

Digital Island Standard Terms & Conditions

Prior to 14 February 2024

1. THESE TERMS

1.1 These terms and conditions set out the basis on which Digital Island provides products and services to their customers.

1.2 Additional terms may apply to the customer's use of some of Digital Island's services. If so, Digital Island will tell the customer what those terms are – these additional terms will generally be incorporated into the Final Proposal. If there is any conflict between these terms and any additional terms, the additional terms will prevail.

2. INTERPRETATION

2.1 "agreement" means the Final Proposal and these terms and conditions.

"customer" means the Digital Island customer who is liable for the costs under this agreement.

"Digital Island" means Digital Island Limited, Level 3, 8 Nugent Street, Grafton, Auckland.

"Equipment" means any equipment supplied by Digital Island or a third party to the customer under this agreement from time to time.

"Final Proposal" means the document signed by the customer that sets out the services to be provided by Digital Island, the length of the contract and the cost of the services.

"Mobile Device" means any mobile hardware other than SIM cards (including but not limited to handsets and accessories) that the customer orders from Digital Island from time to time.

"Notifiable Privacy Breach" is as defined in the Privacy Act 2020.

"Personal Information" is as defined in the Privacy Act 2020.

"Services" means any or all of the services that Digital Island have agreed to provide the customer as set out in the Final Proposal and as varied from time to time.

"Website" means www.digitalisland.co.nz.

3. COMMENCEMENT OF AGREEMENT

3.1 This agreement commences from the date the services are commenced/installed and continues until it is terminated pursuant to this agreement.

4. DIGITAL ISLAND'S SERVICES

4.1 If required and at the discretion of Digital Island, Digital Island may sub-contract other carriers to provide part of any Service.

4.2 Digital Island will use all reasonable endeavours to make the Services available to the customer at all times. However, due to the nature of telecommunications and the reliance placed on networks and services owned by other people, Digital Island cannot guarantee that the Services will always be available or fully functioning. If the

Services are unavailable for any reason Digital Island will endeavour to restore the Services as soon as possible. If the customer needs assistance in using the Services they should call the support centre on 0800 999 010.

4.3 While Digital Island takes all reasonable security precautions, due to the nature of telecommunications services Digital Island cannot guarantee the confidentiality of any calls or transmissions the customer makes using the Services.

4.4 Digital Island may suspend or restrict any of the Services at any time if:

- (a) Digital Island considers it necessary to protect or maintain their network or anyone else's network; or
- (b) Digital Island believes that the customer has breached any of their terms and conditions. Network charges will still apply during the period of any suspension, and if the Services are suspended because of a breach by the customer, Digital Island may charge the customer a reconnection fee if the Services are recommenced.

5. CHARGES

5.1 Digital Island will invoice the customer monthly for the Services. The customer must pay the total amount on the invoice on or before the 20th day of the month following the month the invoice is dated, regardless of whether the customer or someone else used the Services.

5.2 If customer chooses to make payment by credit card (VISA or Mastercard) there will be a 1.5% surcharge added to the transaction amount. We do not surcharge debit cards.

5.3 If the customer does not pay any invoice on the due date, Digital Island may:

- (a) charge the customer interest on the overdue amount from the due date until the date the customer pays, at the rate of 4% per month; and
- (b) withhold any rebate, discount or similar incentive which would otherwise be available to the customer; and
- (c) suspend or restrict the customer's service; and
- (d) recover from the customer any debt recovery and/or litigation costs; and
- (e) require the customer to put in place a direct debit or credit card payment arrangement for payment of the invoices

5.4 Usage-based charges (such as toll calls) are payable in arrears.

5.5 If at any time, or in respect of any period, the customer uses more than the allocated Services that they have contracted to purchase/use for that time or period, the customer will be charged and must pay for any excess Services used.

5.6 Digital Island may vary the charges from time to time. If any charge increases, Digital Island will give the customer reasonable notice of the increase.

5.7 If the customer believes the invoice contains a mistake, the customer must advise Digital Island in writing within 21 days of the date of the invoice. The customer may only withhold payment of the disputed part of the invoice. If Digital Island agrees there has been a mistake on the invoice, Digital Island will apply the appropriate correction to the customer's account, which will be displayed on the customer's next monthly Digital Island invoice. If Digital Island finds that no mistake has been made, the customer must immediately pay the invoice without set-off or deduction and if payment is made past the due date the customer must also pay penalty fees

for late payment be. Digital Island is not required to correct mistakes if notified after 21 days of the date of invoice.

5.8 Digital Island may at its discretion impose a credit limit on the customer's account.

5.9 If the customer breaches any term of this agreement, and Digital Island incurs costs as a result, the customer will be liable for those costs and must reimburse Digital Island on demand.

5.10 Shipping + Handling charges for all items requiring delivery will be charged back to clients, with the exceptions where the relevant Letter of Agreement; Scope of Works; Proposal Document or Customer Contract expressly excludes the cost of delivery of hardware.

5.11 All pricing shown in quotations and on the Final Proposal are exclusive of GST.

5.12 All charges are shown in New Zealand Dollars (NZD) unless otherwise stated.

5.13 Incidental moves, additions or changes (MACs) relating to a Digital Island product will be charged at the rate set out in the relevant product price sheet. For details of specific pricing, please refer to your Digital Island representative.

6. USING DIGITAL ISLAND'S SERVICES

6.1 The customer agrees that they will not use the Services or permit the Services to be used in any way which:

- (a) breaks any laws or infringes anyone's legal rights;
- (b) could interfere with or damage Digital Island's network, any other operator's network, or another customer's enjoyment of Digital Island's services;
- (c) is malicious, obscene or offensive; or
- (d) could introduce anything (including any virus) that may harm Digital Island's or any third party equipment or software.

6.2 The customer agrees that it will:

- (a) comply with any reasonable restrictions imposed or instructions or directions given by Digital Island regarding the use of the Services;
- (b) ensure that all information the customer gives Digital Island is correct. Where any information the customer has previously supplied to Digital Island changes (such as contact details) the customer must provide Digital Island with updated information as soon as possible;
- (c) not use any handset or other equipment that is not specifically approved by Digital Island for use on its network;
- (d) indemnify Digital Island against any legal action taken against it in connection with the customer's use of the Services;
- (e) not use the Services to spam, mail bomb, upload or publish any offensive or unlawful material, harvest information about others, create a false identity, transmit or upload material which breaches any third party right (including any intellectual property right), discriminates against any person or group, is false, inaccurate, misleading or deceptive or similar activity;

(f) keep confidential any password or PIN number which is used by the customer to access the Services. Digital Island recommends that the customer change these on a regular basis for security reasons. The customer must change their password or PIN number if asked to do so;

(g) authorise Digital Island to act on any verbal instructions the customer gives it in relation to the Services. The customer should notify Digital Island which of their staff are authorised to make changes to their account;

(h) allow Digital Island employees and contractors access as and when they reasonably require (and the customer must obtain any necessary consents to provide such access) if Digital Island needs to install equipment and carry out work at the customers premises. If the customer does not allow Digital Island employees and contractors to access their premises, the customer's ability to use the Services may be adversely affected; and

(i) make sure nothing is connected to Digital Island's network unless it has a Telepermit or is otherwise approved by Digital Island. This helps to ensure that the customer's Mobile Device does not damage the network, although this does not mean that the network will always remain compatible with the customer's Mobile Device.

