

Vodafone business customer terms and conditions

1 Agreement

- (a) This agreement between Vodafone and the Customer for the supply of Mobile Services commences on the Commencement Date.
- (b) The agreement incorporates and, by signing the Application Form, the Customer agrees to be bound by:
 - (1) this agreement;
 - (2) the Application Form;
 - (3) the Tariff Sheets;
 - (4) the User Guide (if any);
 - (5) any additional terms specified in accordance with Mobile Service Specific Terms; and
 - (6) any additional terms that are expressly stated to be incorporated into the agreement as notified by Vodafone to the Customer prior to the Commencement Date.
- (c) If there is a conflict between any documents or provisions comprising this agreement, then the documents or provisions will be given the order of priority set out in clause 1(b), such that the document or provision lower in the order of priority will be read down or if necessary severed to the extent necessary to resolve the conflict.

2 Definitions and interpretation

2.1 Definitions

In this agreement:

Adapt includes the act of converting a video message into a series of still images, removing all or part of the Content or inserting a link into a portal based presentation of the Content and **Adaptation** has a corresponding meaning;

Application Form means Vodafone's application form for Mobile Services signed by the Customer and each Customer request for additional Hardware, additional Mobile Services and/or additional Customer Connections made in accordance with this agreement, and forming part of this agreement;

Associate has the meaning given in the Corporations Act;

Associated Customer means a customer who has been approved by Vodafone to join a VPN Private Numbering Plan established by Vodafone for another Customer;

Authorised Person means a person specified as such on the Application Form;

BAN Password means the password specified as such on the Application Form;

Business Day means a day on which banks are open for business in Sydney, excluding a Saturday, Sunday or a public holiday;

Business User Group means the VPN Fixed Line Numbers and VPN Mobile Connections selected by the Customer under this agreement to which the VPN Services will be available;

Charges means the Mobile Service Charges and the Hardware Charges and any other amounts charged by Vodafone to the Customer, as notified by Vodafone to

the Customer in the Tariff Sheets or other Vodafone tariff brochures provided on or before the Commencement Date or otherwise in writing;

Claim means any claim, action, proceeding or investigation of any nature or kind, and includes the allegation of a Claim;

Commencement Date means the date specified as such in the Application Form;

Competitor of Vodafone includes any person, body corporate, firm, trust, joint venture, partnership or other entity which from time to time:

- (a) is a "carrier" as that term is defined in the Telecommunications Act 1997 (Cth);
- (b) is a "service provider" as that term is defined in the Telecommunications Act 1997 (Cth); or
- (c) directly or indirectly provides services for, on behalf of or with the permission of any entity which falls within this definition of Competitor of Vodafone,

and as part of its business sells, leases, licenses or otherwise provides airtime, mobile telephones and/or other products or services relating to mobile, satellite or other portable hand-held telephones;

Confidential Information of a party means any information:

- (a) regarding the business or affairs of that party or its Related Companies;
- (b) regarding the customers, employees or contractors of, or other persons doing business with, that party or its Related Companies;
- (c) regarding the terms of this agreement, or the commercial arrangements between the parties;
- (d) which is by its nature confidential or which is designated as confidential by that party; or
- (e) which the other party knows, or ought to know, is confidential;

Content means any music, video, text, data, software, information, service or other content which a Mobile User may access, use, receive, download, upload or transmit by use of the Mobile Services;

Content Provider means a third party that licenses or sells Content to Vodafone to provide Content to Customers using the Mobile Services;

Corporations Act means the Corporations Act 2001 (Cth);

Customer means the customer specified in the Application Form;

Customer Connection means each connection of a SIM Card to the Vodafone Network in the Customer's name for the purpose of Vodafone supplying one or more Mobile Services to the Customer, including supply to a Mobile User under this agreement, and which has not been Disconnected;

Customer Fixed Line Number means a corporate PSTN or ISDN number held in the name of the Customer;

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Customer Network means the private network or telecommunications system owned and/or operated by the Customer;

Customer PABX means the private automatic branch exchange forming part of the Customer Network;

Customer Representative means the person so named in the Application Form or such other representative of the Customer as may be notified to Vodafone by the Customer from time to time;

Data Bundle is a selection of rates that apply according to volume of use of Value Added Mobile Services to send, receive and access email, internet, PXT services and similar services;

