

1. INTERPRETATION

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

"Agreement" means these Corporate Terms & Conditions, together with any applicable Service Description, Service Plan, Email Instructions and our Corporate Customer Agreement Form signed by you;

"Authorised Contact Person" means the person you authorise to act on your behalf in relation to the Agreement;

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

"Charges" means:

- (a) The charges for the Services as set out or referred to in the applicable Service Description and/or Service Plan;
- (b) The charges for the Equipment (if applicable), plus any installation, freight and delivery costs not included in the listed price, as set out or referred to in the applicable Service Description and/or Service Plan or otherwise advised to you;
- (c) The charges for additional services such as technical or administration support or remedial services;
- (d) Any taxes, levies, fees or other governmental charges relating to our Services; and
- (e) Any additional charges or fees payable by you under the Agreement,

in each case as amended in accordance with the Agreement from time to time;

"Corporate Customer Agreement Form" means our sign-up form for corporate customers;

"Corporate Terms & Conditions" means these standard terms and conditions as amended from time to time;

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

"Data" means internet data;

"Email Instruction" means an instruction to us to change any Service, which instruction is delivered by email from the email address provide by you in the Corporate Customer Agreement Form or updated by you by notice to us from time to time. An Email Instruction may contain a Service Description.

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

"Force Majeure Event" means any event or circumstances beyond our reasonable control, including any act 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 initial term set out in the Service Description for the Services;

"Intellectual Property" means any and all intellectual property such as patents, designs,

service marks and copyright material, registered or unregistered, anywhere in the world;

"Parties" refers to Bluesky and the Customer together, and **"party"** refers to either one of them;

"Payment Date" means the day of the month appearing on each Bluesky invoice as the payment date;

"Phone Number" means a phone number which is allocated to you by us;

"Premises" means the Customer's premises including any premises detailed in any Service Description applicable to the Services;

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

"Regulatory Event" means any legislative or regulatory change (including, any determination, direction or decision by a regulatory authority, or in the introduction of or change to any regulations, reference offer or undertaking) that directly or indirectly has the effect of: altering the terms of the Agreement, making the operation of the Agreement impracticable; materially altering the burden (financial or otherwise) of us providing Services under the Agreement; making us incapable of performing the Agreement; or causing us (voluntarily or otherwise) to materially alter our operations or structure;

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

"Services" means the services and/or Equipment which we provide to you from time to time as described in the relevant Service Description;

"Service Description" means a service description form setting out the Services we will provide to you;

"Service Plan" means any Bluesky plan of entitlements, such as data, minutes and other benefits, included as part of the Services;

"SIM card" means a Bluesky Subscriber Identity Module card encoded with a Bluesky number;

"User" means an individual end user of a Product and/or the Services;

"VAT" means value-added tax levied under the Value Added Tax Act 1997;

"We" or **"us"** or **"our"** or **"Bluesky"**, means Telecom Cook Island Limited t/a Bluesky; and

"You" or **"Customer"** means the Bluesky customer responsible for paying the Charges for the Services, as set out in the Corporate Customer Agreement Form, and **"your"** has a corresponding meaning.

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

- (a) Headings to clauses are for reference only and are not an aid to interpretation;
- (b) References to a party include that party's successors in title and permitted assigns;

- (c) Words importing the plural include the singular and vice versa;
- (d) Words importing gender import all genders;
- (e) Any obligation not to do something will be deemed to include an obligation not to suffer, permit or cause that thing to be done;
- (f) References to currency or \$ are to New Zealand dollars.

2. OUR AGREEMENT

- 2.1. **Application:** These Corporate Terms & Conditions apply if you have submitted a signed a Corporate Customer Agreement Form to us.
- 2.2. **Specific Terms and Conditions:** If a Service for which you have applied is subject to specific terms and conditions, such as a Service Description and/or Service Plan, then those specific terms and conditions (as amended from time to time) form part of this Agreement.
- 2.3. **Priority of documents:** If there is any inconsistency between these Corporate Terms & Conditions and any other terms and conditions, then these Corporate Terms & Conditions will take precedence unless specifically stated otherwise.
- 2.4. **Subject to change:** These Corporate Terms & Conditions may change from time to time without prior notice to you. For the most up to date version of these Corporate Terms & Conditions please visit our website <http://www.bluesky.co.ck>.