7. MOBILE SERVICES

7.1 This clause applies if Digital Island provides mobile services to the customer.

7.2 If the customer downgrades or cancels the mobile pricing plan on any of their mobile Services, then the customer may be liable to pay administration and/or early termination charges as described in clause 15.2 below in respect of those mobile Services. If the customer upgrades their plan there will be no administration charge and the new plan will take effect from the 1st of the following month.

7.3 Mobile connections on a term commitment will automatically revert to the advertised open term pricing after the initial term has expired. At this time there will be the opportunity to revisit the pricing and term.

7.4 Mobile Voice Plans:

(a) If the customer's mobile voice plan includes any bundled minutes and the customer does not use all of their bundle of minutes in any month the unused portion at the end of the month cannot be carried forward or redeemed. Bundled minutes do not include calls to international numbers, 0900 calls, operator assisted and directory related services and calls to special numbers.

(b) All mobile to land (national and international) and mobile to mobile calls made within New Zealand are calculated to the nearest second at 1/60th the appropriate per minute rate, then rounded up to the nearest cent. There is a one minute minimum charge for all calls.

(c) All international roaming calls, operator assisted calls and calls to 0900 numbers are charged on a minute plus minute basis.

7.5 Mobile Data and Mobile Group Data:

(a) Data used in each data session will be charged against the customer's data plan allowance in whole 10KB packets, with part packets rounded up. Megabyte usage is based on the amount of data transferred (both uploading and downloading).

(b) If the customer's mobile data or group data plan includes any bundled megabytes, and the customer does not use all of their bundle of megabytes in any month the unused megabytes at the end of the month cannot be carried forward or redeemed.

(c) All mobile to land (national and international) and mobile to mobile calls made within New Zealand are calculated to the nearest second at 1/60th the appropriate per minute rate, then rounded up to the nearest cent. There is a one minute minimum charge for all calls.

(d) All international roaming calls, operator assisted calls and calls to 0900 numbers are charged on a minute plus minute basis.

7.6 DigiShare Mobile Plans:

(a) The DigiShare Mobile Plan is available to businesses with 5 to 300 mobile phones and data connections.

(b) Voice connections include unlimited NZ/AU minutes and texts together with a share of a selected (5GB to 300GB) shared data bucket.

(c) The size of the shared data bucket can be increased or decreased effective on and from the first day of the month following a change request.

(d) Data buckets can only be purchased in pre-defined sizes (e.g., 5GB, 10GB, 15GB) and the data bucket size in GB must be greater than or equal to the number of devices connected to the data bucket (e.g., where there are 8 connections the data bucket size must be at least 10GB).

(e) Voice and/or data connections can be added or removed effective on and from the day of the month the change was requested.

(f) The pricing for DigiShare Mobile Plans is published, and updated, on the Website.

(g) Changes in pricing during a month will be reflected in the following month's invoice.

(h) Pricing reflects a per voice and data connection and an amount per GB in respect of each shared data bucket (determined in each case on a monthly basis).

(i) There are no additional set up or change or cancellation fees or device subsidies provided as part of the DigiShare Mobile Plan.

(j) Digital Island roaming rates and subscriptions apply.

7.7 The customer acknowledges that the mobile Services use radio signals and that the mobile Services may be interrupted due to interference to those radio signals. Mobile Service quality will vary with geography and other factors.

7.8 The customer acknowledges that access to the mobile Services is dependant upon their equipment and hardware. If the products used by the customer do not support all of the mobile Services, Digital Island are under no obligation to ensure the customer's access to those Mobile Services.

7.9 If at any time, or in respect of any period, the customer uses more than the allocated mobile Services that they have contracted to purchase/use for that time or period, the customer will be charged and must pay for any excess mobile Services used. Current excess rates as per table below:

Standard shared bucket excess data rate:	\$200 per 10GB
Standard individual plan excess data rate:	25c per MB, or \$75 per 2.5GB (whichever works out lower)
M2M / Jasper shared data excess rate:	10c per MB
M2M / Jasper individual data excess rate:	10c per MB

7.10 All mobile Services are subject to the fair use policy set out in this clause:

- (a) The customer agrees that their use of the mobile Services must be fair, reasonable, and not excessive, as reasonably determined by Digital Island from time to time by reference to the average customer profiles and estimated customer usage of the Digital Island mobile Services.
- (b) If the customer's usage of the mobile Services materially exceeds estimated use patterns over any day, week or month (or other period of time as determined by Digital Island) or is inconsistent with normal usage patterns, then, in addition to potentially being liable for excess usage charges, the customer's usage may be excessive or unreasonable.
- (c) Digital Island's mobile Services and mobile voice plans are offered for individual and private and personal use by the customer only.
- (d) No mobile Service allows for activities aimed at making profit or reselling the mobile Service or using the mobile Services in an unfair or excessive way and any such use of the mobile Services is a breach of this agreement.
- (e) For the avoidance of doubt, fair use of the Digital Island mobile Services excludes activities such as auto-dialling, continuously call forwarding, tele-marketing, call centres and use of Cellular Trunking Units (including SIM boxes and GSM gateways).
- (f) If Digital Island is of the view that the customer's use of the mobile Services is excessive or unreasonable, it may contact the customer to advise them. If the customer does not alter their usage of the mobile Services after a request to stop, Digital Island may, without further notice, charge the customer for the excessive and/or unreasonable element of the customer's usage or suspend, modify or restrict use of the customer's mobile Services or withdraw access to the mobile Services.

7.11 Unlimited mobile data plans are subject to the following;

- (a) Unlimited data is for personal NZ use on the End User's phone only. Excludes roaming data. Machine to machine services, mobile hotspots, mobile routers or any other similar activity that Digital Island considers to be non-standard personal usage is prohibited
- (b) if the customer's data usage goes above 40GB within the monthly billing period, throttling of the data speed may be implemented.
- (c) if customer exceeds 40GB 2 months in a row, they may be moved off the unlimited plan, and onto a plan with a 40GB data limit.
- (d) customers are prohibited from tethering or using mobile hot spot capability unless expressly permitted. If customers do tether or hot spot, Digital Island reserves the right to block data use on the connection.

8. PROVISION OF MOBILE DEVICE

8.1 This clause applies if Digital Island provides the customer with a Mobile Device.

8.2 Upon delivery of the Mobile Device, risk in the Mobile Device will pass to the customer.

8.3 Upon payment of the charges for that Mobile Device or, in the case of a Mobile Device that Digital Island has agreed to provide the customer free of charge, upon delivery of the Mobile Device to the customer, title in the Mobile Device will pass to the customer.

