



Specific Terms & Conditions

“Fiber-To-The-Home (FTTH) services”

Description

A. Terms and Conditions

The Terms and Conditions, the Application Form, any other documents which are referred to in this Agreement and any document required to be signed together with the terms and conditions of any additional Services constitute a legally-binding agreement (the ‘Agreement’) between Telecom Vanuatu limited and the Customer named in the Application Form (hereinafter ‘Customer’), which will be effective from the time the Customer’s application for the Services contained in the Application Form overleaf is accepted.

By signing the Application Form, the Customer confirms that all information submitted is accurate and true.

1. Defined Terms and Interpretation

‘**Agreement**’ means this Agreement consisting of the specific terms and conditions in this document and its attached annexure and schedules, the terms and conditions of any applicable product, service, promotion, the applicable tariffs and charges and the application form.

‘**FTTH**’ means Fiber-To-The-Home, the technology used to provide Broadband Internet services over end-to-end optical fiber network

‘**Commencement Date**’ means the date on which activation of the service commences

‘**Commitment**’ is outlined in clause 3.1

‘**Downgrade of Monthly Plan**’ means to switch to another monthly plan with a lower bandwidth

‘**Equipment**’ means the end-device such as modems, routers or ONU’s provided by TVL to the Customer to have access to the service.

‘**Intellectual Property Rights**’ means all intellectual property rights including:

- (a) patents, copyright, rights in circuit layouts, registered designs, trademarks, know how, trade secrets, domain names, website contents, and any right to have confidential



information kept confidential; and

(b) any application or right to apply for registration of any of the rights referred to in paragraph (a).

'Law' means any principle in common law or equity and any requirement under any legislation, rule, instrument, code of practice, ordinance or by law, present or future.

'Material' includes property, information and the subject matter of any category of Intellectual Property.

'Network' means our fixed, mobile and/or other telecommunications network and systems used to provide the Service.

'Package' means the included amount of voice (in minutes), internet (in Mega Bytes) or sms incorporated into the customer's monthly plan.

'Pay As You Use' means the rate that shall apply to usage when the customer is in excess of packages provided in monthly plan.

'Re-sign' means the period after service Commitment when the customer may sign up for an additional service commitment of 12/24 months with a specific advantage and benefit from bonuses, promotions and deals available to them from this service package.

'Service' means mobile telecommunications services and ADSL services as well as related products and services that are made available to the consumer by TVL.

'Shop' means the TVL shop currently located on the ground floor of the TVL House, Fatumaru Bay but subject to change address with notification to the public via the website, SMS, media or other reasonable forms of communication.

'TVL' includes officers, employees, agents and subcontractors appointed by TVL but do not extend to outsourced activities of TVL.

'Upgrade of Monthly Plan' means to switch to another monthly plan with a higher bandwidth

'Website' means the TVL website at www.tvl.net.vu

'we' or **'us'** means Telecom Vanuatu Limited and **'our'** has a corresponding meaning.

'you' means the customer having a billing relationship with us and **'your'** has a corresponding meaning.

2. Service provision



- 2.1 The Residential Internet Application Form needs to be signed by the Customer before the Service is made available.
- 2.2 TVL shall provide the Customer with the Service as specified on the Residential Internet Application Form as per the terms and conditions of this Contract.
- 2.3 TVL will use reasonable endeavors to provide the Service by the date agreed with the Customer but all dates are estimates and TVL shall not incur any liability for any failure to meet any date.
- 2.4 In consideration of the payment by the Customer of the charges, fees and/or rentals, TVL shall provide the Service during the continuance of this Contract subject to the compliance by the Customer with all the terms and conditions set out in this Contract.
- 2.5 TVL reserves the right to cancel or to delay the provision of the Service to a Customer, if the Service is not likely to be effected in satisfying conditions for the Customer or for the Customers already connected, or if TVL has reasonable grounds to believe that the Customer is likely to use the said service for unlawful purposes or for purposes which constitute a breach of Contract.
- 2.6 The Customer acknowledges that it is technically impracticable to provide a fault free Service.
- 2.7 TVL shall however use its best endeavors to repair any reported faults as soon as it reasonably can. TVL reserves the right to:
 - a) for operational reasons, change the codes or the numbers allocated to the Customer or the technical specification of the Service to match changes in the network infrastructure.
 - b) suspend the Service for operational reasons such as repair, maintenance or improvement of the Service or because of an emergency, but before doing so TVL will give as much online, written or oral notice as is reasonable practicable. TVL will restore the Service as soon as it reasonably can after the suspension. TVL will not be liable for any prejudice suffered by or caused to the Customer as a result of the suspension of the Service.
 - c) give the Customer instructions which it believes are necessary for reasons of health, safety or quality of any telecommunications service provided by TVL to the Customer or to any other Customer.

