

## TERMS AND CONDITIONS

### 1 INTERPRETATION

1.1 In this Agreement unless the context requires otherwise:

"Agreement" means this Agreement Form and these Terms and Conditions.  
"Charges" includes all fees, charges, costs and expenses payable by the Customer under this Agreement and includes Fixed Charges, Usage based Charges and any One Time Fee(s). All plan charges are Monthly.  
"Commencement Date" means the date of first activation of the service or date of signing, whichever is the later.  
"Equipment" means any equipment (including software) provided by Vodafone 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.  
"FTTH" means "Fibre To The Home".  
"Initial Term" means the period specified on the front of this Agreement or Clause 2.1 below.  
"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 on the front of this Agreement and includes any adjacent premises where Equipment is installed on a common basis with other users of the building.

"Service" means all or any part of a service described in the Agreement Form 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 1992-1993.  
"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 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 (referred to as "Term"). If no Initial Term is specified then it will be for 24 months. Service beyond the Term will be on a month to month basis until terminated by 20 days notice in writing by either party.

### 3 COMMENCEMENT OF SERVICES

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

### 4 VODAFONE'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 or any third party;
- breaches any Acceptable Use Policy issued by Vodafone;
- interferes with the privacy of any person;
- gives rise to a claim for libel or defamation;
- could damage Vodafone's network or other property or the network or property of any other operator; or
- could bring Vodafone's reputation, brand or business into disrepute.

5.2 The Customer will ensure that all information it gives to Vodafone 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.

5.4 The Customer will not resell the Services or the Equipment to any third party.

### 6 CHARGES

6.1 The Customer will pay Vodafone's Charges for the Services and Equipment as set out on the front of this Agreement and any other Charges that may become due for any services provided to the Customer additional to the Services. The Charges set out on the front of this agreement are subject to amendment in accordance with the provisions of this Agreement. Any other Charges are based on Vodafone's schedule of charges as amended from time to time at its sole discretion. Unless otherwise stated all Charges shown exclude VAGST. The Customer must pay any VAGST payable on its Services.

6.2 Vodafone will send the Customer a monthly invoice for all Services provided to the Customer and which Vodafone'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 may set-off any sums owing to the Customer, under this Agreement or otherwise, against sums owing to Vodafone under this Agreement.

### 7 LATE PAYMENT AND SUSPENSION OF VODAFONE SERVICE

7.1 Vodafone 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 for any Service by the Payment Date Vodafone may suspend the provision of that and/or any other Service without notice.

7.3 Vodafone 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 or telephone Vodafone Customer Services and seek resolution of the disputed amount. The Customer must pay any undisputed amount by the Payment Date. If Vodafone 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 will give the Customer upon request a proportionate rebate of the applicable Fixed Charge for the period of unavailability.

### 10 USE OF SERVICES BY THIRD PARTIES

10.1 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.

### 11 EQUIPMENT & ROLLOVER

11.1 To provide Services to the Customer it may be necessary for Vodafone to install and maintain Equipment on the Premises. Except as otherwise agreed in writing, Vodafone will retain ownership of the Equipment installed or located on the Premises.

11.2 The Customer will provide Vodafone 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.

11.3 The Customer will not interfere with the Equipment in any way.

11.4 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 on a common IT equipment room or is shared with another customer of Vodafone;
  - follow Vodafone's reasonable directions when using the Equipment;
  - remove any equipment from Vodafone's network upon notification from Vodafone that it believes the equipment may cause or have caused damage or disruption to Vodafone's network. Vodafone may disconnect any equipment or suspend Service if it deems it necessary to safeguard any services or its network;
  - take reasonable precautions to protect the Equipment from radio or electrical interference and power fluctuations; and
  - Vodafone will ensure that all Equipment is safe, of merchantable quality and fit for the purpose for which it is provided.
- 11.6 Data rollover may be provided for in the agreement and will cover any unused standard monthly data quota which will rollover for one month and will be used first.

### 12 PHONE NUMBERS & IP ADDRESSES

12.1 Vodafone may allocate Phone Numbers and/or IP Addresses to the Customer to enable it to use the Services. The allocation of these numbers/addresses does not confer any ownership rights in those numbers/addresses and the Customer may not transfer those numbers/addresses to anyone else.

12.2 If it is necessary to do so for operational reasons, Vodafone may change any Phone Number or IP Address allocated to the Customer. However Vodafone will give the Customer as much notice as is reasonably possible of its intention to do so.

### 13 FAULTS, OUTAGES AND MAINTENANCE

13.1 Where any Service has a fault or unscheduled outage Vodafone will use reasonable endeavours to remedy that fault or outage within one business day.

13.2 Where remedial action is required as a result of any act or omission of the Customer, Vodafone may charge the Customer at its standard rates for the cost of remedying the fault or outage.

13.3 Vodafone 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's method of operations for such scheduled maintenance. Vodafone will, where practicable, coordinate scheduled maintenance at times that minimize interference with the business of the Customer.

13.4 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 on the front of this Agreement. 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.

### 14 FORCE MAJEURE

14.1 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").

14.2 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.

14.3 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.

