

## Airtel-Vodafone - Pay-As-You-Go Services

### Terms and conditions applying to Agreements between Jersey Airtel Limited and Guernsey Airtel Limited and their Pay-As-You-Go customers

#### 1. Definitions and Interpretation

For the purposes of the Agreement, the defined terms set forth below have the designated meanings:

- 1.1. **“Acceptable Use Policy”** means any acceptable use policy from time to time published by the Service Provider and relating to its Customers’ use of the Service Provider’s Service as referred to at clauses 9 and 10 below.
- 1.2. **“Account”** means the Customer’s account against which the Service Provider records Credits and Charges using a SIM Card.
- 1.3. **“Account Top-Up”** means any action undertaken to purchase Credit for an Account, including the use of store credit transfers, Top-Up Cards, use of the On-Line Top-Up Service or use of any other top-up service provided by the Service Provider or an authorised third-party.
- 1.4. **“Age Restricted Service”** means any Service which is specified either by the Service Provider or under any applicable law for use only by Customers over a certain age.
- 1.5. **“Agreement”** means the agreement entered into between the Customer and the Service Provider governed by these and any other applicable terms and conditions, as amended from time to time.
- 1.6. **“Call”** means the sending and/or receiving of a signal and includes all types of data transmission using a Device.
- 1.7. **“Charges”** means the fees and charges set out at clause 8 hereof.
- 1.8. **“Credit”** means any amount credited to an Account to enable use of the Service.
- 1.9. **“Customer”** means the person or persons who agree with the Service Provider to receive the Service and who therefore receives a SIM Card.
- 1.10. **“Content”** means information, communications, images and sounds, software or other material contained on or available through the Service.
- 1.11. **“Device”** means a, SIM Card or data card or other item or thing, whether or not approved by the Service Provider, by which the Customer can have access to the Network.
- 1.12. **“Distance Contract”** means a distance contract as that term is defined in the Distance Selling (Jersey) Law 2007 or equivalent legislation in any applicable jurisdiction.
- 1.13. **“Equipment”** means any apparatus used by the Customer enabling use of a Device and any other physical goods we supply in connection with the Service
- 1.14. **“GSM”** means the standard known as the Global System for Mobility used in portable telephony.
- 1.15. **“GAL”** means Guernsey Airtel Limited having its registered office at 45 High Street, St Peter Port, Guernsey, GY1 2JT.
- 1.16. **“GST”** means any goods and services tax chargeable by the Service Provider to the Customer in addition to the cost of the Service and any similar tax where applicable, including, for example, the Goods and Services Tax charged in the Bailiwick of Jersey pursuant to the Goods and Services Tax (Jersey) Law 2007 and/or the Goods and Services Tax (Jersey) Regulations 2007 and any similar tax as may be introduced in any part of the Bailiwick of Guernsey
- 1.17. **“JAL”** means Jersey Airtel Limited having its registered office at 1<sup>st</sup> Floor, Le Masurier House, La Rue Le Masurier, St. Helier, Jersey JE2 4YE.
- 1.18. **“Licence”** means the licence held by the Service Provider and granted by the Channel Islands Competition and Regulatory Authorities to provide telecommunications services.

- 1.19. **“Network”** means the GSM telecommunications system by which the Service Provider makes the Service available.
- 1.20. **“On-line Top-up Service”** means any internet based debit card and/or credit card top-up service provided by the Service Provider to enable the Customer to purchase and add Credit to the Account.
- 1.21. **“Personal Data”** means data that relates to a Customer from which such Customer may be identified.
- 1.22. **“Roaming”** means use of a Device whilst connected to a GSM system other than the Network.
- 1.23. **“Service”** means the telecommunications service (including voice and data services) or other service offered by the Service Provider from time to time and the provision of access by the Customer to the Network and to the GSM mobile telecommunication networks of other service providers with whom the Service Provider has roaming agreements, in any case on a pre-paid basis.
- 1.24. **“Service Provider”** means JAL or GAL as applicable and their successors or assigns.
- 1.25. **“SIM Card”** means ‘Subscriber Identity Modules’ card as supplied by the Service Provider to the Customer to enable access to the Service.
- 1.26. **“Top-up Card”** means a top-up card which the Customer can purchase and use to add Credit to the Account at the face value of such card.
- 1.27. The singular shall include the plural and vice versa.
- 1.28. The masculine shall include the neuter and the feminine and vice versa.
- 1.29. The headings and titles herein are purely for convenience only and shall not affect the interpretation of the Agreement.
- 1.30. Any reference in this Agreement to any clause or condition shall be construed as a reference to a clause or condition of this Agreement unless otherwise expressly stated.

