

# TERMS & CONDITIONS FOR SKY WITH VODAFONE

The following terms and conditions apply between you and Vodafone in relation to your subscription to SKY digital services offered to you by Vodafone for **customers prior to 1 April 2011**. By subscribing to any SKY digital services you agree to be bound by these terms and conditions in addition to Vodafone's fixed line and broadband terms and conditions for residential customers and any other terms and conditions presented during the purchasing process.

## 1. DEFINITIONS

In this contract:

- 1.1 we, us or our** means Vodafone New Zealand Limited and its successors and assigns and/or SKY Network Television Limited and its successors and assigns.
- 1.2 you or your** means the person who is the subscriber under this contract.
- 1.3 Antenna System** means all antennae, cabling and related electronic equipment, other than the Decoder and the Smart Card, needed to receive and distribute the Signal within the HOME but excluding any cabling within wall cavities.
- 1.4 Decoder** means the electronic device or devices authorised by us and associated leads and equipment in the HOME which unscrambles/decodes the Signal.
- 1.5 Eligible Subscriber** means any subscriber who resides in a domestic single unit private dwelling or abode in New Zealand and is a fixed line or broadband customer of Vodafone.
- 1.6 Equipment** means all and any equipment provided by us (whether directly or indirectly) and installed at the HOME including the Smart Card, the Decoder and the Antenna System.
- 1.7 HOME** means the domestic single unit dwelling where you reside or the place we have consented to the Equipment being relocated to under clause 9.1(a).
- 1.8 Selected Service** means the images on the television screen and the accompanying sound produced by receiving and unscrambling/decoding the Signal for the subscription television services chosen by you (as noted on the face of this contract or otherwise agreed with us from time to time) which is achieved by using the Equipment at the HOME in conjunction with a standard operational television set, but excluding any pay-per-view programming and any additional products and services as referred to in clause 5. If you are a Transferred Subscriber the Selected Service will include any services you have agreed to subscribe to as a minimum obligation with SKY or any other person other than Vodafone.
- 1.9 Signal** means the scrambled/encoded transmissions of television channels and programmes and other services we transmit by whatever means for presentation to people in New Zealand who use a Decoder, or any part of those transmissions.
- 1.10 SKY** means Sky Network Television Limited and its successors and assigns.
- 1.11 Smart Card** means the card or cards we issue you to unscramble/decode the Signal.
- 1.12 Transferred Subscriber** means a subscriber to any SKY digital services who, immediately prior to the commencement of this contract, subscribed to the SKY digital services directly from SKY, or any other person, other than through Vodafone.
- 1.13 Vodafone** means Vodafone New Zealand Limited and its successors and assigns.

## 2. INFORMATION

You authorise us to collect information about you and/or your household (including information about the products and services you and/or your household use) from time to time from you and from other sources and by other means. You authorise us to use and/or disclose to third parties such information for the purposes of communicating with you and your household in relation to this contract, marketing and promoting our and/or third party products and services to you and your household, market research, generating and providing statistical analysis and rating information, credit control and debt collection (which includes logging overdue debts and/or liquidated damages you owe us with credit reference agencies). You acknowledge and agree that such information may be held by us both before and after termination of this contract but only for so long as we are legally entitled to use the information for the above purposes.

## 3. INSTALLATION

- 3.1** SKY will, as soon as reasonably practicable, arrange for a SKY employee or contractor to supply, deliver and install the Equipment at the HOME. SKY are not obliged, during the installation of the Equipment, to run cabling within wall cavities. You will pay a joining/installation fee to Vodafone, as determined by Vodafone.
- 3.2** You will, at your own expense, secure and maintain all necessary approvals and consents (including any landlord, property owner or body corporate consents/approvals) for the installation of the Equipment at or in the HOME, for any alterations to the HOME needed to install such equipment and for our right of

access under clause 10.3. We will have no responsibility whatsoever in relation to any such approval or consent.