Disconnection means any disconnection of a Customer Connection from the Vodafone Network, and includes the porting of a mobile number of a Customer Connection from the Vodafone Network to any other network unless Vodafone allocates a new mobile number to that Customer Connection and Disconnect has a corresponding meaning;

Dispute has the meaning given in clause 25.1(a);

Dispute Notice has the meaning given in clause 25.1(c);

Dispute Representative has the meaning given in clause 25.2(a);

Early Exit Fee means the amount payable by a Customer upon Disconnection of a Customer Connection. The Early Exit Fee is calculated, per Customer Connection, by multiplying fifty (50) per cent of the Minimum Spend Amount, by the remaining months left of the Minimum Commitment Period, unless otherwise specified in the Tariff Sheets;

Escalation Representative has the meaning given in clause 25.2(a);

Excluded Loss means:

- (a) any:
 - (1) loss of profits;
 - (2) loss of revenues;
 - (3) loss of anticipated savings;
 - (4) loss of data;
 - (5) loss of reputation;
 - (6) loss of goodwill;
 - (7) lost opportunities, including opportunities to enter into or complete arrangements with third parties;
 - (8) loss of management time;
 - (9) except as expressly otherwise provided in this agreement, loss or damage sustained by the Customer in connection with any Claim against the Customer or a Mobile User brought by a third party; or
 - (10) loss of business;
- (b) any loss, not arising naturally (that is, according to the usual course of things), from the relevant breach, whether or not such loss is to reasonably be supposed to have been in the contemplation of both parties, at the time they made the contract, as the probable result of the relevant breach;

Force Majeure Event means an event or circumstance beyond the reasonable control of Vodafone, including any act of God, civil disorder, war, revolution or any other unlawful act against public order or authority, national or local emergency, fire, flood, earthquake, cyclone, explosion, loss of power, strike, industrial action, or the act or omission of any Government Agency;

Government Agency means any government or any governmental, semi-government, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity;

GPRS means General Packet Radio Service;

GPRS Compatible Device means Hardware specified by Vodafone to be compatible with GPRS;

GSM means the global system for mobile digital mobile service provided using the Vodafone Network;

GSM Handset means Hardware specified by Vodafone to be compatible with GSM;

GST means goods and services tax or similar value added tax levied or imposed in Australia pursuant to the GST Law or otherwise on a supply;

GST Act means A New Tax System (Goods and Services Tax) Act 1999 (Cth);

GST Law has the same meaning as in the GST Act;

Hardware means the handsets, accessories and other equipment used to access the Mobile Services;

Hardware Charges means the purchase prices, delivery charges and any other charges for Hardware, as varied by Vodafone from time to time;

Insolvency Event in relation to a party (**insolvent party**) means:

- (a) a judgment in an amount exceeding \$100,000 is obtained against the insolvent party, or any distress, attachment, execution or other process of a Government Agency in an amount exceeding \$100,000 is issued against, levied or enforced on any of the insolvent party's assets, and is not set aside or satisfied within five Business Days;
- (b) the insolvent party suspends payment of its debts generally, or is or becomes unable to pay its debts when they are due, or is or becomes unable to pay its debts within the meaning of the Corporations Act;
- (c) the insolvent party enters into, or resolves to enter into, any arrangement, composition or compromise with, or assignment for the benefit of, its creditors or any class of them;
- (d) the insolvent party ceases, or threatens to cease, to carry on business; or
- (e) a receiver, receiver and manager, administrator, trustee or similar official is appointed over any of the insolvent party's assets or undertakings, an application or order is made for the winding up or dissolution of the insolvent party, or a resolution is passed or any steps are taken to pass a resolution for the winding up or dissolution of the insolvent party, except for the purpose of an amalgamation or reconstruction which has the other party's

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prior consent;

Intellectual Property Rights means any industrial and intellectual property rights throughout the world and for the duration of the rights including:

- (a) any patents, copyright including future copyright, registered or unregistered trade marks or service marks, trade names, brand names, registered or unregistered designs, commercial names, circuit layouts, database rights;
- (b) any inventions, discoveries, processes, methods, trade secrets, know-how, computer software, confidential information and scientific, technical and product information;
- (c) the right to apply for any industrial and intellectual property rights; and
- (d) any other similar or analogous rights and any intellectual or industrial rights whether now existing or which come into existence in the future;