## 2. Term of the Agreement

Subject to any applicable law, the Agreement shall be effective from the time when the Customer first uses the Device to gain access to the Network and shall remain in force (as varied by the Service Provider from time to time as allowed by clause 21) for so long as the Customer utilises the Service.

## 3. Services

- 3.1. The Service is provided in accordance with the terms of this Agreement and also in accordance with the terms of the Licence. Should any provision of this Agreement conflict with any provision of the Licence, the provision of the Licence shall prevail.
- 3.2. The Service Provider described shall open the Account and the Customer will be able to add Credit to the Account in the manner prescribed in clause 4 and 5 and Charges will be made against such Credit as the Customer uses the Service.
- 3.3. The Service does not necessarily include the provision of any Equipment. It is open to the Customer and the Service Provider also to agree to the provision by the Service Provider to the Customer as part of the Service of Equipment to be used in conjunction with a Device such as a SIM Card. If Equipment is provided, then the Customer acknowledges that additional terms and conditions, including additional charges and payment terms, as notified by the Service Provider to the Customer may apply and the Customer agrees to be bound by such additional terms and conditions.
- 3.4. The Service is made available subject to the Customer complying with the obligations as set out in the Agreement and may be suspended in accordance with clause 10 if the Customer fails to comply with those obligations.
- 3.5. If any part of the Service is provided or supported by a provider other than the Service Provider, the Service Provider will not in any manner be responsible or liable for such part or parts. In no event will the Service Provider be responsible for any spam text messages, or any other such message or data,

that is received by the Customer. In particular the Customer acknowledges and agrees that the Service Provider shall not in any manner be liable or responsible for the quality of services provided to or experienced by the Customer while the Customer is in another territory or jurisdiction and/or is Roaming.

- 3.6. The Service Provider has the right, at its sole discretion, to deliver the Service using the most appropriate method or technologies and reserves the right to vary the technical specification of the Service at any time.
- 3.7. The Customer acknowledges that the Service Provider does not guarantee that the Service will enable the Customer to make calls and send messages to all destinations.
- 3.8. The Customer acknowledges and agrees that the Service Provider shall not be liable if the number and/or identity of the Customer is released or made known to any person to whom the Customer makes a Call.

#### **4. Account Top-up**

- 4.1. In order to use the Service the Customer acknowledges that they must have sufficient Credit on the Account and that they must thereafter consume their Credit by accessing the Network and then add Credit to their Account in accordance with the time periods and Account use requirements of the particular product that they have selected
- 4.2. Credit is added to the Account by performing an Account Top-Up.

#### **5. On-Line Top-up Service**

- 5.1. The Customer may pay for Credit with a valid debit or credit card. It is not a requirement that Customers should have reached the age of majority but all Customers old enough to hold a debit or credit card should use their own card to pay for Credit. Customers not old enough to hold a debit or credit card must obtain the card holder's permission before using it to pay for Credit. The Customer acknowledges that the Service Provider may impose a maximum total amount of Credit.
- 5.2. The Customer agrees that the Service Provider shall be able to accept Credit purchases using the On-Line Top-Up Service where a correct username and password has been entered and valid debit or credit card details have been provided without any further enquiry by the Service Provider.
- 5.3. Once the Customer's purchase of Credit is complete, the Customer will receive a text message confirming the amount of Credit purchased and applied to the Account.
- 5.4. The Service Provider may refuse to accept an instruction to buy Credit using the On-Line Top-up Service in the event that it cannot verify the Customer or the debit/credit card details entered.
- 5.5. The On-Line Top-up Service may be suspended by the Service Provider at any time in accordance with the provisions of clause 10.5.

#### **6. Warranties**

The Customer acknowledges that the warranties provided for in the Agreement constitute the only warranties made by the Service Provider with respect to the Service or any part thereof and are in lieu of all other warranties, express or implied, including but not limited to, implied warranties of merchantability and fitness for a particular purpose.

#### **7. Devices**

The Customer acknowledges that the Device becomes the property of the Customer. The Customer agrees to inform the Service Provider immediately in the event that any Device is stolen or lost and the Service Provider shall at the Customer's request suspend the relevant Account as soon as practicable for a maximum period of thirty (30) days. The Customer acknowledges that the Service Provider will charge for the replacement of any Device.