3. TERM

- 3.1. **Term:** This Agreement will commence on the date you sign your Corporate Customer Agreement Form and continues until the Agreement is terminated in accordance with these Corporate Terms & Conditions.
- 3.2. **Service Term:** For each Service:
 - (a) The Initial Term will commence on the date we start providing the Services to you and continues until the expiry of the Initial Term; and
 - (b) At the end of the Initial Term or a Renewal Term, a Renewal Term will automatically commence and thereafter automatically renew for another Renewal Term unless terminated by you giving at least sixty (60) days' prior written notice to Bluesky before the end of the Initial Term or then current Renewal Term. The Services will then terminate on the last day of the Initial Term or then current Renewal Term as applicable.
- 3.3. **Commencement of Services:** We will begin providing the Services to you in accordance with the timeframe set out in the Service Description, or, if no timeframe is set out, within a reasonable time.

4. BLUESKY OBLIGATIONS

- 4.1. Bluesky will provide the Services to you in accordance with the terms set out in this Agreement.
- 4.2. Bluesky 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 Bluesky performs work for you in connection with the provision of the Services, it will ensure that all work is carried out by competent and suitably qualified personnel and in a professional manner.

5. CUSTOMER OBLIGATIONS

- 5.1. **Use of Services:** You agree that you will:
 - (a) not use the Services or permit the Services to be used in any way that is illegal or unlawful. Furthermore, you will only use the Services for the purposes for which they are provided and in accordance with our reasonable instructions and the terms of this Agreement;
 - (b) not use the Services in any way that could damage our Network or other property, including any of our Equipment at your Premises, or the Network or property of any other operator, or interfere with another customer's enjoyment of our services. **Auto dialling, continuous call forwarding, and the use of cellular trunking units or SIMboxes is not permitted;**
 - (c) not use or install any device and/or hardware in connection with the Services, that is not pre-approved by us, or which masks or in any way alters the true origin or termination of any call or other transmission; and
 - (d) only use the Services for your own internal business requirements and not resell, rebill or otherwise provide any of the Services to anyone else without our prior written consent.
- 5.2. **Cooperation and assistance:**
 - (a) You will ensure that all information you give to Bluesky 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.
- 5.3. **Acknowledgements:** You acknowledge and agree that:
 - (a) Bluesky is not responsible for ensuring that the Services are unable to be misused by you or any third party; and
 - (b) You are responsible for your misuse of the Services and for any use of the Services by any user or third party, whether authorised by you or

not. You must therefore pay any Charges incurred from the use of the Services by any user or third party, whether authorised by you or not.

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

6. CHARGES, INVOICING AND PAYMENT

- 6.1. You will pay and are responsible for the Charges for the Services and/or Equipment that we provide you in accordance with this Agreement, irrespective of who ultimately uses them.
- 6.2. All Charges are subject to VAT.
- 6.3. We will send you a monthly invoice for the Services to the email address you provide on the Corporate Customer Agreement Form. We will not provide a paper invoice unless you specifically request one, and any such invoice incurs a printing Charge. Any paper invoice will be mailed to your PO Box address provide on your Corporate Customer Agreement Form or notified to us.
- 6.4. Every invoice is payable by the Payment Date. Non-receipt of invoice is no excuse for non-payment of our Charges.
- 6.5. You will pay each invoice without set off, counterclaim or deduction.
- 6.6. Invoices that remain unpaid after the Payment Date may be charged a late payment fee. Details of our late payment fees can be found on our website at <http://www.bluesky.co.ck>.
- 6.7. You will reimburse us for any costs we incur, including legal fees, to recover money you owe us under this Agreement.

7. DISPUTED INVOICES

If you think there is a mistake in an invoice, you must inform us prior to the Payment Date for the invoice. You must still pay the entire invoice by the Payment Date. If Bluesky agrees there is a mistake it will correct the invoice and credit your account for the portion owed to you as a result of the mistake.

8. CREDIT ARRANGEMENTS

- 8.1. We may require that you provide us with a bond in accordance with our Customer Bond Policy. You can view our Customer Bond Policy on our website at <http://www.bluesky.co.ck>.
- 8.2. We may pass on 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. We may also let those organisations know if you have not paid our Charges. At any time, those organisations may pass on to us information about you that they hold. We 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.

- 8.3. We may suspend or stop providing Services to you if we receive an unsatisfactory credit check about you.

