworthiness.
- 19.4 Vodafone Samoa may use or disclose information in its possession about the Customer for the purposes of marketing its products and services, or the products and services of third parties.
- 19.5 This clause survives the termination of the Agreement.

**20 INTELLECTUAL PROPERTY RIGHTS**

- 20.1 The Customer acknowledges that the Intellectual Property Rights in the Services and the Equipment belongs to Vodafone Samoa or its licensors. All Intellectual Property rights in any improvements or changes to any Service or Equipment also belong to Vodafone Samoa or its licensors.

**21 SOFTWARE**

- 21.1 Where the Services involve the provision to the Customer of any software, the Customer may not copy, modify or reverse assemble the software and is licensed by Vodafone Samoa to use the software only for the purposes, and in accordance with the terms, of this Agreement. The same requirements apply equally to software provided by the Customer to Vodafone Samoa.

**22. LIABILITY AND INDEMNITY**

- 22.1 Vodafone Samoa will compensate the Customer for any physical damage which it causes to the Customer's property through not taking reasonable care, up to the maximum value of one month's total recurring Charges as described in the Agreement Form
- 22.2 The Customer will compensate Vodafone Samoa for any physical damage which it causes to Vodafone Samoa's property through not taking reasonable care of such property, up to the maximum value of one month's total recurring Charges as described in Agreement Form
- 22.3 Subject to clause 22.1, Vodafone Samoa's liability arising from any cause (including the negligence of Vodafone Samoa or any of its employees, contractors or authorized representatives) in the provision of the Services or any failure to provide any Service will be limited:
- where a Fixed Charge is payable for that Service, to Vodafone Samoa's monthly Charge for providing the Service giving rise to the claim against Vodafone Samoa; and
  - in all other cases, to Vodafone Samoa's actual Charge for providing the Service giving rise to the claim against Vodafone Samoa.
- 22.4 All other liability is excluded to the fullest extent permitted by law.
- 22.5 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 Samoa is expressly excluded. This exclusion is included by Vodafone Samoa as the agent of such persons for their benefit and may be enforced by them as a complete defense to any claim.
- 22.5 Vodafone Samoa will not be liable to the Customer for indirect or consequential losses or damages of any kind (including but not limited to loss of profit, loss of business opportunity or loss of income) caused by third parties contracted by the Customer.
- 22.6 The Customer indemnifies Vodafone Samoa in respect of any claim, demand, loss, damage, liability and/or expense relating to the Customer's breach of the Agreement, including but not limited to any legal costs as between solicitor and client on a full

indemnity basis incurred by Vodafone Samoa or for which Vodafone Samoa is liable, with the exception of any claims arising out of any willful or reckless conduct of Vodafone Samoa, its employees, agents or contractors.

22.7 This clause survives the termination of the Agreement.

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**23. NOTICES**

23.1 Any notice given pursuant to this Agreement will be deemed to be validly given if personally delivered or emailed to the address of the Party to be notified set forth in Schedule 1 or to such other address as the party to be notified may designate by written notice given to the other Party.

23.2 Any notice given pursuant to this Agreement will be deemed to be validly given:

- a) in the case of delivery, when received;
- b) in the case of email, on receipt by the sender of a delivery notification message showing that the email has entered the information system that hosts the recipient's email.

23.3 This clause will not apply to notices given under clause 14.4 which notices will comply with the requirements set out in that clause.

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**24. ENTIRE AGREEMENT AND VARIATION**

24.1 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 this Agreement.

24.2 No variation or waiver of any provision of this Agreement will be recognized or binding on the Parties unless reduced into writing and signed by both Parties.

24.3 Any part of this Agreement rendered illegal, unenforceable, or void will be considered severed from this Agreement with the remainder of the Agreement in full force and effect.

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**25. CONFLICT**

25.1 If there is any conflict between the main body of this Agreement, the Schedules, and, or these Standard Terms and Conditions, the parts of this Agreement will have precedence in the following order:

- a) the Agreement Form;
- b) These Standard Terms and Conditions.

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**26. SUBJECT TO CHANGE.**

These Terms and Conditions may change from time to time without prior notice to the Customer. For the most up to date version of these Terms and Conditions please visit our website <http://www.vodafone.com.ws>

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**27. ASSIGNMENT**

27.1 The Customer will not assign this Agreement or any right or obligation under this Agreement without the prior written consent of Vodafone Samoa. A change in control of the Customer will be deemed to be an assignment for the purposes of this clause. For the purposes of this clause "change in control" means:

- a) a change of shareholding which results in a new majority shareholder; or
- b) a change in the right to appoint a majority of the directors.

27.2 Vodafone Samoa may assign this Agreement or any right or obligation under this Agreement without the consent of the Customer.

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**28. NO WAIVER**

28.1 No failure to exercise or delay in exercising any right or remedy by either party will constitute a waiver by that party of that or any other right or remedy available to it.

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**29. COUNTERPARTS**

This Agreement may be executed in any number of counterparts (including copies) and provided that every party has executed a counterpart, the counterparts together will constitute a binding and enforceable Agreement between the parties.

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**30. DISPUTE RESOLUTION**

30.1 Any dispute arising in relation to this Agreement, other than a dispute under clause 8, will be resolved as follows:

- (a) By good faith negotiations between the Parties;
- (b) If the dispute cannot be resolved by good faith negotiations, then either party may refer the dispute to mediation by a single mediator appointed by the President of the Law Society;
- (c) If the dispute cannot be resolved by mediation, either party may refer the dispute to arbitration by a single arbitrator under the Arbitration Act 1976.

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**31. GOVERNING LAW**

This Agreement will be governed by and construed in accordance with the laws in force for the time being in Samoa. Each Party irrevocably submits to the jurisdiction of the courts of the Samoa and any court hearing appeal from them.