#### **8. Charges**

- 8.1. The Customer shall only be charged in respect of the Service that has been applied or subscribed for or that has been utilised in relation to the Account.
- 8.2. As Charges are incurred by the Customer, they shall be deducted from the Credit available on the Account. Charges are normally deducted at the time when a Call is made and the Service is used. In some circumstances, Charges may be deducted at a later date. The Customer acknowledges that they themselves shall be responsible for all Charges.
- 8.3. When all Credit on the Account has been used the Customer will not be able to make or continue chargeable Calls or use the Service until an Account Top-Up has been undertaken and sufficient Credit is added to the Account. The Customer will still be able to make Calls to the emergency services and receive Calls which are not chargeable.
- 8.4. Charges for Calls made or other services accessed using the Customer's Device or Equipment are incurred whether on the Network or whilst Roaming.
- 8.5. Details of the Charges can be found on the Service Provider's website [www.airtel-vodafone.com](http://www.airtel-vodafone.com) and include:
  - 8.5.1. charges for Calls made from the Customer's Device or Equipment;
  - 8.5.2. charges for Calls made to the Customer's Device or Equipment whilst Roaming; and
  - 8.5.3. GST, where applicable.
- 8.6. The Customer acknowledges that there may be additional Charges in respect of downloading of certain data and/or content for example ring tones, wall papers, applications and similar data.
- 8.7. The Service Provider shall have the right to charge extra amount(s) for the provision of any additional service such as technical call outs, SIM card swaps/duplicate SIMs, handset repairs, fixed wireless/mobile telephone number swaps and statements of the Account. These Charges are subject to change at the discretion of the Service Provider and further details can be found on the Service Provider's website [www.airtel-vodafone.com](http://www.airtel-vodafone.com).
- 8.8. The Charges are subject to change at the discretion of the Service Provider and further details can be found on the Service Provider's website [www.airtel-vodafone.com](http://www.airtel-vodafone.com).

## **9. Obligations of Customer**

- 9.1. The Customer undertakes to comply with all applicable laws and regulations whilst using the Service and to use the Service only for lawful purposes. Furthermore, the Customer acknowledges that if the Service is used from a country or any jurisdiction outside Jersey or Guernsey, the use of the Service may be subject to different laws and regulations that apply in that country.
- 9.2. The Customer shall:
  - 9.2.1. not use, make use of, cause, allow or permit to be used the Service for any improper, fraudulent or unlawful purposes or for the sending of any communication or storing of any information which is of an offensive, abusive, indecent, obscene or menacing nature, or which is pornographic, or contains threats of any kind, is defamatory in any way or breaches confidence or which incites hate;
  - 9.2.2. not cause, nor knowingly allow others to cause, any nuisance, annoyance or inconvenience whether to the Service Provider or any of the Service Provider's customers which shall include the use of the Network for the persistent sending of unsolicited communications without reasonable cause;
  - 9.2.3. not use, make use of, cause, allow or permit to be used the Service in any way, whether knowingly or otherwise, such that the operation of the Network or any part of the Network will be jeopardised or impaired;
  - 9.2.4. keep recorded any login code, pin number or security details specific to the Service, Device or Equipment secure and not disclose such security details to any third party;

- 9.2.5. comply with any reasonable instructions issued by the Service Provider in respect of the use of the Service, comply with the Service Provider's reasonable requests for assistance in order to diagnose existing or potential faults and co-operate with the Service Provider in its reasonable security and other checks (which may include making Calls);
  - 9.2.6. not use, make use of, cause, allow or permit to be used the Service to access, transmit, publish, display, advertise, send or upload anything that is copyright protected (unless the Customer has permission) or which in any way breaches the intellectual property rights of any third party;
  - 9.2.7. not use, make use of, cause, allow or permit to be used, copy, modify, store, forward, publish or distribute the Content without the Service Provider's express permission;
  - 9.2.8. only use, make use of, cause, allow or permit to be used Content for personal use and not for any commercial purposes or distribute it commercially;
  - 9.2.9. not use, make use of, cause, allow or permit to be used the Service to re-sell, re-supply or otherwise distribute the Service and/or Devices, if applicable, without the prior written agreement of the Service Provider;
  - 9.2.10. not use, make use of, cause, allow or permit to be used the Service to circumvent the Age Restricted Service mechanisms;
  - 9.2.11. not use, make use of, cause, allow or permit to be used the Service in any manner which might result in unauthorised persons accessing any Age Restricted Service and/ or Content which is unsuitable for such persons;
  - 9.2.12. not sell, transfer or assign any telephone numbers associated with the Service without the express written consent of the Service Provider;
  - 9.2.13. not use, make use of, cause, allow or permit to be used the Service fraudulently or in connection with a criminal offence;
  - 9.2.14. only use, make use of, cause, allow or permit to be used the Service in accordance with the terms and conditions of the Agreement, the Acceptable Use Policy, any applicable law or regulation, or any instructions provided by the Service Provider in respect of the Service;
  - 9.2.15. not use, make use of, cause, allow or permit to be used the Service in any manner or for any purposes which may result in hacking, spamming, illegal access to computers or networks and the like;
  - 9.2.16. be responsible for all damage or loss caused to the Service Provider or third parties due to misuse of the Service other than any acts or omissions caused by the Service Provider;
  - 9.2.17. not use any Equipment that is not approved for connection to the Network;
  - 9.2.18. be responsible for ensuring that no unauthorised access to the Service is obtained using the Account;
  - 9.2.19. be responsible for safeguarding the security of and protecting Equipment and data against any actions that the Customer has not authorised and, in particular, programs which mainly come in the form of viruses, Trojans, worms and spy-wear; and
  - 9.2.20. not breach the Acceptable Use Policy.
- 9.3. The Acceptable Use Policy may be provided in separate documents (including marketing material and documents published on the website [www.airtel-vodafone.com](http://www.airtel-vodafone.com)) made available to the Customer by the Service Provider, showing and describing the rules and etiquette governing the Customer's usage of the Service including the use of all data downloaded and/or generated by the Customer and any User (during usage of Device and/or the Service) including internet data, call minutes and text messages.
- 9.4. Where the Customer is more than one person, the Customer's liability under the Agreement shall be joint and several.