8.4 If all or any part of the Mobile Device is under a manufacturers' warranty, Digital Island will endeavour to give the customer the benefit of the warranty. Where this is not possible, Digital Island will hold the warranty on behalf of the customer. Digital Island will have no obligation to negotiate any warranty or indemnity on behalf of the customer with respect to any Mobile Device (or any associated software).

8.5 If the customer makes a claim on any warranty that is held by Digital Island on behalf of the customer, the customer must promptly return the defective Mobile Device to Digital Island with any accessories and all original packaging, together with a copy of the invoice and a written claim specifically identifying the defect(s) to the Digital Island offices at Level 3, 8 Nugent Street, Grafton, Auckland.

8.6 If any part of the Mobile Device requires repair or replacement because it is lost or damaged and that repair or replacement is not covered by any warranty referred to in clause 8.4 above, or the customer places an order for an additional Mobile Device, then the charges for the repair or replacement and/or additional Mobile Device will be in accordance with Digital Island's then current standard charges and the customer agrees to pay all such applicable charges.

8.7 The customer acknowledges that Digital Island is not responsible for any loss of data or other information that may occur in the course of or in connection with the repair of any Mobile Device. Digital Island recommends that the customer backs up all data on all item(s) of Mobile Device before those items are sent to Digital Island for repair or replacement.

8.8 The customer acknowledges that Digital Island is not under any obligation to ensure the continued availability of the make and model of any Mobile Device provided to the customer by Digital Island.

8.9 The customer agrees not to resell, lease or rent any Mobile Device to any other person.

8.10 The customer acknowledges that access to the mobile Services is dependant upon their equipment and hardware. If the products used by the customer do not support all of the mobile Services, Digital Island are under no obligation to ensure the customer's access to those Mobile Services.

8.11 The customer must not remove any trademarks or logos from any part of the Mobile Device.

8.12 All SIMcards belong to Digital Island or its service providers and the customer may not sell, assign, transfer, encumber or otherwise deal in any SIMcard. If the customer fails to return the SIMcard within 30 days after disconnection, Digital Island may charge you for the SIMcard.

8.13 MobiPay:

(a) Where the customer elects to purchase a Mobile Device using Digital Island's MobiPay scheme, the following provisions will apply.

(b) The purchase price for the Mobile Device will be payable in equal consecutive monthly instalments over 24 months.

(c) An administration fee equal to 10% of the purchase price will be payable where the purchase price is paid early provided that this administration fee will not be payable where the customer wishes to update its Mobile Device as contemplated in paragraph (g) below.

(d) In order to qualify for MobiPay, each Mobile Device purchased must have a corresponding mobile connection.

(e) Mobile Devices can be transferred to another connection but the customer must pay Digital Island an administration fee of \$50.00 plus GST per transfer.

(f) If a customer wishes to cancel a connection, they must first pay the outstanding balance of the purchase price owing on the Mobile Device, together with an administration fee equal to 10% of the purchase price for the associated Mobile Device.

(g) Customers can update/purchase new Mobile Devices from time to time provided that any outstanding purchase price owing on earlier devices is first paid in full.

9. INTERNET SERVICES

9.1 This clause applies if Digital Island provides internet services to the customer.

9.2 If the customer downgrades or cancels the plan on any of their internet Services, then the customer may be liable to pay administration and/or early termination charges as described in clause 15.2 below in respect of those internet Services. If the customer upgrades their plan there will be no administration charge and the new plan will take effect from the 1st of the following month.

9.3 Digital Island may without notice to the customer remove any emails that remain on their servers for more than 90 days. The customer is responsible for downloading from Digital Island's email server to the customer's computer any email that they wish to keep.

9.4 The customer must not knowingly transmit any virus or other disabling feature or use the Services in a manner which is likely to or is intended to damage or compromise the security of Digital Island's network or anyone else's network.

9.5 The customer must use the internet services in a reasonable and responsible manner and only use the internet services for the purposes that they are provided for.

9.6 The customer must not have more than one connection to the Service using the customer's user ID at any time. If for any reason the customer does have simultaneous connections Digital Island reserves the right to charge the customer \$5.00 per hour (or part hour) for each additional connection.

9.7 If at any time, or in respect of any period, the customer uses more than the allocated internet services that they have contracted to purchase/use for that time or period, the customer will be charged and must pay for any excess internet services used.

9.8 Digital Island is not liable for any inaccurate, illegal or offensive information which may be obtained from the internet from the customer's use of the Services.

9.9 Digital Island is not liable for any viruses or other harmful code that the customer may download via the internet using the Services.

9.10 The customer will be responsible for protecting the customer's computer against any virus, unauthorised access or spam and to the extent permitted by law, Digital Island accepts no liability in relation to any virus, unauthorised access or spam experienced by the customer.

9.11 The customer will indemnify Digital Island against all liability, losses and costs that Digital Island incurs:

(a) through the customer's failure to do any of the above;

(b) through the customer's failure to perform any other obligation that it may have under this agreement; or

(c) as a result of any claim made against Digital Island by a third party as a result of the customer's use of the internet services, including as a result of material that the customer generates or disseminates by using the internet services.

9.12 All internet services are subject to the fair use policy set out in this clause:

(a) The customer agrees that their use of their internet service must be fair, reasonable, and not excessive, as reasonably determined by Digital Island from time to time by reference to the average customer profiles and estimated customer usage of the Digital Island data Services.

(b) If the customer's usage of the internet services materially exceeds estimated use patterns over any day, week or month (or other period of time as determined by Digital Island) or is inconsistent with normal usage patterns, then, in addition to potentially being liable for excess usage charges, the customer's usage may be excessive or unreasonable.

(c) Digital Island's internet services are offered for normal business use by the customer only.

(d) No internet service allows for activities aimed at making profit or reselling the internet service or using the internet service in an unfair or excessive way and any such use of the internet service is a breach of this agreement.

(e) If Digital Island is of the view that the customer's use of the internet services is excessive or unreasonable, it may contact the customer to advise them. If the customer does not alter their usage of the internet services after a request to stop, Digital Island may, without further notice, charge the customer for the excessive and/or unreasonable element of the customer's usage or suspend, modify or restrict use of the customer's internet services or withdraw access to the internet services.

9.13 Internet speed:

(a) Downstream and upstream speeds are based on a theoretical maximum, and actual speeds will be affected by various factors including NZ and overseas networks, the particular modem and computer technology, internal wiring and other environmental factors. Speeds will vary depending on how many people are on the network at the same time both in the customers premises and in general on the Internet. This is also true for overseas networks when accessing content, such as websites or streaming video.

(b) Content such as web pages and videos are stored on 'content servers' so the customer can access them via their internet connection. Content servers within New Zealand and overseas can reduce the rate (bandwidth) at which access to their content is available (for instance, when they are very busy), this affects the time it takes to download content and thus the user's internet speed.