9. FAULTS, OUTAGES AND MAINTENANCE

- 9.1. Where any Service has a fault or unscheduled outage, Bluesky will use reasonable endeavours to remedy that fault or outage within the time periods set out in the service level agreement in the Service Description to which the Service relates, or in the absence of such an agreement, then within a reasonable time.
- 9.2. Where remedial action is required, we may charge you at our standard rates for the cost of remedying the fault or outage.
- 9.3. We will notify you regarding any scheduled maintenance operations affecting the Services and an estimate of the length of any outage or other impact. Notice may be by way of public announcement in the media, on our website and Facebook page.

10. EQUIPMENT

- 10.1. **Your Equipment:** As required under clause 5.1(c) you must not use any device and/or hardware in connection with the Services without our preapproval (in this clause "your equipment"). Where, with our approval, you are using your equipment with the Services, you will follow our reasonable instructions about modifications that you may need to make to your equipment so that you can use the Services. Such modifications may include modifications to avoid any danger or interference your equipment may cause to the Services, our Equipment or our Network.
- 10.2. **Our Equipment:** To provide the Services, it may be necessary for us to install and maintain Equipment on the Premises (e.g. we lease you a modem for your broadband connection). Except as otherwise agreed in writing, Bluesky will retain ownership of the Equipment installed or located on the Premises. You will not deal with our Equipment in a manner that is contrary to our legal title to it (e.g. sell or give it away). If the Equipment is faulty, you must notify us immediately and we will, as soon as practicable, either repair or replace it at our discretion. If you are responsible for any loss or damage to our Equipment, we will charge you the repair or replacement cost as applicable.
- 10.3. **Risk and ownership:** Any Equipment you arrange to purchase from us is your responsibility from the time you take delivery of the Equipment. Where we install the Equipment at your Premises, this is considered as you taking delivery. Any such purchase is non-refundable. Ownership in the Equipment does not pass to you until it is fully paid.

10.4. Inspection and rejection: When you take delivery of any Equipment from us that you have arranged to purchase, you must promptly inspect the Equipment and notify us of any visible damage to the Equipment within seventy-two (72) hours of receipt (in this clause "notice period"). Provided the damage was not your responsibility, we will, as soon as practicable, either repair or replace the Equipment at our discretion. If you do not notify us within the notice period, we will not be liable to repair or replace the Equipment without cost and you will be charged the repair or replacement cost as applicable.

10.5. Equipment warranty: Where we have a product warranty specific to any Equipment, the terms of that product warranty will apply. We will pass on the full benefit of any manufacturer's warranty for Equipment purchased by you.

11. SIM CARDS, PHONE NUMBERS, ADDRESSES AND OTHER CODES

11.1. Allocation and ownership: We may allocate SIM cards, Phone Numbers, electronic addressees, and other codes to you. These are and will remain the property of Bluesky.

11.2. Publication of Phone Numbers: Your Phone Number may be displayed to emergency services. Also the number may be displayed on the mobile or telephone of the party called if that person uses caller ID.

12. CONFIDENTIALITY AND PUBLICITY

12.1. Subject to clauses 12.2 and 12.3, 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:

- (a) As required by law;
- (b) In good faith and in proper furtherance of the objects of this Agreement;
- (c) To its professional advisers.

12.2. You may not issue any press release or announcement concerning this Agreement or its subject matter without the prior written consent of Bluesky.

12.3. This clause does not apply to information already in the public domain other than as a result of a breach of this clause 12.

13. CUSTOMER PRIVACY

Subject to the following instances of disclosure, information we may have about you and your business, including call log, Data usage, SMS usage, is kept strictly confidential:

- (a) Disclosure under clause 8.2 for credit check and reporting purposes;
- (b) If required by law, e.g. to the Police or any regulatory authority.

14. INTELLECTUAL PROPERTY RIGHTS

14.1. Our intellectual property: You acknowledge that all rights to Intellectual Property contained in or relating to the Services and/or Equipment

(including any improvements or changes to any Service or to the Equipment) belong to us or to our licensors.

14.2. Licence: We license you to use Intellectual Property that we provide to you in connection with the provision of the Services on a non-exclusive and non-transferable basis for the term of the Service to which it relates; and in respect of any software that we provide to you in connection with the Services, any terms upon which the software is ordinarily licensed or which we notify to you.

14.3. Software: If we provide you with any software in connection with the provision of the Services, you must not copy, modify or reverse assemble the software.

14.4. Warranty as to third party infringement: Each party warrants to the other party that any materials proprietary to a party and provided to the other party for the purposes of the Agreement will not infringe the intellectual Property rights of any third party, provided that the other party:

- (a) Uses such materials in accordance with the terms of the Agreement and any terms notified in writing by the disclosing party; and
- (b) Does not in any way modify or alter the materials, other than as permitted under the Agreement.