## 4. TERM

Subject to earlier termination under clause 13 or as permitted by any mandatory provision of law, this contract will continue until terminated by either party giving 30 days' notice to the other provided that any notice given by you will not take effect prior to the expiry of the minimum term that applies under this contract (as stated on the face of this contract or otherwise agreed with Vodafone). Such minimum term will run from the date that the Selected Service can first be received by you. For the avoidance of doubt, if you are a Transferred Subscriber, the minimum term may include any period during which the Selected Service was received by you directly from SKY or any other person, other than through Vodafone.

## 5. PAY-PER-VIEW AND ADDITIONAL PRODUCTS/SERVICES

We and/or third parties may from time to time offer to you, via the Equipment, pay-per-view programming or additional products or services which may incur additional fees charged by us or a third party. If you or any member of your household accepts any such offer, or the offer is accepted electronically via your Decoder, then you will: (a) abide by any additional terms that apply to; and (b) pay the additional fees to us or to the applicable third party for; the programming, products or services that have been accepted.

## 6. FEES AND CHARGES

You will pay Vodafone:

- (a) the joining/installation fees payable upon first installation of the Equipment at the HOME. Those fees are non-refundable;
- (b) monthly in advance, on or before the due date for payment set out in Vodafone's tax invoice, the monthly fees for the Selected Service and for the supply of SKYWATCH (if supplied), which fees may from time to time be varied by Vodafone in Vodafone's discretion on 30 days' written notice to you. If you are a new subscriber or a Transferred Subscriber, the fees for the Selected Service will be prorated from the date of the subscription until the bill cycle date and thereafter align with your Vodafone bill cycle;
- (c) on demand, GST on all payments under this contract;
- (d) on demand, a reconnection fee if the Equipment is relocated to an alternate HOME under clause 9.1(a) or if you ask Vodafone to reinstate any of our services after we have disabled the Decoder due to non-payment or late payment of any amounts that you owe Vodafone;
- (e) on demand, a fee for each dishonoured cheque and direct debit;
- (f) or the applicable third party, if you (or any person in your household) accepts any offer for any pay-per-view programming or other additional products or services as referred to in clause 5, or the third party's additional fees as and when notified to you from time to time;
- (g) and/or SKY on demand, any early termination charges or liquidated damages payable under clause 14 and a collection fee where SKY repossesses the Equipment under clause 14(b)(ii); and
- (h) and/or SKY on demand, interest at 15% per annum on any amount due to Vodafone or SKY (as applicable) and unpaid by you on the due date until you pay us together with any costs incurred for the collection of any overdue debts.

## 7. AVAILABILITY AND FAILURE TO TRANSMIT

**7.1** We aim to provide high quality services which are available at all times. However, because SKY rely on satellite services and other networks and equipment that SKY does not own or control, we cannot promise that our services will always be available or fault free.

**7.2** If for any reason the Signal of the Selected Service or any channel within it is not transmitted to you for a continuous period greater than 24 hours Vodafone will, if you request, credit you with that portion of either the monthly Selected Service fee (where the entire Selected Service is affected) or a part of that fee determined by Vodafone (where the entire Selected Services is not affected) covering the period when the Signal of the Selected Service or any channel within it was not transmitted. The placement of individual screen messages does not amount to a failure to transmit and you will remain liable to pay the fee for the Selected Service during the period of any screen messaging.

## 8. RIGHT TO SUSPEND, CANCEL OR ALTER SERVICE

We are entitled, at any time without prior notice or any liability to you, to:

- (a) cancel or suspend the whole or any part of the Selected Service and/or substitute in place of the Selected Service or any part of it alternative programming, products or services;
- (b) alter the packages of subscription television services offered by us (in which case you must select one of the new packages);
- (c) alter the mechanism by which we transmit the Signal and/or the format of that signal; and/or

(d) change, add and remove features and functionality of the Decoder or any products or services provided to you.