14.4 Nothing in this clause will excuse the Customer from any obligation to pay Vodafone for Services provided to the Customer under this Agreement.

### 15 DATA QUOTA & ADDON PACKAGES

15.1 For FTTH Services – Included Data GB quota will be used first. Once included Quota completes the service will continue at a reduced "throttled" speed. Subscriber will have unlimited data access at the reduced speed subject to reasonable use. Subscriber can optionally purchase an ADDON package valid for 30 days and receive additional GB quota at 50/10Mbps.

15.2 For 4G+/4G+ services – Included Data GB quota will be used first. Once included Quota completes, the service will terminate, until new monthly quota period commences. Customer can optionally purchase an ADD-ON Package to continue. ADDON packages are valid for 30 days and will be used first.

### 16 TERMINATION

16.1 Either party may terminate this Agreement after the expiry of the Term by giving thirty (30) days' notice in writing to the other party.

16.2 This Agreement may be terminated immediately by either party ("the First Party") giving notice in writing to the other party ("the Other Party") at any time without any further financial obligation, under the following circumstances:

- upon the Other Party committing any material breach of this Agreement which is incapable of being rectified;
- upon the Other Party committing any material breach of this Agreement which is capable of being rectified but that is not rectified within thirty (30) days of written notice of the breach having been given to the Other Party by the First Party;
- upon the Other Party committing three or more material breaches of this Agreement in respect of which the First Party has given notice under clause 16.2(b) in any twelve (12) month period;
- upon termination or suspension of the Other Party's business as a result of bankruptcy, insolvency or similar event;
- upon the appointment of a receiver or manager of any asset of the Other Party, or an order made or resolution passed for the liquidation of the Other Party.

16.3 Termination of this Agreement for any reason will not affect the rights or obligations of the Parties in relation to any Services provided up to the date of termination.

### 17 CONFIDENTIALITY AND PUBLICITY

17.1 Subject to clauses 17.3 and 17.4, 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.

17.2 The Customer may not issue any press release or announcement concerning this Agreement or its subject matter or the business of Vodafone to the news media without the prior written approval of Vodafone.

17.3 Vodafone 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.

17.4 Vodafone 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.

17.5 This clause survives the termination of the Agreement.

### 18 INTELLECTUAL PROPERTY RIGHTS

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

### 19 SOFTWARE

19.1 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 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.

### 20 LIABILITY AND INDEMNITY

20.1 Vodafone 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 on the front of this Agreement.

20.2 The Customer will compensate Vodafone for any physical damage which it causes to Vodafone's property through not taking reasonable care of such property, up to the maximum value of one month's total recurring Charges as described on the front of this Agreement.

20.3 Subject to clause 20.1, Vodafone's liability arising from any cause (including the negligence of Vodafone 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: a) where a Fixed Charge is payable for that Service, to Vodafone's monthly Charge for providing the Service giving rise to the claim against Vodafone; and

b) in all other cases, to Vodafone's actual Monthly Charge for providing the Service giving rise to the claim against Vodafone.

20.4 All liability is excluded to the fullest extent permitted by law.

20.5 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 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 defense to any claim.

20.6 Vodafone 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 contacted by the Customer.

20.7 The Customer indemnifies Vodafone 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 and a full indemnity basis incurred by Vodafone or for which Vodafone is liable, with the exception of any claims arising out of any willful or reckless conduct of Vodafone, its employees, agents or contractors.

20.8 This clause survives the termination of the Agreement.

### 21 REFUNDS

21.1 Vodafone will issue refunds in the following cases:

- Technical issues - If you've experienced technical issues which are the fault of Vodafone that prevent you from using our services, we may, in our sole discretion, provide you with either a refund, or an equivalent value of service in replacement.
- Fraud - If it's determined that your service has been taken over by a third party and used fraudulently, we may in our sole discretion, provide you with either a refund, or an equivalent value of service in replacement.
- Payment error - If it's determined that Vodafone charged you in error, we'll issue a refund.

21.2 You must contact us in writing or by email (corporatesupport@vodafone.com.wa) within 30 days of an issue or disputed charge for us to be able to issue a refund.

21.3 Vodafone's liability for all issues is limited to the invoiced value of the service provided.

### 22 NOTICES

22.1 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 on the front of this Agreement or to such other address as the party to be notified may designate by written notice given to the other Party.

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

- in the case of delivery, when received;
- 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.

22.3 This clause will not apply to notices given under clause 13.4 which notices will comply with the requirements set out in that clause.

### 23 ENTIRE AGREEMENT AND VARIATION

23.1 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.

23.2 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.

23.3 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.

### 24 CONFLICT

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

- the Agreement Form;
- these Standard Terms and Conditions.

### 25 ASSIGNMENT

25.1 The Customer will not assign this Agreement or any right or obligation under this Agreement without the prior written consent of Vodafone. 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 change of shareholding which results in a new majority shareholder; or
- a change in the right to appoint a majority of the directors.

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

### 26 NO WAIVER

26.1 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.

### 27 COUNTERPARTS

27.1 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.

### 28 DISPUTE RESOLUTION

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

- by good faith negotiations between the Parties;
- 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;
- 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.

### 29 GOVERNING LAW

29.1 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.