(c) If connecting via Wi-Fi, the connection can be impacted by environmental factors like other wireless devices in the premises (such as mobile or digital phones) and even a neighbour's Wi-Fi connection.

(d) The speed capacity of the devices the customer is connecting with may be a limitation, for instance the age of the Wi-Fi adapter. Other hardware and software components can also limit the processing of bandwidth and thus the speed.

(e) The most reliable connection and faster speeds will be achieved by connecting devices directly to the modem via high-speed Ethernet wiring instead of using Wi-Fi. For example, a Cat5e is a high-quality copper cable, designed to deliver Ethernet standard services over short distances at speeds of up to 1Gbps.

9.14 Digital Island may intercept any communications of the customer for the purposes of complying with the Department of Internal Affairs' Digital Child Exploitation Filtering System, or for the purposes of complying with lawful authority and in continuing to use the Digital Island internet services, the customer consents to this.

10. DATA SERVICES

10.1 This clause applies if Digital Island provides data services to the customer.

10.2 Implementation of a data solution will be project managed through to completion. It is expected the customer's IT department or IT contractor will provide the necessary resources to work with Digital Island during the project in order to ensure a timely and seamless implementation.

10.3 Although initial feasibility results may indicate the data service is available at a particular speed, it is possible that upon physical installation the speed anticipated or quoted may not be available. If this is the case then Digital Island may need to revisit the product and pricing and renegotiate the proposed solution.

10.4 Some data services installations are reliant on existing cabling from a third party telecommunications company's demarcation point (often in basement or cabling room of building) through to the desired termination/delivery point. If this building cabling does not exist or is not of sufficient quality, the customer may be required to cover the cost of new building cabling to the desired termination/delivery point.

10.5 Data solutions with routers will include a managed router at each site and initial configuration of each router. Additional router configuration required after initial installation will be charged at \$150 + GST per hour.

10.6 All Local Area Network configuration and Internet security, including supply of a suitable firewall appliance, is expressly the customer's responsibility.

10.7 Managed router(s) will be configured and then sent to the customer's site. Either the customer or the customer's nominated IT contractor shall plug the router in to the pre-installed, labelled jack point. If the customer does not wish to do this, an onsite installation can be arranged for an additional \$150 + GST per site.

10.8 In the unlikely event of a faulty router, the customer shall inform Digital Island immediately and return the faulty router. Digital Island will arrange for a replacement router to be configured and sent out via courier as quickly as is commercially practicable.

10.9 The Digital Island SIP Trunk product has been tested with most leading PBX products. However Digital Island does not guarantee compatibility to any specific product or future software release. It is the responsibility of the PBX vendor to perform compatibility testing. Digital Island will assist where it considers it appropriate with this testing.

10.10 Digital Island takes all reasonable precautions to ensure that the SIP Trunk solution is secure, but as the security of the PBX is beyond their control, Digital Island takes no responsibility if the PBX is compromised and fraudulent calling is generated.

10.11 Digital Island SIP Trunks are not recommended for services such as Eftpos, faxing and alarm monitoring. Digital Island can arrange a separate analogue phone line for these services.

10A. ULTRA-FAST BROADBAND

10A.1 This clause applies if Digital Island provides ultra-fast broadband services to the customer.

10A.2 The customer agrees that in using the ultra-fast broadband service, they will be bound by these terms and the terms of their Local Fibre Company's End User Terms (which can be found at <https://www.crownfibre.govt.nz/crown-partners/>). The Local Fibre Company End User Terms relate to, amongst other things, the provision (including installation) and use of that part of the Local Fibre Company's network which is located on the customer's premises.

10A.3 The customer must pay for the costs of installation of ultra-fast broadband. On the day that ultra-fast broadband is to be installed, the customer will need to be present to meet with the Local Fibre Company's technicians who will advise what is required for installation and the costs involved.

10A.4 In order to install the ultra-fast broadband at the customer's property, land excavation may be required. The extent of restoration will depend on the policy of the Local Fibre Company. Generally, the Local Fibre Company will reinstate like for like, e.g. concrete where concrete has been used, but the Local Fibre Company do not guarantee to match surface finish and reinstatement will be limited to the area where the trench has been dug. The customer will be responsible for any further costs associated with the additional restoration.

10A.5 The following equipment will be installed at the property to allow ultra-fast broadband services to be used:

- (a) The External Termination Point, which will remain the property of the Local Fibre Company;
- (b) The Optical Network Terminal, which will remain the property of the Local Fibre Company; and
- (c) Fibre Enabled Modem or Residential Gateway.

10A.6 If the customer changes to ultra-fast broadband, Digital Island cannot guarantee that the customer will be able to move back to ADSL Broadband. Any change in service may be subject to installation charges and an early termination fee will apply if the customer terminates before completion of the minimum contract period.

10A.7 Initially, the existing copper connection will remain in place for the provision of voice services. The customer agrees that they will migrate to a fibre based service as soon as it is available. At the time it is available, Digital Island will provide the customer with a minimum of 30 days' notice to the commencement of the migration process. A technician will need to visit the customer's premises to carry out the work, which may require internal access to the customer's premises. A suitable time will need to be scheduled for the technician to visit the premises. The fibre voice service is reliant on the ONT having power to it and in the event of a power cut, the fibre voice service (and broadband) will no longer work. If the customer is reliant on their phone services for medical or important applications (e.g. emergency services) they should consider whether a fibre based service is appropriate to their needs. Digital Island does not guarantee that the fibre voice service will support all models of low speed analogue device (for example: home alarms, personal medical alarms, low speed modems, sky set top boxes, faxes, low speed modems, eft-pos). It is the customer's responsibility to contact their relevant service provider to find out whether such services are compatible with fibre. The customer should not sign up for ultra-fast broadband if their provider cannot guarantee compatibility. Digital Island is not liable to the customer in relation to the foregoing.

10A.8 DigiMax UFB Plans are subject to the following;

(a) DigiMax enhanced Restore SLA is based on following: If fault is reported to Digital Island, troubleshooting completed, and fault lodged with fibre supplier by Midday – service restored by 7pm same day, If fault is reported to Digital Island after midday – fault restored by midday the following day.

(b) DigiMax enhanced restore SLA is currently only applicable in Chorus UFB areas: Auckland, Wellington, Rotorua, Taupo, Gisborne, Hastings, Palmerston North, Masterton, Blenheim, Timaru, Dunedin, Invercargill.

10B. MOVING ADDRESS

10B.1 This clause applies if the customer moves address and Digital Island provides data services and/or ultra-fast broadband services to the customer.

10B.2 The customer shall give Digital Island notice in writing at least 3 months prior to the moving date, advising the new address and the moving date. If Digital Island is able to continue providing the data services and/or

ultra-fast broadband services, it will endeavour to ensure that the data services and/or ultra-fast broadband services will be available at the new address on the moving date.