## 9. CARE OF EQUIPMENT

**9.1** SKY own the Equipment at all times and you must not:

- (a) remove the Equipment from the HOME without SKY's prior written consent;
- (b) sell, lease, dispose of, lend or otherwise part with possession of, or modify in any way, the Equipment;
- (c) use the Equipment for any purpose other than viewing the Selected Service, or using any other programming, products or services selected in accordance with clause 5, inside the HOME in accordance with this contract;
- (d) deface, obliterate or remove any label or mark which identifies SKY's ownership of the Equipment; or
- (e) do any other act which may adversely affect or prejudice SKY's ownership of the Equipment.

**9.2** You: (a) must use the Equipment in accordance with SKY's instructions (which SKY may alter from time to time by notice to you); and (b) are responsible for maintaining the HOME (including the places where the Antenna System is attached to, enters and passes through, the HOME).

**9.3** You must immediately return the Equipment to SKY or one of SKY's authorised agents on termination of this contract.

**9.4** You will be liable to SKY for any loss (including by fire) or theft of, or damage however caused to, the Equipment during the term of this contract and while it remains in your possession (if longer). It is your responsibility to have insurance cover, if you elect to do so, against potential liability under this clause.

**9.5** This contract applies to any additional Smart Cards, Decoders or other Equipment that SKY provides to you to enable the Selected Service, or any of other SKY supplied services, to be viewed on more than one television set within the HOME.

## 10. EQUIPMENT/YOUR RESPONSIBILITIES

**10.1** The Decoder includes software that is owned by third parties. You have a limited licence to use a copy of that software only within the Decoder and only for the term, and for the purpose of, this contract. You must not copy, reproduce, decompile, create derivative works of, reverse engineer, modify, sublicense, distribute or use for any other purpose either the Decoder or the software in the Decoder or attempt, or authorise or permit any other person, to do so.

**10.2** You must not record, copy, play, publish, sell, distribute or otherwise use or retransmit the whole or any part of the Selected Service, any other programming, products or services referred to in clause 5, or the Signal under any circumstances for any purpose whatsoever other than for your personal, non-commercial use within the HOME as permitted by the Copyright Act 1994. You shall: (a) access and use the Selected Service in accordance with this contract, any additional agreed terms that may apply, and SKY's instructions (which SKY may alter from time to time); (b) not reverse engineer, break, decode or otherwise interfere with any encryption, security, copy protection or other mechanisms used by SKY in relation to the Decoder, the Signal or other SKY supplied products or services; (c) not make any attempt to receive or access without payment or our permission, any of SKY's products and services which are provided on a subscription basis; and (d) not attempt, or authorise or permit any other person, to do so.

**10.3** SKY has an irrevocable right at any time during the term of this contract whenever you or other occupants are at the HOME, to enter the HOME, or any other location that you own or lease, in order to maintain, replace or repossess the Equipment or where SKY has reasonable grounds to believe that you are not complying with your obligations under this contract.

**10.4** SKY may at any time in SKY's absolute discretion require that you exchange any Equipment (including any Smart Card) for any new equipment (including a new Smart Card) that SKY provides or specifies. SKY may also download new software to, and retrieve information from, the Decoder at any time without notice to you.

**10.5** You will ensure that any PIN numbers we allocate you are kept secret and are only disclosed to authorised members of your household. You are responsible for any charges incurred using the Equipment and/or your PIN. If you or any person in your household uses your PIN to access or unblock any restricted service then you are fully responsible for who views that service.

## 11. DEFECTIVE DECODER

Subject to clause 9.4, where SKY provide the Decoder to you, SKY will be responsible for maintaining the Decoder in good working order and condition. You must advise us as soon as the Decoder is damaged or is not in full working order. We will respond to you as soon as reasonably practicable.

## 12. LIABILITY

**12.1** You agree, to the maximum extent permitted by law: (a) not to bring any claim (including a claim in negligence) whatsoever against any third party service or infrastructure provider used by us in providing products and services to you under this contract (including any satellite or telecommunications provider that we use, their related companies and the personnel and officers of such providers and their

related companies) ("Service Providers") for any loss or damage suffered by you or persons in your household in connection with, or related to, this contract; (b) that all liability (including liability in negligence) of Service Providers is excluded; and (c) that this clause 12.1 confers a benefit on Service Providers which may be relied on and enforced by them under the Contracts (Privity) Act 1982.