3. Service availability

- 3.1 Coverage and quality of service may vary and change without notice depending on a variety of factors including network load, terrain and weather. Outages and interruptions in Service may occur. TVL will not be liable for problems relating to Service availability or quality.
- 3.2 TVL make no warranties of any kind, either expressed or implied as to the reliability of this Telecom Vanuatu Limited Trading as **Vodafone Vanuatu**, PO BOX 146, Kumul Highway, Port Vila, Vanuatu



service for any particular purpose. TVL takes no responsibility for any loss or damage resulting from or arising out of the use of the service, service interruptions, slow delivery or no delivery of information.

3.3 In no event shall TVL be liable to the Customer for indirect, special, consequential, incidental or punitive damages including but not limited to, loss of business, revenue, contracts, anticipated savings or profits whether or not TVL was or should have been aware of the possibility that such damage could occur.

3.4 In the event that Customer's Service is interrupted the Customer should notify TVL and, unless the loss of Service is due to your negligence or wilful act, use our best endeavor to restore Service as soon as possible.

4. Service Upgrade/Downgrade

4.1 The Customer is entitled, at any time, to upgrade the monthly plan of your Service Commitment by consulting a salesperson at our TVL shop.

4.2 Downgrades of a monthly plan are only allowed if your Service Commitment period has lapsed. You may downgrade by consulting with a salesperson at our shop.

4.3 It is your responsibility to manage consumption in excess of your package. All usage in excess of your monthly plan package shall be charged on a Pay As You Use rate basis. If the threshold of excess usage is reached, TVL reserves the right to request a deposit that has to be made before further access to the service is permitted.

5. Use of service

5.1 A dynamic IP addressing is used for the Service and the Customer shall not use the Service to provide access to Internet Servers hosted in its premises. The Customer shall not use the Service:

- a) for any unlawful purposes such as, but not limited to, vice, gambling or other criminal purposes whatsoever or any other activities which are contrary national security, public order and morality; or
- b) for persistently sending messages without reasonable cause or for causing any threat, harassment, annoyance, inconvenience or needless anxiety to any person whomsoever; or
- c) to send, receive, upload, download, use or re-use any information or material which is offensive, abusive, indecent, defamatory, obscene or menacing, or in breach of confidence, copyright, privacy or any other rights; or



- d) to send or provide unsolicited advertising or promotional material or to receive responses to any unsolicited advertising or promotional material sent or provided using the Service by any third party; or
- e) attempt to gain access to any computer system connected to Internet without authorization by the owner of the computer system; and to access information or resources which are private to individuals and organizations unless permission to do so has been granted by the owners or holders of the rights to such resources and information.
- f) share or allow to be shared the Service and/or Equipment with any person or corporation whomsoever without the prior written approval of TVL and shall use the Service only for the purpose for which it is subscribed.
- g) assign or dispose of in whole or in part any rights or obligations herein contained without the prior written approval of TVL. Any purported assignment or disposal without such written consent shall be null and void and of no effect.
- h) other than in accordance with the Acceptable Use Policies of any connected networks and the Internet Standards.
- i) for business purposes, in the event he is a Residential Customer
- j) to make excessive use of bandwidth intensive services contrary to Fair Usage Policy that may negatively impact on the rest of the Internet Customers who only make use of their Internet service for normal Internet Access purposes

6. Service Commitment and Discontinuance of Service

6.1 The Service shall be provided with a Minimum Subscription Period as stipulated by TVL on Residential Internet Application form. This Agreement is from date of activation of Service or from the date of Re-signing and is valid for as long as the Service is being used by you unless otherwise stated and agreed upon by TVL.

6.2 In the event where you decide to discontinue the Service before the Service Commitment lapses, we will require you to pay an Early Termination Fee. This Fee is the cost of monthly recurring charges (including any applicable taxes and fees) for the remaining months of the service commitment. This Early Termination Fee is not a penalty, but rather a charge to compensate us for your failure to satisfy the Service commitment on which your monthly plan is based.