10B.3 If the customer fails to provide Digital Island with sufficient notice of the moving date, Digital Island may be required to implement interim services to ensure the customer can access data services and/or ultra-fast broadband services at the new address on the moving date. The customer shall pay any additional costs incurred by Digital Island for providing the interim services.

10B.4 If a customer moves address within 12 months of installation of the data services and/or ultra-fast broadband services, the customer shall pay an additional 'early move fee', being 75% of the remaining charges of the first 12 months of the fixed term contract.

10B.5 If a customer moves address and the data services and/or ultra-fast broadband services during the initial fixed term contract the customer shall be required to pay for any additional costs Digital Island may incur from network operators.

10B.6 If the data services and/or ultra-fast broadband services that the customer is currently receiving are not available at the new address, Digital Island will provide an alternative solution for the customer, which may require that the customer enter into a new contract and minimum term.

10B.7 The customer must pay for any installation costs of data services and/or ultra-fast broadband services at the new address.

10C. WIRELESS BROADBAND

10C.1 This clause applies if Digital Island provides wireless broadband services to the customer

10C.2 Digital Island Wireless Broadband requires a specific Digital Island Wireless Broadband Modem. This will be supplied with the service.

10C.3 Digital Island does not guarantee that the service can be supplied at a particular location.

10C.4 If you use all your plan data, you will be charged \$20 per additional 10GB block or part thereof, up to a maximum of 50GB. At this point the connection will be disabled until the end of the month, with no option to purchase more data.

10C.5 If your Digital Island Wireless Broadband service is disconnected for any reason, we cannot guarantee you will be able to connect back to a fixed line broadband service, particularly if there are capacity issues in your area. If you have an existing broadband connection with another provider, you are responsible for arranging for disconnection of this service.

10C.6 Digital Island Wireless Broadband is only available in certain 4G coverage areas. 4G coverage is not available everywhere.

10C.7 The Digital Island Wireless Broadband Modem contains a SIM card. You may not use this SIM card in any other device. It remains our property and you must return it to Digital Island on reasonable request.

10C.8 You may not use your Digital Island Wireless Broadband Modem to receive the Digital Island Wireless Broadband service at any other location other than the installed location. If you are moving, please contact us. If you are moving to a location within our Digital Island Wireless Broadband coverage area, you may be able to continue to use the service. If you are moving to a location outside our current Digital Island Wireless Broadband coverage area, you will need to end your contract with us. Early termination charges may apply.

10C.9 If we become aware that you are using your Digital Island Wireless Broadband Modem at a location other than the installed location we reserve the right to withhold, suspend, disconnect, or restrict your Digital Island Wireless Broadband service without notice. The reason we retain this right is that we need to be able to manage the network to ensure that all customers using the network receive a reliable and consistent service.

10C.10 If you choose to sign up with Digital Island Wireless Broadband on a term contract, and your service is disconnected before the completion of that minimum contract period, you will be charged an early exit fee of \$199.

10C.11 The Digital Island Wireless Broadband Modem requires mains power. In the event of a power failure, service will not be available, including access to emergency services.

10C.12 If you choose to change to another broadband technology (e.g. ADSL), an availability check will need to be done for your address. Digital Island does not guarantee availability of an alternative broadband technology at your address.

10C.13 Any unused data within a monthly data allocation will not be carried forward to the following month.

10C.14 Upstream and downstream speeds are variable, and actual speeds will be affected by various factors including NZ and overseas networks, your modem and computer technology, internal home wiring and other environmental factors.

11. CLOUD SERVICES

11.1 This clause applies if Digital Island provides cloud services to the customer.

11.2 In this clause:

“cloud services” means those Services which Digital Island from time to time agrees to deliver over the Internet to the customer;

“Content” means all data, information, documentation and content (in whatever form, including audio and visual) transmitted, shared, exchanged or otherwise made available by Digital Island to the customer;

“customer content” means all data, information, documentation and content (in whatever form, including audio and visual) transmitted, shared, exchanged or otherwise made available by the customer and/or its end users using the Services;

“Customer Offering” means services created by Customer for access and use by Customer’s customers and end users;

“Intellectual Property Rights” means registered and unregistered copyright, trademarks, trade names and branding, design, patents, trade secrets, knowhow, and all confidential information;

“Materials” means any user guide(s) and all other written materials which are provided to the customer by Digital Island from time to time and designed to assist or supplement the understanding, application or use of the Products and/or Services;

“Products” means any products and/or Services provided and/or offered by Digital Island and subscribed to by the customer;

“Service user” means the customer, the customer’s employees, the customer’s contractors, and the customer’s customers and end users;

“server” means the server(s) made available by Digital Island which hosts the customer content;

11.3 Digital Island provides the cloud services on a subscription basis. The term and fees payable for the cloud services are set out in the Final Proposal. As part of the cloud services, Digital Island will provide a server to host cloud services and the customer content.

11.4 Bundled (Inclusive Calling) Conditions

(a) Customers must have all Telepo users on all sites on the Inclusive calling profile.

(b) The Inclusive calling plan is for standard business purposes only, excludes contact centres, continuous calling forwarding, premium calling services such as 0900.

(c) Fair Use Policy applies to Unlimited Calling. If use materially exceeds estimated customer use of this service (reference against customer profiles), we may ask the customer to moderate usage. If the customer fails to do so, Digital Island reserves the right to withdraw the service and/or recover any associated costs.

11.5 If Digital Island agrees to a trial period in the Final Proposal, then:

(a) this agreement shall be subject to a trial period;

(b) the trial period shall, unless terminated earlier pursuant to this agreement or provided for in the Final Proposal, be for a period of 28 days terminating at 11.59pm on the 28th day of the trial period;

(c) any provision of this agreement intended to survive termination of this agreement shall survive termination of the trial period and continue in full force and effect;

(d) at the end of the trial period, the customer shall elect by notice in writing to Digital Island whether to subscribe for the Services in accordance with this agreement or to terminate the Services;

(e) if the customer elects to terminate the agreement and gives Digital Island written notice of this prior to the end of the trial period, then the Services shall terminate at the end of the trial period and the customer shall be liable to pay for the Services through to that time but shall not be liable for any further notice or early termination fees payable pursuant to clause 14;

(f) if the customer does not give written notice of termination to Digital Island prior to the end of the trial period then, unless agreed otherwise by the parties, the termination provisions in clause 15 will apply.

11.6 Digital Island will use its reasonable endeavours to ensure its software has the necessary features to ensure the availability of cloud services. Digital Island will use commercially reasonable efforts to implement reasonable and appropriate security measures to assist the customer to secure the customer content.