14.5. The Customer shall indemnify Bluesky from and against any and all liability arising from a breach by the Customer of the Intellectual Property rights in the Services and/or Equipment belonging to any third party.

15. LIABILITY AND INDEMNITY

15.1. Exclusion of liability: Subject to clause 15.3, in no event will either party be liable under or in connection with the Agreement (whether in contract, tort (including negligence) or otherwise) for any loss of data; loss of profit, revenue, anticipated savings or goodwill; or indirect or consequential losses, regardless of whether such losses were contemplated.

15.2. Limitation on liability: Subject to clause 15.3, in no event will either party's liability under or in connection with the Agreement (whether in contract, tort (including negligence) or otherwise) exceed:

- (a) The total Charges paid by you in the twelve (12) calendar months immediately prior to the occurrence of the event(s) giving rise to the claim; or
- (b) If the Agreement has not been in effect for twelve (12) months prior to the occurrence of the event(s) giving rise to the claim, the average monthly Charges paid by you for the months from the date of the Agreement until the occurrence of the event(s) giving rise to the claim.

15.3. Exceptions: Nothing in this Agreement shall limit either party's liability (as applicable):

- (a) To pay the Charges or any Early Termination Charges which are payable in accordance with the Agreement;

- (b) For a breach of clause 12 (Confidentiality and Publicity);
- (c) For a breach of clause 14 (Warranty as to third party infringement);
- (d) For any loss or damage which is finally judicially determined to have resulted from that party's fraud; or
- (e) For death or personal injury which is finally judicially determined to have resulted from an act or omission of that party.

15.4. Network operators and other suppliers not liable: All liability of any kind (including but not limited to negligence) on the part of any third party network operator, its officers, employees, contractors and agents, however arising in the provision of services by such network operator to Bluesky is expressly excluded. This exclusion is included by Bluesky as the agent of such persons for their benefit and may be enforced by them as a complete defence to any claim.

16. FORCE MAJEURE

- 16.1. Liability:** Neither party will be liable to the other party for any failure to perform its obligations under the Agreement during the time and to the extent that such performance is prevented by reason of a Force Majeure Event.
- 16.2. Notice:** The party seeking to rely on this clause will notify the other party as soon as practicable after the Force Majeure Event occurs and use its best endeavours to provide the other party with information regarding the extent of the affected party's inability to perform and an estimate of the time likely to be required to overcome the Force Majeure Event.
- 16.3. Mitigation:** The affected party will use its best endeavours to remedy or mitigate the effect of the Force Majeure Event and to complete its obligations under the Agreement as far as reasonably practicable.
- 16.4. Charges:** You will not be required to pay any Charges for any Services to the extent that such Services are not provided by us due to a Force Majeure Event.
- 16.5. Termination:** Either party may terminate the Agreement by notice in writing to the other party, with immediate effect on the date specified in that notice, if a party has been unable to perform its obligations under the Agreement as a result of a Force Majeure Event for a continuous period of sixty (60) Business days.

17. SUSPENSION OF SERVICE

- 17.1. Suspension for breach:** If you fail to make payment to us for any Service by the Payment Date or we believe you are otherwise in breach of this Agreement, we may restrict or suspend the provision of Services to you without notice.
- 17.2. Disconnection and reconnection charges:** We may require you to pay a reconnection Charge as a condition of lifting any restriction or suspension imposed under clause 17.1.
- 17.3. Suspension of services to prevent damage or loss:** 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 (in this clause the "risks"), or if requested by any Cook Islands Government authority in the interests of national security.