Internet TXT Mobile Service means any service offered by Vodafone which enables the Customer to send TXT messages using the Internet;

Invalid Number means a number in the VPN Private Numbering Plan which is not a Customer Fixed Line Number or a Customer Connection for Mobile Services;

Interest Rate means a rate of 2% above the 30 day Bank Bill Swap Reference Rate: Average Bid quoted in the Australian Financial Review on the due date of the relevant overdue payment or if no such rate is quoted on the due date, the rate quoted on the day preceding the due date;

ISDN means integrated services digital network;

Law means any:

- (a) legislation, including regulations, determinations, by-laws, declarations, ministerial directions and other subordinate legislation;
- (b) common law;
- (c) Government Agency requirement or authorisation (including conditions in respect of any authorisation);
- (d) mandatory codes, standards and guidelines;
- (e) writ, order, injunction, or judgment; or
- (f) local government legislation, including regional plans, district plans, regulations, by-laws, declarations, ministerial directions and other subordinate legislation;

Malicious Communication means any call or message that is intended to cause, or has the effect (as such may be contemplated by a reasonable person) of causing, the recipient to feel harassed, abused or offended;

Minimum Commitment Period means the minimum fixed term of each Customer Connection, if any, as specified in the Application Forms, Mobile Service Specific Terms or otherwise notified to the Customer by Vodafone;

Minimum Spend Amount means the minimum amount that the Customer is required to spend in respect of each Customer Connection each month, (in addition to any monthly access fees), if any, as specified in the Application Forms, Mobile Service Specific Terms or otherwise notified to

the Customer by Vodafone;

Mobile Service Area means the geographic area in Australia within which the Vodafone Network and interconnected networks operate from time to time;

Mobile Service Charges means the Mobile Services charges specified in the Tariff Sheets, as varied by Vodafone in accordance with this agreement from time to time;

Mobile Services means the mobile services nominated by the Customer in the Application Form and as described in Schedule 1 and Schedule 2, as varied in accordance with this agreement from time to time;

Mobile Service Specific Terms means the terms that relate to specific Mobile Services as set out in Schedule 1;

Mobile User means an employee, agent or contractor of the Customer who accesses or uses the Mobile Services through a Customer Connection, as approved by the Customer;

Personal Information has the meaning given to it in the Privacy Act;

Personnel means, in relation to a party, that party's employees, agents, consultants and subcontractors;

Prepay Account means an account that Vodafone creates which shows the amount of credits the Prepay Customer has at any one time;

Prepay Customer means a Customer that prepays for the Mobile Services;

Privacy Act means the Privacy Act 1988 (Cth), the National Privacy Principles contained in schedule 3 to the Act and any regulations, ancillary rules, guidelines, orders, directions, directives or other instrument made or issued thereunder;

Privacy Policy means the Vodafone privacy policy set out on Vodafone's website, www.vodafone.com.au, as varied by Vodafone from time to time;

Privacy Requirements means those provisions of:

- (a) the Privacy Act;
- (b) the Privacy Policy; and
- (c) all other applicable laws, regulations and registered codes,

which apply to Personal Information Processed in connection with this agreement;

Processing includes collecting, recording, organising, storing, adapting, altering, retrieving, consulting, using, disclosing, making available, combining, blocking, erasing and destroying;

PSTN means Public Switched Telephone Network;

PXT message means the Value Added Mobile Service which is described as PXT;

Reasonable Notice means providing the relevant information in writing by any of the following methods:

- (a) delivering the information to the Customer in person;
- (b) sending the information by pre-paid post to the address listed in Vodafone's records for the relevant Customer;
- (c) transmitting the information to the Customer's electronic mail address if the Customer:
 - (1) has an electronic mail address; and

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- (2) has consented to Vodafone sending the information to the Customer at that address;
- (d) including the information on or in the Customer's bill, including a bill made available to the Customer in electronic format via the Vodafone's website, where the Customer has expressly consented to receiving the bill in that format; or
- (e) by making the information available to the Customer on Vodafone's website or at a retail outlet of Vodafone and informing the Customer (by means of a text message, or in writing) how the Customer can obtain the information;