11.7 The customer will:

(a) comply with all applicable laws, rules and regulations, including those regarding data privacy, copyright, and export control and the terms of this Agreement;

(b) use reasonable security precautions for providing access to the Services by its employees or other individuals to whom Customer provides access including private keys and other security options;

(c) cooperate with Digital Island’s reasonable investigation of outages, security problems, and any suspected breach of this Agreement;

(d) comply with all license terms or terms of use for any software, content, service or website (whether made available to the customer through the Services by Digital Island or a third party) the customer uses or accesses when using the Services;

(e) be responsible for the use of the Services or Customer Offering by the Customer, Service Users, any person to whom Customer has given access to the Content or Services, and any person who gains access to Customer's Content or the Services;

(f) use commercially reasonable efforts to prevent unauthorized access to or use of the Services and immediately notify Digital Island of any known or suspected unauthorized use of customer's account, the Services, or any other breach of security; and

(g) where the customer provides a Customer Offering, the customer must enter into an agreement with Customer's customers or Service users which shall include the relevant terms of this Agreement and release Digital Island from any and all liability for damages or losses Service Users may incur as a result of using the Services or the Customer Offering.

(h) only use Digital Island cloud services in accordance with this agreement and use all reasonable endeavours to ensure all Service users comply with the terms of this agreement in connection with their access and use of Digital Island's cloud services.

11.8 The customer will not reproduce, duplicate, copy, sell, resell or otherwise exploit Digital Island's cloud services product.

11.9 The customer will not take any action which imposes or may impose (in Digital Island's sole opinion) an unreasonable or disproportionately large load on Digital Island's cloud services or the server.

11.10 The customer acknowledges and agrees that the plan they are on is the plan Digital Island believes to be the most appropriate for the customer based on the information provided by the customer as to its current requirements. If the information provided by the customer to Digital Island is inaccurate in any material respect or the customer's use of the cloud services is materially greater than that advised to Digital Island prior to entering into this agreement, then this could adversely impact the performance of the Services and the customer may be liable for excess usage charges.

11.11 Digital Island does not control (or have any right or ownership), or have any knowledge of the customer content. The customer acknowledges that the customer content is the responsibility of the customer and that Digital Island cannot guarantee, nor is in any way responsible for, the accuracy and/or legality of any customer content.

11.12 Digital Island shall access the server and the customer content to the extent necessary to:

(a) ensure the continued operation of the Services;

(b) monitor the usage and operation of the Services;

(c) enable it to comply with this Agreement;

(d) ensure that the customer is in compliance with this Agreement; or

(e) comply with any law or regulation or the order of any applicable court or government or regulatory body.

11.13 Digital Island shall keep confidential and shall not disclose to any third party any of the customer content except as required to:

- (a) comply with its obligations under this Agreement;
- (b) enforce its rights under this Agreement against the customer or any Service user; or
- (c) comply with any law or regulation or the order of any applicable court, government or regulatory authority.

11.14 The customer acknowledges that all Intellectual Property Rights in and to the Product, the Content and the Materials are owned by and will continue to belong (as between the customer and Digital Island) exclusively to Digital Island. The customer shall indemnify Digital Island against all loss, costs, expenses, demands of liability, whether direct or indirect, arising out of a claim by a third party alleging infringement charges of their Intellectual Property Rights where such infringement is caused, directly or indirectly by the use of the Products or the Materials in a form not specifically approved by Digital Island (whether modified or not) or in any manner or for any purpose not reasonably contemplated or authorized by Digital Island. The customer acknowledges that there is no transfer of title or ownership of any Intellectual Property Rights, or other rights in the Products, the Content or the Materials to the customer by virtue of this agreement.

11.15 All Digital Island service plans are subject to Digital Island's fair use policy. Digital Island may apply its fair use policy where in Digital Island's reasonable opinion, the customer's use of the Services is excessive and/or has exceeded the fair use policy by reference to average customer profiles and estimated customer usage of the Services. If the customer's usage of the Services materially exceeds estimated use patterns over any month, then, in addition to potential liable for excess usage charges, the customer's usage will be excessive and/or unreasonable. If the customer's usage is excessive and/or unreasonable, Digital Island may contact the customer to advise the customer that its usage is in breach of Digital Island's fair use policy. Digital Island may then request that the customer alter its usage or consider changing its service plan to come within Digital Island's fair use policy. If the customer's unreasonable or excessive use continues, Digital Island will apply charges to the customer's account for the excessive and/or unreasonable element of the customer's usage of the Services.

11.16 Upon acceptance of these terms and conditions, a 50% deposit of proposed one-off hardware and installation charges are payable within 30 business days of signing the contract, with the remainder of the one-off charges invoiced upon completion of installation.

11.17 Telepo Salesforce CRM Connector

- (a) Only licensed Salesforce users are eligible to use this application.
- (b) Digital Island is not responsible for any damages, financially or otherwise, to the customer's business due to users functioning within an *unlicensed* instance of Salesforce, who furthermore may under this condition, access and update contact records in Salesforce. This unauthorised use may also furthermore be in breach of the customer's Salesforce terms and conditions.

12. TELEPO CONTRACT TERMS & CONDITIONS

- (a) New 24 Month Bundled (Inclusive) calling and Open Term pricing is valid from 1st September 2018 and applies to re-signs or new contracted clients only.

(b) On expiry of the 24-month contract the pricing will automatically be moved to Open Term and Pay As You Go rates.

(c) Clients wishing to go on an Open Term contract MUST purchase all hardware upfront.

(d) 75% Early Termination Fees apply.

13. SUPPLY OF EQUIPMENT

13.1 Digital Island or a third party may from time to time supply Equipment to the customer in connection with the Services. Unless agreed otherwise, the customer will have no ownership rights to any Equipment.

13.2 The customer must not damage or interfere with the Equipment.

13.3 If the Equipment is lost or damaged while located on the customer's premises, the customer shall pay the charges of Digital Island for repairing or replacing it as required.

13.4 Upon termination of this agreement, the customer shall return all Equipment to Digital Island within 30 days or the customer shall pay the cost of the Equipment, as determined by Digital Island.

14. PHONE NUMBERS

14.1 Unless Digital Island has agreed otherwise, all addresses, phone numbers, electronic addresses and other codes allocated to the customer remain the property of Digital Island.

14.2 Digital Island may be required by law or for operational reasons to change the phone number(s) or electronic addresses allocated to the customer. If this is necessary, Digital Island will give the customer as much notice as reasonably possible of any such change.

15. TERMINATION AND SUSPENSION

15.1 If there is no fixed term contract in place or the fixed term has expired, Digital Island may cease providing any Service by giving the customer not less than 30 days' written notice.