**12.2** Except as set out in clause 7.2, our liability (whether in contract, tort including negligence or otherwise) to you and persons in your household in connection with or arising from: (a) the supply and/or installation of the Equipment; or (b) the supply of the Selected Service or any other programming, product or service; or (c) any damage (including property damage) or loss caused by our statements, acts or omissions, or those of our agents or contractors (including negligent acts and omissions), whether under this contract or otherwise, is excluded to the maximum extent permitted by law.

**12.3** Nothing in this contract limits our liability under the mandatory provisions of the Consumer Guarantees Act 1993.

## 13. TERMINATION AND SUSPENSION

We may terminate, or temporarily suspend this contract (by disabling the Decoder from unscrambling/decoding the Signal), without written notice to you if you:

- (a) fail to pay any amount you owe Vodafone under this contract on the due date;
- (b) are no longer an Eligible Subscriber; or
- (c) breach any other clause of this contract.

Any such termination or suspension will be without prejudice to our other rights and remedies.

## 14. EVENTS AFTER TERMINATION

On termination of this contract:

- (a) SKY are entitled to immediately disable the Decoder from unscrambling/decoding the Signal;
- (b) where you fail to return the Equipment in accordance with clause 9.3 SKY may, at SKY's option: (i) require you to pay to SKY on demand, as liquidated damages for the breach of clause 9.3, an amount equal to the cost of replacing the Decoder, as determined by SKY; and/or (ii) at any time when you or other occupants are at the HOME, enter the HOME and repossess the Equipment;
- (c) if that termination is before the expiration of the minimum term referred to in clause 4, then you must pay Vodafone on demand, early termination charges determined by calculating the difference between Vodafone's standard joining/installation fees (excluding any promotional or other discounts) and the amount of the joining/installation fees actually paid by you;
- (d) you must immediately pay us all amounts you owe us including any early termination charges and liquidated damages payable under this clause 14; and
- (e) clauses 2, 6, 9, 10, 12 and 14 of this contract will survive for our benefit.

If you terminate a service part way through a month, you are still required to pay the monthly fee that you have been billed for. If you have a credit balance in your account we will refund that balance to you on request, except that no refund is payable of balances relating to monthly fees paid in advance, where you terminate a service part way through the period for which you have paid.

## 15. FORCE MAJEURE

If we are prevented from carrying out any of our obligations under this contract by reason of any act of God, inclement weather, floods, earthquakes, fires, volcanic eruptions, acts of government, civil unrest, strike, sanctions, failure or interruption of satellite services, equipment, systems or facilities, or any other circumstance beyond our reasonable control, we will try to advise you of the existence of the circumstances and their expected duration. The performance of this contract will, to the extent that it is made impossible or impractical by such circumstances, be suspended until such circumstances cease to prevail.

## 16. GENERAL

**16.1** You warrant that you are aged 18 years or older.

**16.2** Any notice required to be given under this contract must be in writing and is deemed to be properly given if left at, sent by prepaid letter, email or facsimile to the last known address of the recipient.

**16.3** We may, at any time, assign any or all obligations or rights that we have under this contract to any person, company or business entity. You may not assign or otherwise transfer your rights under this contract.

**16.4** If any term of this contract is held to be invalid, unenforceable or illegal, then the remaining terms will continue in full force and effect.

**16.5** We will have the right to alter this contract at any time by notice to you or by putting a notice in major daily newspapers and/or on our website.

**16.6** These terms record a contract between you and Vodafone and are not binding on SKY. However, it is acknowledged by you and Vodafone that for the purposes of the Contracts (Privity) Act 1982, this contract contains provisions which confer a benefit on, and are intended to be enforceable by, SKY. enforceable by, SKY.