6.3 After expiration of the Service commitment, the service shall continue under the terms of Telecom Vanuatu Limited Trading as **Vodafone Vanuatu**, PO BOX 146, Kumul Highway, Port Vila, Vanuatu



this Agreement until you decide to re-sign to or terminate the service. The Early Termination Fee is only applicable during the Service Commitment period and not during periods when the Commitment period has lapsed without Re-signing.

7. Equipment

7.1 Any equipment connected to or used with the Service must be connected and used in accordance with any instructions, safety, and security procedures applicable to the use of that equipment.

7.2 Any equipment that is attached (directly or indirectly) to the Service must be technically compatible with the Service and approved for that purpose under any relevant legislation.

7.3 TVL is acting only as a reseller or licensor of any hardware, software and equipment (collectively, the “Equipment”) offered under this Contract that was manufactured by a third party. TVL shall not be liable for any changes in Service that cause Equipment to become obsolete, require modification or alteration, or otherwise affect the performance of the Service. Any malfunction or manufacturer’s defects of Equipment, either sold, licensed or provided by TVL to the Customer or purchased directly by the Customer used in connection with the Service will not be considered a breach of TVL’s obligations under this Contract.

7.4 Any rights or remedies the Customer may have regarding the ownership, licensing, performance or compliance of Equipment are limited to those rights extended to the Customer by the manufacturer of such Equipment. The Customer is entitled to use any Equipment supplied by TVL only in connection with the Service.

7.5 The Customer shall use his best efforts to protect and keep confidential all intellectual property provided by TVL through any Equipment and shall make no attempt to copy, alter, reverse engineer, or tamper with such intellectual property or to use it other than in connection with the Service. The Customer shall not resell, transfer, export or re-export any Equipment, or any technical data derived there-from, in violation of any applicable Vanuatu or foreign law.

7.6 The Customer shall be responsible for TVL equipment on the Customer’s premises and shall not add to, modify or in any way interfere with the TVL equipment. The Customer shall be liable to TVL for and shall insure (under an all risks policy) against any and all loss of damage to TVL equipment howsoever occasioned or caused, except in so far as any such loss or damage is attributable to the negligent or wilful act or omission of TVL, its agents or subcontractors.

7.7 Unless otherwise provided in the Contract, ownership (both legal and beneficial) of TVL



equipment shall be retained by TVL at all times and the Customer will not remove or alter in any way any identification mark on any part of the TVL equipment showing that it is owned by TVL. On all occasions when the ownership of the TVL equipment is in issue, the Customer shall make clear to third parties that the same is the property of TVL.

8. Tariffs and payment

8.1 Usage charges payable shall be calculated by reference to data recorded either by TVL or on our behalf by an authorized third party.

8.2 All charges due to TVL are tax inclusive and shall be paid by the Customer.

8.3 We reserve the right to adjust rates, specifications and terms and conditions with a 30 (thirty) day written notice sent to the address you have provided us and/or transmitted as a public notice by reasonable means to our customers through our website, SMS notification or through other suitable medium.

8.4 You are allowed to terminate your service Commitment within 30 (thirty) days following any adjustment under section 8.3 and without Early Termination, Fee charges if:

- a) these adjustments are not the result of Regulatory or Government decisions; or
- b) the changes are fully attributable to and controlled by TVL; or
- c) the alternative plans proposed are not favorable when compared to the original plan package in terms of pricing, data and voice.

8.5 Accounts shall be prepared monthly and sent either:

- (a) as an electronic notification on the e-mail address provided by TVL which guides you to your account on the TVL Website for details of usage;
- (b) by ordinary post;
- (c) delivery to the billing address specified in the service application (or such other address as notified to TVL in writing from time to time) ; or
- (d) may be collected by you at points we have designated for that purpose if you elect so to do in writing.

8.6 It is your responsibility, having applied for the Service, to notify us of any change of billing address, to safely guard any E-mail or TVL Web account details assigned to you, regularly check and review billing invoices and charges and settle payment of accounts for such services, bills and all charges in connection therewith which will be rendered to you.