15.2 The customer may give up any Service or terminate this agreement at any time by giving Digital Island not less than 30 days' notice in writing and the customer must pay Digital Island (in each case within 30 days of the termination of the relevant Service):

(a) the charges throughout the 30 day notice period even if the fixed term has expired; and

(b) for any costs that Digital Island has paid (if any) for transferring the customer from one telephone company to another if the customer terminates any Service within a period of three months or less from the commencement of the Services; and

(c) if any promotional incentives were provided as part of the contract, they must be repaid in full. Examples of this could be free month(s), sign-on credits, free installation and other similar incentives.

termination of Services other than mobile, data and cloud services

(d) an early termination fee of 60 day's normal charges for all terminated services (excluding mobile, data and cloud services, which are dealt with below), including the current month.

termination of data services

(e) for an early cancellation of a data connection, Digital Island's early termination fee of 75% of unpaid charges for the remainder of the term.

termination of cloud services

(f) for an early cancellation of cloud services, Digital Island's early termination fee of 75% of unpaid charges for the remainder of the term.

termination of mobile services

(g) for an early cancellation of a mobile connection, Digital Island's early termination charges in accordance with the table below:

Monthly spend*	Remaining on contract term			
	1-6 months	7-12 months	13-24 months	25-36 months
\$0 – \$50	\$300	\$600	\$900	\$1,200
\$50 – \$100	\$400	\$800	\$1,200	\$1,600
\$100 – \$200	\$500	\$1,000	\$1,500	\$2,000
\$200 +	\$600	\$1,200	\$1,800	\$2,400

*Monthly spend is calculated as the greater of either the monthly plan rental or the average spend per mobile connection from up to three months previous billing.

(h) for plan downgrades within the contract term, Digital Island's plan downgrade charges are calculated as:

Previous monthly spend less new monthly spend, multiplied by months remaining multiplied by 50%

(i) if any additional subsidies/credits were provided as part of the mobile contract, they must be repaid, pro-rata to the months remaining in the minimum term. Additional mobile subsidies are calculated as the subsidy provided less the advertised subsidy at the time of purchase.

(j) for early contract resigns, Digital Island's resign device subsidy reductions are applied in accordance with the table below:

Remaining on contract term	Reduction of resign device subsidy
13 or greater months	No contract resign permitted
7 to 12 months	Monthly spend multiplied by months remaining multiplied by 40%
4 to 6 months	Monthly spend multiplied by months remaining multiplied by 20%
0 to 3 months	No device subsidy reduction applies

(k) any early termination charges that are payable under the Final Proposal; and

(l) any outstanding charges and other monies payable by the customer for the Services.

15.3 Digital Island may, without liability to the customer, terminate the provision of any Service and shall endeavour to provide the customer with reasonable notice in writing if:

- (a) Digital Island determines that the relevant Service is not commercially viable; or
- (b) a third party service provider or carrier does anything that prevents Digital Island from supplying that service; or
- (c) Digital Island is unable to provide the relevant Service; or
- (d) Digital Island decides to withdraw the relevant Service from general availability.

15.4 Digital Island may terminate this agreement, or the provision of any Service to the customer, immediately if:

- (a) the customer breaches any term of this agreement; or
- (b) Digital Island reasonably believes that the customer has supplied incorrect or misleading information; or
- (c) the customer (or the directors or principals) goes into liquidation, bankruptcy or receivership (or it appears that any of these events are likely to happen); or

(d) the customer has a receiver or statutory manager appointed over any or all of their assets; or the customer is removed from the Companies Register (other than as a result of a solvent amalgamation), dissolved; or

(e) the customer dies.

15.5 If this agreement is terminated for any reason the customer must pay for the Services provided up to the date of termination. If the customer has prepaid for the Service, no refund is payable to the customer on termination unless Digital Island agree otherwise. Any remaining hardware subsidy for mobile services shall be forfeited upon termination (for any reason) of the agreement.

15.6 Upon termination or expiry of the agreement, or when Equipment in which title has not passed to the customer is no longer needed, or Digital Island reasonably considers any Equipment is at risk (as defined in section 109 of the PPSA), the customer will surrender and immediately return that Equipment to Digital Island or provide Digital Island or its agents access to the customer's premises to reclaim the Equipment. If the customer fails to do this within 10 Business Days of Digital Island's request for the return of the Equipment, the customer agrees that Digital Island may either:

(a) charge the customer a reasonable amount for rental of the Equipment from the date on which Digital Island first requested the return of the Equipment until the date that the customer actually returns it to Digital Island; or

(b) act (or send Digital Island's agents to act) as the customer's agent to enter any premises Digital Island reasonably believes contains that Equipment to recover it, without incurring any liability to the customer or anyone else, and in that case the customer must pay Digital Island's costs, including legal costs on a solicitor and client basis, in exercising this right.

15.7 Digital Island may suspend provision of Services to the customer without liability if:

(a) Digital Island reasonably believes that the Services are being used (or have been or will be used) by the customer in violation of this Agreement;

(b) the customer does not cooperate with Digital Island's investigation of any suspected violation of this Agreement;

(c) Digital Island believes that Services provided to the customer have been accessed or manipulated by a third party without the customer's consent or in violation of this Agreement;

(d) Digital Island reasonably believes that suspension of the Services is necessary to protect Digital Island's network, Digital Island's other customers, or others in general;

(e) a payment for the Services is overdue by more than thirty (30) days;

(f) the continued use of the Services by the customer may adversely impact the Services or the systems or content of Digital Island or any other Digital Island customer;

(g) Digital Island reasonably believes that the use of the Services by customer may expose Digital Island, its affiliates, or any third party to liability; or

(h) suspension is required by law.

Digital Island will give the customer reasonable advance notice of a suspension under this clause 14.6 and a chance to cure the grounds on which the suspension are based, unless Digital Island determines, in Digital Island's reasonable commercial judgment, that either suspension on shorter or contemporaneous notice or immediate suspension without notice is necessary to protect Digital Island, its other customers, or any third party from operational, security, or other risk or the suspension is ordered by a court or other judicial body. If the suspension was based on the customer's breach of the customer's obligations under this Agreement, then

Digital Island may continue to charge the customer the fees for the Services during the suspension, and may charge the customer a reasonable reinstatement fee upon reinstatement of the Services, which shall be at Digital Island's sole discretion.

16. CONSUMER GUARANTEES ACT AND LIMITATION OF LIABILITY

16.1 The customer agrees that, if they are using the Services for the purposes of a business, the Consumer Guarantees Act 1993 statutory guarantees do not apply to their connection or the Services to the maximum extent permitted by the legislation. The customer agrees (whether the customer is using the services for the purposes of a business or otherwise) that Digital Island excludes and do not have any liability of any kind (whether in contract tort or otherwise) to the customer or anyone claiming through the customer, relating to any economic loss, loss of profits or revenue, loss of data, lost business or missed opportunities, wasted expenditure or savings the customer might have had or any form of indirect or consequential loss or damage whatsoever arising from:

- (a) the customer's connection to the Digital Island network or the content or supply of any Services;
- (b) the customer's use of the Mobile Device;
- (c) the failure, interruption or delay in the supply of, any Services or any part of them or any negligence in this regards;
- (d) the fitness of all or any of the Services or Equipment for any particular purpose;
- (e) errors in or omissions from any directory listing;
- (f) the inaccurate or incomplete transmission of any call or any email;
- (g) any other matter which relates to this agreement.