## 10. Suspension of Services

- 10.1. The Service Provider may, without any liability of any kind, suspend (indefinitely or for such period as the Service Provider may consider appropriate) the Service at any time with immediate effect or whenever practicable for the following reasons:
  - 10.1.1. any failure, interruption, disruption or congestion of or in any telecommunications network, system or service (whether of or caused by the Service Provider or any other person);
  - 10.1.2. where the Service Provider is unable to provide the Service for reasons beyond its control (including the Network breaking down or requiring maintenance);
  - 10.1.3. where the Customer has been in violation of applicable law or regulation and/or the terms and conditions of the Agreement, and/or the terms and conditions in the Acceptable Use Policy, if any;
  - 10.1.4. where the Service Provider knows or suspects a Device is or may be being used illegally or fraudulently;
  - 10.1.5. the Customer causes or is likely to cause any failure, interruption, disruption or congestion of any telecommunications network, system or service (whether of the Service Provider or any other person);
  - 10.1.6. if it is directed to do so by any regulatory authority and/or governmental authority and/or under any applicable law; or
  - 10.1.7. failure of the Customer to make any payment for Charges within the stipulated time, or failure to comply with these terms and conditions.
- 10.2. Where any part of the Service has been suspended (whether or not at the Customer's request), the Customer shall pay all reconnection or re-instatement charges raised by the Service Provider.
- 10.3. The Customer is responsible for ensuring that their Account has Credit and that they consume their Credit and add Credit to their Account in accordance with the time periods and Account use requirements of the particular product that they have selected.
- 10.4. The Service Provider reserves the right to defer performance of any of its obligations under the Agreement, if it is prevented from, or delayed in, carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including strikes, lockouts or other industrial disputes (whether involving the workforce of the Service Provider or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.
- 10.5. The Service Provider may suspend or end (as it see fit) the On-line Top-up Service without warning if it considers that:
  - 10.5.1. it is being fraudulently used, misused or abused in any way (whether by you or any other person) in any jurisdiction;
  - 10.5.2. any debit/credit card used to purchase Credit is being fraudulently used, misused or abused in any way in any jurisdiction;
  - 10.5.3. it is necessary for any security reasons; and/or
  - 10.5.4. the Service Provider has reasonable grounds to believe that the Customer has provided false, incomplete or misleading details (including, but not limited to, the Customer's name, current and/or previous address(es), date of birth, telephone numbers, employment information, and bank and debit/credit card information) when the Customer applied to use the On-line Top-up Service or if the Customer has failed to tell the Service Provider if any of these details have changed since applying to use the On-line Top-up Service.

## 11. Termination of Service

- 11.1. The Service may be terminated immediately by the Service Provider in the event that:
  - 11.1.1. the Customer has been in violation of any applicable law or regulation (including but not limited to the Telecommunications (Jersey) Law, 2002 or the Telecommunications (Guernsey) Law, 2001 as applicable) and/or the terms and conditions of the Agreement;
  - 11.1.2. the Customer causes or is likely to cause any failure, interruption, disruption or congestion of or in the Network or any telecommunications network, system or service (whether of or provided by the Service Provider or any other person) or misuses the Service generally; or
  - 11.1.3. if it is directed to do so by any regulatory authority, and/or governmental authority and/or under any applicable law.
- 11.2. The Customer may terminate this Agreement at any time by ceasing to purchase and apply Credit and allowing the Account to go into a suspended state as detailed in clause 10.3.
- 11.3. Termination or expiry of the Agreement for any reason is without prejudice to any rights or remedies available to or any obligations or liabilities accrued to the parties as at the date of termination and expiry.