- 8.7 You are required to settle payment of billings on the 20th (twentieth) day of every month.
- 8.8 Failure to receive an invoice sent to the last address your have notified to us shall not exempt you from payment of the account by the due date.
- 8.9 Enquiries or disputes concerning any bill must be submitted to us within 30 (thirty) days of the bill issue date. Nothing in this condition shall relieve you from paying the charges on or before the payment date indicated under section 5.7.
- 8.10 TVL shall be entitled to charge daily interest on outstanding amounts, until we receive full payment, at the rate of 15% per annum whether before or after any judgment. Interest shall continue to accrue despite termination of this Agreement.
- 8.11 In case of non-payment of charges, fees or rental for the service and/or equipment, should any claim be made through an Attorney at law or Debt Collection Agency, the customer shall be liable for the debt recovery costs, court fees, legal charges, Attorney fees and commissions with interests incurred for recovery of the debt.
- 8.12 In the event that the Customer cancels any order after the same has been accepted by TVL, the Customer shall be liable to pay a cancellation charge therefore, if any, at TVL's then prescribed rate for the said cancellation.
- 8.13 In the event that TVL's staff and/or authorised agents have been called upon to attend to a fault at the Customer's premises, TVL reserves the right to impose charges for the visit if the fault is not attributable to any of TVL's equipment or networks.
- 8.14 TVL reserves the right to disconnect the Service in case of non-payment of charges, fees and/or rentals for the Service. TVL shall not be liable for such disconnection.

9. Limitation, Suspension and Termination

- 9.1 TVL may limit, suspend or terminate your service or agreement without notice for any reason, including without limitation, if you or any user of the service provided to you whether authorized or not :
- (a) breach(es) the Agreement;
 - (b) incur(s) outstanding charges greater than any monthly plan threshold limit (or their excess usage thresholds) on your account (even if TVL has not charged any bill);
 - (c) provide(s) inaccurate information or credit information which TVL is unable to verify;
 - (d) resides(s) in an area where TVL's network is not present;
 - (e) transfer(s) Service to another person without our consent;
 - (f) become(s) insolvent, goes bankrupt or threatens bankruptcy (except as prohibited by law);
 - (g) misuse(s) the Service provided to you and our equipment;



- (h) use(s) our equipment is in a manner which will adversely affects our service to others
- (i) subscribed to a Monthly Plan that TVL no longer offers

9.2 If your outstanding charges remain unpaid for more than two consecutive months from the date of tax invoice, we may suspend your connection without prejudice to our rights to recover the outstanding charges.

9.3 Reconnection of Service shall be made when convenient to us and at our sole discretion having regard to:

- a) the availability and provision of the necessary facilities;
- b) our other commitments;
- c) your payment of all outstanding amounts as well as the applicable reconnection fee and deposit where appropriate; and/or
- d) whether you have rectified the breach of terms and conditions of service to our complete satisfaction.

10. Content Management

10.1 The “TVL Acceptable Use Policy” available from our website at http://www.tvl.vu/sites/tvl.vu/files/Internet%20Services_Terms%20and%20Conditions_v2_1_0.pdf shall be used in conjunction with this Agreement for the purposes of the ‘Content Management’ clause and ‘Fair Usage Policy’ clause. The “TVL Acceptable Use Policy” shall succeed over clause 7 and 8 in the event of a conflict.

10.2 It is your responsibility for all access to and use of the service provided to you. You shall assume all responsibility and liability for the activities that any other person (with or without your permission) conducts with the service provided to you.

10.3 If you have used shareware, trial ware or software provided by us then you will be subject to conditions stated by the developer of that product, such as usage, registration, payment etc. Also, if you change operators in the future, we have the right to reallocate the IP address or phone number assigned to your name. This service does not provide any public IP addresses or mobile phone number.

11. Traffic Policy

11.1 FTTH is a shared access service depending upon local and international scarce connectivity



resources. TVL intends to provide to all Users a reasonable level of service and distribute bandwidth among them. This is why depending on the type of FTTH subscription that the Customer has chosen, TVL may apply dynamically an allocation of the available resources.

11.2 Access Speed

FTTH is a best effort service and no guarantee will be made regarding the speed of access.

11.3 FTTH packages are intended for normal Internet access purposes (recreational, educational or search for information) by our Customers. Because of TVL commitment to provide the best possible service at all times to all its Internet Customers, a Fair Usage Policy is applicable on all FTTH services. The application of the Fair Usage Policy (FUP) ensures that Customers act reasonably when using the service and hence that an acceptable standard of service in terms of download speeds will be provided across all FTTH services. TVL will continually measure the performance of its broadband network and take steps to restrict the download speeds will be provided across all FTTH services. TVL will continually measure the performance of its broadband network and take steps to restrict the download speeds of very heavy users, should their activities significantly contribute towards the risk of reduced speeds being experienced by the majority of our FTTH customers.