16.2 Digital Island's liability to the customer under or in connection with this agreement, for any loss or damages which the customer incurs as a direct result of Digital Island's failure to meet any of it's obligations under this agreement or for any negligence by Digital Island in relation to the supply of the Services, will be limited to the value of 3 average months' Services used by the customer under this Agreement for all events occurring in any 12 month period.

16.3 If the customer uses another service provider's services during any period when the Services are not fully operational, Digital Island is not liable to pay or reimburse the customer for any amount the customer may be charged by that service provider.

16.4 No other network operator and/or third party supplier (including their officers, employees, contractors and agents) will be liable to the customer for loss or damage of any kind arising from the customer's use of the Services. This clause creates a right and benefit that other network operators and/or suppliers can enforce as a defence to any claim.

16.5 Apart from the warranties expressly given to the customer in this agreement, all other warranties, express or implied, are excluded to the extent permitted by law.

17. PRIVACY

17.1 The customer may at times provide Digital Island with Personal Information, for example, when the customer applies to become a customer of Digital Island. Digital Island may also obtain Personal Information from the customer's use of the Services.

17.2 The customer agrees that Digital Island may:

(a) use the customer's information (which may include Personal Information):

- to provide the customer with the Services, which may require Digital Island to disclose, transfer, store and/or make available the customer's information (which may include Personal Information) to Digital Island's third party suppliers. These third party suppliers may be based outside of New Zealand (Offshore Suppliers). Digital Island recognises the importance of protecting information you have provided Digital Island, and so Digital Island only uses carefully selected and trusted Offshore Suppliers;
- for credit checking and collection; and/or
- to communicate with the customer about Digital Island's current and future services;

(b) share information about the customer and their use of Services with other third party suppliers to provide the Services and to comply with interception, capability, security, fraud investigation co-operation or emergency response requirements; and

(c) Digital Island's third party suppliers may use information about the customer and their use of the Services for the purposes described in (b) above.

17.3 The customer is entitled to see any Personal Information Digital Island holds about them and to request that any incorrect information be corrected.

17.4 Digital Island may record or monitor calls between it and the customer to verify information and for staff training purposes.

17.5 Digital Island will notify the customer if Digital Island is made aware of any Notifiable Privacy Breach that affects any information you have provided to us and where the Privacy Act 2020 requires individuals and/or the Privacy Commissioner to be notified. The parties will co-ordinate and consult with each other on the contents of any such notification(s). Where Digital Island considers it necessary, Digital Island may notify individuals and/or the Privacy Commissioner directly.

17.6 In providing the Services, Digital Island will comply with the Privacy Act 2020 where applicable.

18. CHANGING THESE TERMS/VARIATIONS TO CUSTOMERS CONTRACT

18.1 Digital Island may vary these terms from time to time and will endeavour to give the customer 21 days' notice. Digital Island will inform the customer of any variation to the terms and conditions either by email, post, notification in major daily newspapers or via Digital Island's website. The latest terms and conditions are available for viewing on Digital Island's website www.digitalisland.co.nz.

18.2 Digital Island may notify the customer of any variation or update to their contract by email. Upon Digital Island receiving acceptance of the variation to the contract from the customer, the customer's contract shall be updated.

19. SERVICES PROVIDED BY THIRD PARTIES OVER THE NETWORK

19.1 Digital Island takes no responsibility for the accuracy, completeness or currency of any content or material or services that the customer may access or have provided to the customer by a third party through the Services or for any charges that the customer may incur by their use of such content, materials or services.

19.2 Digital Island are not responsible for:

- (a) ensuring that the information the customer accesses or makes available through using the Services will be private or secure or free from viruses or other harmful things;
- (b) any transactions the customer enters into through use of the Services or any dealings between the customer and any advertisers or other third parties using the Services or the customer's participation in any promotions;
- (c) any delay in receipt of information the customer selects for transmission to their mobile phone; and
- (d) fixing any faults in any part of the Internet beyond Digital Island's network.

20. NOTICES

20.1 If the customer wishes to notify Digital Island of anything the customer can do so by emailing customer.services@digitalisland.co.nz or by calling 0800 999 010. Digital Island may require the customer to confirm in writing any advice given over the phone.

20.2 If Digital Island wishes to communicate with the customer or notify them of anything it may do so by post, phone, facsimile or email to the last known address or number held for the customer.

21. PERSONAL PROPERTIES SECURITY ACT 1999 (PPSA)

21.1 If Digital Island provides any Equipment, the customer agrees that:

- (a) the customer grants a security interest to Digital Island in each and every part of the Equipment as security for payment for that part and for each other part of the Equipment. The customer agrees that this agreement constitutes a security agreement for the purposes of the PPSA, which provides for a security interest in Digital Island's favour in all of its present and after acquired property in relation to the Equipment;
- (b) it will not sell, lease, dispose of, or allow any other person to take a security interest in the Equipment; and
- (c) Digital Island can register a financing statement on the Personal Property Securities Register (PPSR) to reflect its interest in the Equipment.

21.2 Where Digital Island exercises its right to register a financing statement, the customer also agrees to:

- (a) provide such information as Digital Island reasonably requests to enable it to register a financing statement on the PPSR; and
- (b) inform Digital Island immediately in writing if the customer intends to change its name, address or contact details.

21.3 The customer waives its rights under sections 114(1)(a), 116, 117, 119, 120(2), 121, 125, 126, 127, 129, 131, 132, 133, 134 and 148 of the PPSA.

22. FORCE MAJEURE

22.1 Digital Island will not be liable for any delay or failure of the Services or for any loss or damage from such delay or failure to the extent that it was caused, in whole or part, by a "Force Majeure Event". "Force Majeure Event" means anything outside the reasonable control of a Party, including acts of God, strikes by employees of a third party, acts or omissions (including laws, regulations, disapprovals or failures to approve) of any government or government agency and includes (unless expressly stated otherwise by other terms of the Agreement):

- (a) unavoidable accident, explosion, public mains electrical supply failure, or nuclear accident;
- (b) cyber events, cyber terrorism, sabotage, riot, security events, civil disturbance, insurrection, epidemic,

national emergency (whether in fact or law) or act of war (whether declared or not);
(c) requirement or restriction of, or failure to act by, any government, semi- governmental or judicial entity;
(d) Service Providers', or any other third party's acts or omissions (including failure to deliver) outside of Spark's reasonable control; and
(e) any other similar cause beyond the reasonable control of the Party concerned.

A Force Majeure Event does not include:

(f) any event which the affected party could have avoided or overcome by exercising a standard of reasonable care at a reasonable cost;
(g) a lack of funds for any reason or any other inability to pay; or
(h) strike, lockout, work stoppage or other labour hindrance by employees of a Party or its Related Companies unless the strike is part of an industry wide campaign which does not arise out of a dispute between that Party or Related Company and its employees.