## **12. Provisions applicable to Customers buying the Service by Distance Contract.**

- 12.1. If the Customer enters into a Distance Contract with the Service Provider he may have a legal right to cancel such contract under Distance Selling law or regulations. This means that during any prescribed period if the Customer changes his mind or for any other reason decides he does not want to keep any Device or Equipment or to continue a service purchased under a Distance Contract, he can notify the Service Provider of his decision to cancel the contract and receive a refund. Advice about such rights is generally available from Citizens' Advice Bureaux or Trading Standards offices.
- 12.2. The Service Provider's returns policy in respect of Distance Contracts is as follows, subject to any applicable laws or regulations which shall apply:
  - 12.2.1. within 7 working days beginning with the day after the day of delivery of any Device or Equipment, or the day of first using any Credit purchased under a Distance Contract, the Customer may exercise his right of cancellation in respect of such Device Equipment, or Credit by giving written notice of cancellation to the Service Provider by post or e-mail or by contacting the Service Provider by telephone. The Customer may wish to keep a copy of A written notice of cancellation for his own records. If the Customer sends the notice of cancellation by e-mail or by post, then the cancellation is effective from the date the e-mail was sent or the letter was posted. If the Customer telephones the Service Provider to give notice of the cancellation, then the cancellation is effective from the date of the telephone call. The contact details of the Service Provider's customer services division can be found on the Service Provider's website [www.airtel-vodafone.com](http://www.airtel-vodafone.com);
  - 12.2.2. in the case of a valid cancellation the Service Provider shall refund the Customer's payment for the relevant Device or Equipment or Credit including any delivery cost;
  - 12.2.3. where the payment refunded was for Credit, the Credit purchased shall be deducted from the Customer's Account; and
  - 12.2.4. the Customer shall not have the right of cancellation or refund in respect of any Credit used by the Customer or on the Customer's Account.
- 12.3. Where the Customer seeks to exercise his/her right of cancellation in respect of any Device or Equipment purchased under a Distance Contract the Customer shall return such Device or Equipment in unmarked condition accompanied by any accessories and all original packaging to the Service Provider within 21 working days of the notice of cancellation referred to in clause 12.2.1 .
- 12.4. Upon receipt of the Customer's notice of cancellation, by whichever means, the Customer agrees that the Service Provider shall be deemed to have made an immediate request for the return within 21 days of any Device or Equipment purchased under a Distance Contract.

## **13. General Returns & Refund Policy**

Any Device or Equipment supplied by the Service Provider will be guaranteed for up to 1 year by its manufacturer

and comply with applicable health and safety standards. In Europe compliance is shown by the presence of a CE mark. To give the Customer extra peace of mind the Service Provider, upon the Customer's request, offers an exchange or refund provided that the Device or Equipment is returned within 14 days of the date of purchase;

undamaged (unless faulty)  
with all the accompanying accessories  
with all original packaging  
with, in the case of Equipment, a copy of the Customer's identification document ( eg passport or driving licence )  
with a signed copy of the Service Provider's Returns Form ( available at your local Airtel-Vodafone retail outlet)

and in the event that the Service Provider authorised service centre confirms that Equipment has been damaged or harmed by liquid ingress, physical damage or software tampering then the Customer will not receive a refund but be liable for the cost or repair or the purchase of a new handset.

#### **14. Directory and Data Protection**

- 14.1. The Service Provider may send Personal Data supplied by the Customer to IBM India who is the Service Provider's technology partner. IBM, who provides the Service Provider's customer relationship management systems, will store this information securely on systems based in India on behalf of the Service Provider. The Service Provider may use the Personal Data from time to time in compliance with the Data Protection (Jersey) Law, 2005 and the Data Protection (Guernsey) Law, 2001 as applicable for marketing, billing, invoicing, insertion in an electronic directory, credit scoring, customer services, tracking web preference usage and the like. The Customer agrees that the Service Provider may share such Personal Data and other information with its group companies and selected business partners who shall assist the Service Provider with such services.
- 14.2. The Service Provider reserves the right to disclose the name, telephone number and/ or email address of the Customer to an authorised agent of any of the emergency services in the event of an emergency and otherwise when required to do so by law.
- 14.3. The Service Provider shall have the right to do or carry out any of the following at any time during the term of the Agreement:
  - 14.3.1. use, share and/or provide the Customer's details (and any other information pertaining to the Customer) with debt collection agencies and appropriate authorities for the purposes of collecting debts, preventing and detecting fraud and for recovering/for seeking to recover damages and costs arising from fraud or any other unlawful activity on the part of the Customer;
  - 14.3.2. record and pass to the appropriate authorities details of any information or data pertaining to the Customer (or any inaccurate information provided by the Customer) if the Service Provider is required to do so under any applicable legal or regulatory requirement or is required to do so by any court or arbitral tribunal, or where the Service Provider suspects fraud or any other unlawful or improper activity on the part of the Customer; and
  - 14.3.3. pass on to and share information with other local/international communications service providers and network operators for the purposes of detection and prevention of theft and fraud or any other criminal or unlawful activity.
- 14.4. The Customer may, by notifying the Service Provider request the Service Provider not to use the Customer's Personal Data (including but not limited to their telephone number) for any marketing purposes – this includes sending or updating the Customer on new product and services information. Failing such notification by the Customer, Personal Data may be made available to be used for such purposes and the Customer agrees to receive such information. Full details of the use of such Personal Data as set out in the Service Provider's legal notice available on the Service Provider's website from time to time shall be deemed to be included and form part of the Agreement.
- 14.5. Subject to clause 14.4 above the Customer agrees to allow the Service Provider and/or its business partners to arrange for and/or to send to the Customer advertising and promotional material relating to other services/products and the like.
- 14.6. The Customer can opt out of any mailing list by writing to the Service Provider at the following address:



Jersey Airtel Limited, Customer Services Department, 1<sup>st</sup> Floor, Le Masurier House, La Rue Le Masurier, St. Helier, Jersey JE2 4YE, unless the Service Provider specifies to the Customer otherwise.

- 14.7. If Customer supplies the Service Provider with Personal Data, the Customer shall ensure that it is accurate and up to date when disclosed. The Customer shall also ensure that the Customer has obtained from the individuals concerned all necessary consents under the applicable law to both the supply of the data to the Service Provider, and the processing of it by the Service Provider, for the purposes of performance of the Agreement, supply of the Equipment and Service and for direct marketing about the Service Provider's similar products and services.

## **15. Personal Data**

Notwithstanding the above, the Service Provider will source, hold and use the Personal Data in the ways highlighted in the Service Provider's legal notice published on [www.airtel-vodafone.com](http://www.airtel-vodafone.com) and amended from time to time.

## **16. Limitation of Liability**

### **THE CUSTOMER'S ATTENTION IS DRAWN TO THESE PROVISIONS IN PARTICULAR**

- 16.1. Notwithstanding anything to the contrary in the Agreement and only to the full extent permitted by any applicable law or regulations:
- 16.1.1. the Service Provider shall not be liable in any way to the Customer whether in contract, tort (including negligence or breach of statutory duty) or otherwise for any losses, claims, damages, liabilities and the like howsoever caused or arising from any failure by the Service Provider to perform any of the terms and conditions under the Agreement;
  - 16.1.2. notwithstanding the generality of the aforesaid, the Service Provider shall not be liable for consequential, special or indirect losses or damages sustained by them on account of any loss of profits, loss of customers or damage to reputation or goodwill;
  - 16.1.3. notwithstanding the generality of the aforesaid, the Service Provider shall not be liable in any way to the Customer whether in contract, tort (including negligence or breach of statutory duty) or otherwise for any losses, claims, damages, expenses, liabilities and the like incurred or sustained by the Customer caused or as a result of:
    - 16.1.3.1. any failure, delay, interruption to or disruption of any Service in the transmission or reception of any data through any Service, howsoever caused or arising;
    - 16.1.3.2. any non-delivery of or non-receipt of an email or other message;
    - 16.1.3.3. any defect or deficiency in or the breakdown or failure of any Device or Equipment or other product or system (whether or not maintained by the Service Provider or any other person) howsoever arising;
    - 16.1.3.4. any defect, deficiency or deterioration in the quality of any signal or data transmitted as part of any Service;
    - 16.1.3.5. any illegal (including but not limited to violation of any applicable law e.g. obscenity laws, and third party intellectual property rights) or unauthorized use (including use prohibited/unauthorised) in accordance with the terms and conditions of the Agreement) of the Service by the Customer or any person using such Service through the Customer;
    - 16.1.3.6. any use of any Age Restricted Service by under-age persons;
    - 16.1.3.7. any loss, corruption or deletion of any data or information (whether belonging to, provided or stored in any system or equipment (whether or not maintained or operated by the Service Provider, the Customer or any other person), howsoever caused or arising;
    - 16.1.3.8. any event the occurrence of which the Service Provider is unable to control or avoid by the use of reasonable diligence (force majeure events), including but not limited to the failure, shortage or interruption of electrical power or supply,

riots or civil commotion, strikes, lock outs or trade or labour disputes or disturbances, plague, epidemic or quarantine, fire, flood, drought or acts of any government or sovereign, change in any applicable law, acts of war or terrorism (whether real or perceived), defaults, omissions or actions, extreme weather conditions or acts of God;

