

<p style="text-align: center;"><b>TELECOM VANUATU LIMITED MOBILE POST PAID AND INTERNET ADSL TERMS AND CONDITIONS</b></p>
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## **A. Background**

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All services provided by Telecom Vanuatu Limited ("TVL") shall be supplied on the following terms and conditions.

### **1. Defined Terms and Interpretation**

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#### **In this Agreement:**

**'Agreement'** means this Agreement consisting of the 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.

**'ADSL'** means Asymmetric Digital Subscriber Line, the technology used to provide Broadband services over a telephone line but for the purposes of these Terms and Conditions, the terms ADSL and Broadband are interchangeable and both refer to the internet connectivity provided by TVL under these Terms and Conditions.

**'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 a TVL monthly plan package (ie: Biz, Talk, Life, Surf and other post paid or ADSL package plans) inferior in price to the current package the customer is subscribed to.

**'Equipment'** means any apparatus or equipment provided by TVL to the Customer to enable provision of the Service.

**'Intellectual Property Rights'** means all intellectual property rights including:

- (a) patents, copyright, rights in circuit layouts, registered designs, trade marks, 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 Haos, 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 does not extend to outsourced activities of TVL.

**'Upgrade of Monthly Plan'** means to switch to a TVL monthly plan package (ie: Biz, Talk, Life, Surf and other post paid or ADSL package plans) superior in price to the current monthly plan package the customer is subscribed to.

**'Website'** means the TVL website at [www.tvl.net.vu](http://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. Services

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- 2.1 We shall endeavor to supply and activate services to you within 28 days of the receipt of a request however we do not guarantee that service will be provided within such time nor will we incur any liability whatsoever to you in the event that service cannot be provided within 28 days.
- 2.2 Coverage and quality of service may vary and change without notice depending on a variety of factors including network capacity, terrain and weather. Outages and interruptions in Service may occur, and speed of Service varies. We are not liable for problems relating to Service availability or quality.
- 2.3 We make no warranties of any kind, either expressed or implied as to the fitness of this service for any particular purpose. We take 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.
- 2.4 In no event shall we be liable to you 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.
- 2.5 In the event that your Service is interrupted you should notify us on the number published for this purpose and we shall, unless the loss of Service is due to your negligence or willful act, use our best endeavor to restore service as soon as possible.
- 2.6 You are entitled, at any time, to upgrade the monthly plan of your Service Commitment by consulting a salesperson at our TVL shop.
- 2.7 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.
- 2.8 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.

### **3. Service Commitment and Discontinuance of Service**

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- 3.1 Your 'Commitment' is the 12/24 month service period during which you are on a monthly plan without the option of termination without incurring an early termination fee. Periods of suspension of Service do not count toward your Commitment. 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.
- 3.2 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.
- 3.3 After expiration of the Service commitment, the service shall continue under the terms of 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.
- 3.4 The Early Termination fee may be waived if you have documented proof in the form of an employer's letter or travel documentation (visas and/or confirmed airline tickets) verifying that you shall be absent from Vanuatu for a period not less than 3 (three) months. In such a case, you shall be required to refund any bonus received in exchange of your Commitment before service can be terminated.

#### **4. Equipment**

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- 4.1 You must permit us or the relevant outsourcing company, whichever is applicable, access to the premises where the equipment is located at reasonable times for the purpose of installing, inspecting, repairing, replacing, removing or recovering the equipment and providing the services;
- 4.2 You must notify us immediately of any damage, fault, theft or loss of any equipment;
- 4.3 You must operate and use the equipment in a proper manner and shall not alter, tamper with or attempt to repair the equipment in any way.

#### **5. Pricing, Billing and Payments**

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- 5.1 Usage charges payable shall be calculated by reference to data recorded either by us or on our behalf by an authorized third party.
- 5.2 All charges due to us are inclusive of any tax from time to time. You shall pay for any such tax.
- 5.3 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 available media.
- 5.4 Without limiting the provisions of Clause 5.3, in the event that there is an issue on the submarine cable, TVL reserves the right to apply the prices applicable before 28 March 2014. This pricing will only be effected 16 days following the submarine cable incident in which TVL cannot assure that the bandwidth will be similar to that previously enjoyed by the Customer.
- 5.5 You are allowed to terminate your service Commitment within 30 (thirty) days following any adjustment under section 5.3 and without Early Termination, Fee charges if:
  - (a) these adjustments are not the result of Regulatory or Government decisions ; and
  - (b) the changes are fully attributable to and controlled by TVL; and

(c) the alterations are not favorable in comparison to the original plan package in terms of pricing, data and voice.