12. Personal Information

12.1 You have agreed to provide to us, upon request, information pertaining to your identity, address and your planned use of the Services as well as satisfactory evidence of your creditworthiness. We are entitled to refuse service if such information is not, in our sole discretion, satisfactory.

12.2 It is your responsibility to retain a copy of this Agreement for future reference at the request of TVL

13 Liabilities and Force Majeure

13.1 The Customer is hereby advised hereby that servers on the Internet are exposed to hackers' attacks, viruses and other adverse effects. Furthermore, due to dynamic development of the latest technologies there are many software products, including well-known brands, with internal flaws. For these and many other reasons the Customer may experience complete loss of content of their server (s). While TVL does everything in its power to prevent these problems, TVL will not be liable for lost data.

13.2 TVL shall not be liable for any failure in performance, interruption of the Service or delay in performing its obligations hereunder if such failure, interruption or delay is due to circumstances beyond its reasonable control, including but not limited to, acts of God, acts



of any governmental body or military authority, civil disturbance, war, sabotage, embargo, fire, earthquakes, tsunamis, volcanic eruptions, flood, strikes or other labour disputes and disturbances, interruption or delay in transportation, interruption or delay in telecommunications or third party services, failure of third party software or hardware, inability to obtain facilities, raw materials, fuel, energy, labour.

13.3 TVL has no control over the information transmitted to or from the Service and that TVL does not ordinarily examine the use to which Customers put the Service or the nature of the information they are sending or receiving. TVL hereby excludes all liability of any kind for the transmission or reception of information of whatever nature.

13.4 TVL shall not in any circumstances be liable under this Contract or otherwise for any direct or indirect loss, loss of business, revenue, profits or savings; wasted expenditure; corruption or destruction of data; or for any indirect or consequential loss whatever whether arising from negligence, breach of contract or otherwise

14. Limitation of liabilities

14.1 In no event shall TVL or its employees, affiliates, agents, suppliers, third-party information providers, merchants, licensors or the like, be liable for any indirect, incidental, special or consequential damages, or loss of profits, revenue, data or use, by the customer or any third party, whether in an action in contract or tort or strict liability or other legal theory, even if TVL has been advised of the possibility of such damages. In no event will TVL's liability for any damages, losses and causes of actions whether in contract or tort (including negligence or otherwise) exceed the actual amount paid by the customer for the service which gave rise to such damages, losses or causes of actions during the 1-month period prior to the date the damage or loss occurred or the cause of action arose.

15. Indemnity

15.1 The Customer undertakes and agrees to indemnify and hold harmless TVL at all times against all actions, claims, proceedings, costs, losses and damages whatsoever including but not limited to libel slander or infringement of copyright or other intellectual property rights or death, bodily injury or property damage and howsoever arising which TVL may sustain, incur or pay, or, as the case may be, which may be brought or established against TVL by any person whomsoever arising out of or in connection with or by reason of the operation, provision or use of the service and/or equipment under, by reason of or pursuant to this agreement and which are attributable to the act, omission or neglect of the Customer, his servants or agents.

15.2 TVL shall not be liable for any loss or damages sustained by reason of any disclosure, inadvertent or otherwise of any information concerning the Customer's account and particulars. Neither shall TVL be liable for any error, omission, nor inaccuracy with respect to any information disclosed.



16. Miscellaneous

- 16.1 No act or omission by us shall affect our rights, power and remedies under this Agreement or any further or other exercise of such rights, powers or remedies.
- 16.2 This Agreement embodies the entire understanding between us relating to the services and there are no promises, terms, conditions or obligations, oral or written, expressed or implied, other than those contained in this Agreement.
- 16.3 Each of the provisions of this Agreement is severable and distinct from the others and, if one or more of such provisions is or becomes illegal, invalid or unenforceable, the remaining provisions shall not be affected in any way.

17. Governing Law

17.1 The rights and obligations of signatories of this Agreement shall be governed by, and shall be construed and enforced in accordance with, local, domestic laws of The Republic of Vanuatu.

I/We have read, understood and agree to the above Service and Service Terms & Conditions. This Agreement is hereby executed on the(DD) of(M) 20__
Signature

Full name (PRINT):

Company and Position (If applicable):.....

Address for Correspondence:
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Alternative Address for Correspondence:
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