- 16.1.3.9. any health issues arising from propagation of and/or exposure of harmful radio-frequency radiation;
  - 16.1.3.10. any error, omission or inaccuracy in any information provided by the Service Provider whether to the Customer or any person and whether in any publication or as part of or in connection with any Service or otherwise;
  - 16.1.3.11. any liability for any unsolicited information sent to Customer via other network operators' networks while the Customer is 'roaming'; or
  - 16.1.3.12. the content of any material made available and/ or accessible by use of the Service.
- 16.1.4. the Service Provider is not responsible for maintaining any insurance cover of any kind to cover any losses, damages or liabilities and the like suffered by the Customer or any third party howsoever arising in respect of the provision of the Service;
- 16.1.5. the Service Provider shall not be liable in any way to the Customer whether in contract, tort (including negligence or breach of statutory duty) or otherwise for any losses, claims, damages, liabilities and the like howsoever caused or arising from acts of any party the Service Provider is not responsible for (including any telecommunication operator who provides part(s) of the Service). For the avoidance of doubt, it is clarified that where part(s) of the Service will be provided and/or supported by a telecommunication provider other than the Service Provider, the Service Provider shall not be responsible for such parts of the Service;
- 16.1.6. under no circumstances will the Service Provider or any of the other parties involved in the provision of Content as part of the Service, be liable for any losses, damages, costs or expenses arising from or in any way connected with any errors, defects, interruptions, malfunctions or delays in Content or the provision of Content. Further, the Service Provider accepts no liability for the loss, late receipt or non-readability of any download, transmission, or other communications. The Content is obtained from a large range of sources, and the Service Provider does not warrant that the Content is of satisfactory quality, fit for a particular purpose, suitable, reliable, accurate, complete, secure, free from error, or not in violation of any applicable law (including but not limited to applicable obscenity laws) and third party intellectual property rights. The Customer also acknowledges that the Service Provider has no control over the value or quality of goods, services or Content offered by third parties on or through the Service and as a result the Service Provider cannot be responsible or liable in any way for and do not endorse, any of these goods, services or Content offered by third parties on or through the Service;
- 16.1.7. if the Customer uses a Device to access the internet or any third party service it may not be a secure environment and unwanted programs or material or viruses may be downloaded to the Device without the Customer's knowledge, which may give unauthorised access to, or damage the Device and the information stored on it. The Service Provider is not liable or responsible in any way for such unauthorised access, damage to or loss of information on a Device whether transmitted via the Service or otherwise. The Customer will remain responsible for all Charges deducted from the Account for the use of any Service activated by such a virus;
- 16.1.8. subject always to the exclusions provided herein, the Service Provider's liability to the Customer whether in contract, tort (including negligence or breach of statutory duty) or otherwise for any and all losses, damages or liabilities and the like caused or arising from any breach, failure or default of either the Service Provider or any of its employees, representatives, agents and/or consultants to perform any of its obligations or duties to the Customer (whether arising under the Agreement or under any applicable law) with respect to any Device or Service, including those relating to product usage, product liability, data protection, and any applicable data protection law or regulation, shall not in aggregate exceed

the amount equal to Charges paid or payable by the Customer for a period of three (3) months immediately preceding such breach, failure or default on the part of the Service Provider, provided that nothing in this sub-clause shall apply to limit or restrict the amount recoverable from the Service Provider as compensation for any death or personal injury caused by the negligence or breach of duty (statutory, contractual or otherwise) of the Service Provider; and

- 16.1.9. the Customer expressly acknowledges and agrees that use of the Device(s) and Equipment is at his or her own sole risk and that the entire risk as to satisfactory quality, performance, accuracy and effort is with the Customer. To the maximum extent permitted by applicable law, the Devices, Equipment and Service are provided "as is" and "as available", with all faults and without warranty of any kind, and the Service Provider hereby disclaims all warranties and conditions with respect to the Devices, Equipment and services, either express, implied or statutory, including, but not limited to, the implied warranties and/or conditions of merchantability, of satisfactory quality, of fitness for a particular purpose, of accuracy, of quiet enjoyment, and non-infringement of third party rights. The Service Provider does not warrant against interference with your enjoyment of the Device(s), that the Devices and Service will meet your requirements, that the usage and operation of the Devices and/or Service will be uninterrupted or error-free, or that defects in the licensed application or Service will be corrected. No oral or written information or advice given by the Service Provider or its authorised representatives shall create a warranty. Should the Device, Equipment and/or Service prove defective, the Customer assumes the entire cost of all necessary servicing, repair or correction.