5.6 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.

5.7 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.

5.8 You are required to settle payment of billings on the 20<sup>th</sup> (twentieth) day of every month.

5.9 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.

5.10 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.

5.11 We 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.

5.12 In the instance that we are compelled to recover our outstanding debts and interest payments with the services of a debt collection company, the fees incurred for this recovery shall be borne by you.

## 6. Limitation, Suspension and Termination

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6.1 We 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 we haven't yet billed the charges);
- (c) provide(s) inaccurate information or credit information we can't verify;
- (d) live(s) in an area where we don't provide Service;
- (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 in a manner which will adversely affects our service to others
- (i) are on a Monthly Plan that we determine is no longer available to you.

6.2 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.

6.3 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 arrears together with 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.

## 7. Content Management

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- 7.1 The “TVL Acceptable Use Policy” accessible from our website at <http://www.tvl.vu/AUP.html> 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 sections of clause 7 and 8 in the event of a conflict.
- 7.2 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.
- 7.3 All management of data or content management is your responsibility and you shall be responsible for all data (including SPAM/Junk Mail or Virus Attacks) traversed through your Service connection. We require you to have updated antivirus software at all times for your data security. In the case where traffic causes excessive resource utilization on our interfacing equipment or network that results in degraded performance for our other customers, we reserve the right to immediately downgrade or suspend service without prior notice.
- 7.4 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
- 7.5 This service may only be used for lawful purposes. Transmission, distribution or storage of any material in violation of the laws and regulations of the Republic of Vanuatu is prohibited. Prohibited activities are described in the “TVL Acceptable Use Policy” mentioned in clause 7.1.
- 7.6 The use of information attained via this service is at your risk. We take no responsibility for the accuracy or quality of information transmitted or received. You acknowledge that if you use another organization’s proprietary material, then you shall be subject to the permission and usage policies of that person or organization.



## **8. Fair Usage Policy**

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8.1 All our services offered free or under unlimited subscription are subject to our Fair Use Policy. If, in our reasonable opinion, your use is excessive, we may ask you to moderate your usage. If, after we have asked you to moderate your usage, you fail to do so, we reserve the right to:

- (a) charge you for the excessive element of your usage at your price plan's standard rate;
- (b) throttle your usage; or
- (c) suspend or terminate our service.

## **9. Personal Information**

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9.1 We shall be entitled to require you to produce positive identification and are entitled to refuse service if such evidence is not, in our sole discretion, satisfactory.

9.2 You agree 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.

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

## **10. Our Liability**

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10.1 Nothing in these terms and conditions shall exclude liability for:-

(a) death or personal injury resulting from our negligence or of our employees whilst acting in the course of their employment, or

(b) direct physical loss of, or damage to, property which is directly attributable to our breach of contract, negligence or other cause provided that in no case shall the amount of such liability exceed Vatu 1,000,000 to respect of any incident or any series of incidents arising from a common cause in any twelve (12) month period.

## **11. Force Majeure**

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11.1 Notwithstanding any provisions herein to the contrary we shall bear no liability for any act or omission which we perform or fail to perform for any reason beyond our control, including but not limited to acts of God, acts of government authorities, strikes, war or war like activities, riot, acts of crisis, civil commotion, cyclones, tempest, storm and any other cause of like or unlike nature.

## 12. Indemnity

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12.1 You agree to indemnify and hold us harmless for all liabilities, loss, claims and expenses that may arise from:

- (a) any breach of these Conditions by you; and
- (b) any transmission or receipt of any content or message which you have requested, made or received using the Service.

## 13. Miscellaneous

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- 13.1 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.
- 13.2 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.
- 13.3 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.

## 14. Governing Law

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14.1 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 \_\_\_\_ of \_\_\_\_ 20\_\_**

**Signature : \_\_\_\_\_**



**Full name (PRINT):** \_\_\_\_\_

**Company and Position (If applicable) :** \_\_\_\_\_

**Address for Correspondence:** \_\_\_\_\_

**Alternative Address for Correspondence**

**NAME:** \_\_\_\_\_

**RELATION:** \_\_\_\_\_

**ADDRESS:** \_\_\_\_\_

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