18. TERMINATION

- 18.1. Licence suspension or termination:** If any of our licences or rights required to operate our Network or to provide the Services are terminated or suspended, or any agreement with any of our third party operators is suspended, expires or is terminated or there is a Regulatory Event and we cannot, as a result, continue to provide some or all of the Services or determine in our discretion that it would not be commercially viable or prudent for us to do so under the current terms of this Agreement, we may cease providing any Services or terminate our Agreement immediately. If this happens we will give you written notice.
- 18.2. Our termination notice:** If the Initial Term for any Services has expired, we may cease providing the Services by giving you twenty (20) Business days' notice.
- 18.3. Material breach:** If you are in material breach of this Agreement, we may give you written notice to remedy the breach. If the breach is incapable of remedy or is not remedied within twenty (20) Business days of the notice, then we may give you written notice immediately terminating the Agreement. A material breach of this Agreement includes non-payment of Charges when due.
- 18.4. Fraud:** We may terminate this Agreement immediately if we reasonably suspect fraud by you or on your behalf, including but not limited to SIMbox fraud.
- 18.5. Insolvency event:** If either party:
 - (a) (or any of its parent or holding companies) goes into liquidation, bankruptcy, administration or receivership or enters into a compromise with its creditors (or it appears that any of these events is likely to happen);
 - (b) Has a receiver or statutory manager appointed over any or all of its assets; or
 - (c) Is removed from the companies register (other than because of a solvent amalgamation), is dissolved or dies;

then the other party may give written notice immediately terminating the Agreement.

- 18.6. Terminate for Force Majeure:** See clause 16.
- 18.7. Consequences of termination:** Where this Agreement or any of the Services is terminated:
 - (a) You will be disconnected from our Network so that you are no longer able to receive the relevant Services;
 - (b) You will remain liable for any Charges incurred prior to the termination.

19. DISPUTES

If you have a dispute in connection with the Services, other than a disputed invoice which must be addressed under clause 7, please refer the dispute to Customer Services. Upon receipt

of the dispute, the Parties agree to negotiate a resolution of the dispute in good faith. In the event good faith negotiations fail, the Parties agree to refer the matter to mediation by a mediator mutually agreed between the Parties or in the case the parties cannot agree, then one appointed by the President of the Cook Islands Law Society. Neither you nor we will commence court proceedings (except where urgent interlocutory relief is required) while resolution of the dispute is being sought under this clause.

20. NOTICES

- 20.1. Disputes under clauses 7 (Disputed Invoices) must be notified to Customer Services. Any other notice you give to us under or about this Agreement must be delivered or emailed to:
- (a) Bluesky Main Office, Parekura, Rarotonga; or
 - (b) ck.bsolutions@blueskypacificgroup.com.
- 20.2. Any notice we give to you will be delivered, or emailed to the address provided in your Corporate Customer Agreement Form or updated by you by notice to us from time to time. We may also post notices on our website, Facebook page or in the local newspaper. For example, where the notice affects services for multiple customers.

21. ENTIRE AGREEMENT AND VARIATION

- 21.1. This Agreement contains all of the terms, representations and warranties made between the Parties and supersedes all prior discussions and agreements covering the subject matter of the Agreement, whether oral or written or partly oral and partly written. No variation or waiver of any provision of this Agreement will be recognised or binding on the Parties unless reduced into writing and acknowledged by both Parties.
- 21.2. Notwithstanding clause 21.1, Bluesky may accept Email Instructions. You will ensure that access to the authorised email address provided is strictly limited to yourself or your Authorised Contact Person. You will be bound by any changes to the Services authorised by Email Instruction.
- 21.3. You will promptly notify us of any change in your authorised email address for Email Instructions

or Authorised Contact Person named in your Corporate Customer Agreement Form.

22. GENERAL

- 22.1. **Exclusions:** You acknowledge that the Services and/or Equipment provided to you under this Agreement is not for personal consumption but is supplied in trade and therefore the *Consumer Guarantees Act 2008* does not apply to the supply.
- 22.2. **Assignment:** The Customer will not assign this Agreement or any right or obligation under it without the prior written consent of Bluesky (which will not be unreasonably withheld). A change of control, of the Customer, as defined below, will be deemed to be an assignment:
- (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.
- From time to time we may assign any of our rights and obligations under this Agreement without prior notice to you or your consent.
- 22.3. **Subcontracting:** We may subcontract any or all of our obligations under the Agreement without your consent, but we will remain ultimately responsible to you for carrying out those obligations.
- 22.4. **No contra preferentem:** The rule of construction known as the contra preferentem rule does not apply to the Agreement.
- 22.5. **No waiver:** 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.
- 22.6. **Severability:** If the Agreement or any provision of the Agreement is held to be illegal, invalid, unenforceable or of no effect, then, to the extent permitted by law, the provision or provisions giving rise to such illegality, invalidity, unenforceability or lack of effect will be severed from the Agreement and the remaining provisions of the Agreement will remain in full force and effect.
- 22.7. **Governing law:** The laws of the Cook Islands govern this Agreement. Each party irrevocably submits to the exclusive jurisdiction of the courts of the Cook Islands.

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