## **17. Customer Indemnity and Liability**

The Customer shall fully indemnify and hold harmless the Service Provider at all times against all actions, claims, proceedings, costs (including legal costs incurred by the Service Provider), liability, losses and damages whatsoever and howsoever arising which may be brought or commenced against the Service Provider by any person and/or which the Service Provider may sustain, incur or suffer, as the case may be, arising out of or in connection with or by reason of the use or operation by the Customer or any person in any way (whether with or without the authorisation and/or permission of the Customer) of the Service subscribed by and provided to the Customer. Further, the Customer agrees to offer the Service Provider all possible assistance in respect of the Service Provider defending any third party claims covered under this clause.

## **18. Notices**

- 18.1. All bills, notices and communications by the Service Provider to the Customer may be sent or dispatched to the Customer by private delivery service, post, e-mail, , text message or any other means deemed appropriate by the Service Provider to the address, email, or mobile number of the Customer in any record of the Customer maintained by the Service Provider or from which any communication by the Customer to the Service Provider was dispatched or issued or otherwise last known to the Service Provider. Any such bill, demand, notice or communication addressed and so sent or dispatched to the Customer shall be deemed to have been received by the Customer:
- 18.1.1. in the case of dispatch by e-mail, text message, or other instantaneous electronic communications, immediately upon transmission by the Service Provider;
- 18.1.2. in the case of dispatch by private delivery service to the address of the Customer, on the date and at the time it was so delivered or left at that address; and
- 18.1.3. in the case of dispatch by post, five days after it was posted by the Service Provider.
- 18.2. All notices and requests from the Customer to the Service Provider shall be in writing and sent to Jersey Airtel Limited, Customer Services Department, 1<sup>st</sup> Floor, Le Masurier House, La Rue Le Masurier, St. Helier, Jersey JE2 4YE, unless the Service Provider specifies to the Customer otherwise. The Service Provider shall be entitled to regard as ineffective and invalid any notice or request of the Customer the receipt of which by the Service Provider has not been confirmed by the Service Provider to the Customer.
- 18.3. In addition to clause 18.1 above, the Service Provider may give notice of any amendment, variation or supplement to the Agreement or any other published terms and conditions of the Service Provider by publishing such notice in any newspaper with a mass circulation in Jersey or Guernsey, posting such notice on any internet website maintained by the Service Provider or otherwise by making such notice public in any manner deemed appropriate by the Service Provider.

## **19. Assignment**

- 19.1. The Customer shall not assign, transfer or encumber any or all of its rights, interests and obligations under the Agreement without the prior written consent of the Service Provider.
- 19.2. The Service Provider may freely assign, transfer or encumber any or all of its rights, interests and obligations under the Agreement subject to giving prior notice to the Customer in accordance with clause 18.

## **20. Entire Agreement**

The Agreement, hereto represents the entire agreement between the parties hereto and supersedes and cancels all previous negotiations, agreements or commitments (whether written or oral) with respect to the subject matter hereof.

## **21. Variation**

The Service Provider may amend, vary or supplement any terms and conditions of the Agreement by giving notice to the Customer in accordance with clause 18. Such amendment, variation or supplement shall have the effect of varying the Agreement or any other terms or conditions of the Service Provider in the manner stated in the publication or notice and shall unless otherwise stated be effective upon the Customer's deemed receipt thereof as defined at clause 18.1. The Customer's continued use of the Service after the date of such deemed notice shall constitute acceptance of the amendment, variation or supplement.

## **22. Severability and Waiver**

If any part or any provision of the Agreement is or becomes illegal, invalid or unenforceable, that part or provision shall be ineffective to the extent of such invalidity or unenforceability only, without in any way affecting the validity or enforceability of the remaining parts of said provision or the remaining provisions of the Agreement. No waiver by either party to any provisions of the Agreement shall be binding unless made in writing. The failure by either party to enforce at any time for any period any one or more of the terms or conditions of the Agreement shall not be a waiver of them or of the right at any time subsequently to enforce all terms and conditions to the Agreement.

## **23. Governing Law**

- 23.1. If the Agreement is between the Customer and JAL, then the laws of the Bailiwick of Jersey shall govern the Agreement, without reference to the principles of conflict of laws, and the parties irrevocably consent and submit to the exclusive jurisdiction of the Royal Court of Jersey for all matters arising under the Agreement.
- 23.2. If the Agreement is between the Customer and GAL, then the laws of the Bailiwick of Guernsey shall govern the Agreement, without reference to the principles of conflict of laws, and the parties irrevocably consent and submit to the exclusive jurisdiction of the Royal Court of Guernsey for all matters arising under the Agreement.