Related Company means a related body corporate as that expression is defined in the Corporations Act;

SAC means the VPN Service Access Code provided to the Customer by Vodafone;

Service Provider Network means the service provider telecommunications network (excluding the Vodafone Network) used by the Customer for non-mobile telecommunications;

SIM Card means a subscriber identity module supplied by Vodafone to the Customer, which is to be used with Hardware to enable a Mobile User to access and use the Mobile Services;

Subsidiary has the meaning given in the Corporations Act;

Suspension Event means the suspension by Vodafone or a member of the Vodafone Group of one or all of the Mobile Services or suspension of the operation of the Vodafone Network because:

- (a) Vodafone is required or instructed to do so by a governmental body or statutory authority, including but not limited to:
 - (1) an order, instruction or request of government, the Australian Communications and Media Authority, emergency services or other Government Agency;
 - (2) the issue of a competition notice by the Australian Competition and Consumer Commission (ACCC), a change in a carrier licence condition of Vodafone, the declaration of a service by the ACCC; or
 - (3) any applicable Law;
- (b) of emergency circumstances including for the provision of support to emergency and other essential services;
- (c) of technical factors beyond its reasonable control, including but not limited to circumstances necessary to avoid the risk of harm to human health or safety which mean Vodafone is unable to supply one or all of the Mobile Services; ; or
- (d) it is reasonably likely that an act or omission of the Customer will impair or adversely affect the quality of one or all of the Mobile Services or any part of one or all of the Mobile Services or the operation of the Vodafone Network;

Tariff Sheets means the tariff sheets provided by Vodafone to the Customer prior to the Commencement Date which specify the applicable Mobile Service Charges and/or Hardware Charges;

Technical Standards means technical standards for the operation, maintenance and configuration of telecommunications networks made by the Australian Media and Communications Authority;

Telecommunications Act means the Telecommunications Act 1997 (Cth);

TXT message means the Value Added Mobile Service known as TXT or otherwise known as short message service;

UMTS means Universal Mobile Telecommunications Service which includes but is not limited to a third-generation (3G) broadband , packet -based transmission of text, digitized voice, video, and multimedia at data rates up to 2 megabits per second of mobile telecommunications technology;

UMTS Compatible Device means Hardware specified by Vodafone to be compatible with UMTS;

User Guide means any user guide relating to the Mobiles Services issued by Vodafone to the Customer, as amended by Vodafone from time to time;

Value Added Mobile Services means special services including GPRS and any other value added mobile services set out in the User Guide (if any) or otherwise offered by Vodafone from time to time;

Vodafone means Vodafone Pty Limited ABN 76 062 954 554 of 799 Pacific Highway, Chatswood, NSW 2067;

Vodafone Fair Use Policy means the Vodafone Fair Use Policy set out on Vodafone's website, www.vodafone.com.au, as varied by Vodafone from time to time;

Vodafone Group means Vodafone Group plc and any company in which Vodafone Group plc (directly or indirectly) owns more than 15 per cent of the issued share capital;

Vodafone Network means the mobile telecommunications networks operated by Vodafone Network Pty Limited ABN 31 081 918 461;

Vodafone Representative means the person so named in the Application Form or such other representative of Vodafone as may be notified to the Customer by Vodafone from time to time;

VPN Fixed Line Number means a fixed line number of the Customer which is part of the VPN Private Numbering Plan;

VPN Fixed to Mobile Call means a call from a Fixed Line Number in the Customer's VPN Private Numbering Plan to a mobile number;

VPN Internet Provisioning Service means the VPN internet provisioning service offered by Vodafone from time to time;

VPN Mobile Connection means a Mobile Connection of the Customer which is part of the VPN Private Numbering Plan;

VPN Mobile Originating Call means a call made from a VPN Mobile Connection;

VPN Private Numbering Plan means the list of Customer Fixed Line Numbers and VPN Mobile Connections (known as a Business User Group) selected by the Customer under this agreement to which the VPN Services will be available;

VPN Security Login means the security login issued to the Customer for access to the VPN Internet Provisioning Service;



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VPN Services means the virtual private network Mobile Services provided by Vodafone from time to time; and

Year means a 12 month period commencing on the Commencement Date or anniversary of the Commencement Date during the term of this agreement.

2.2 Interpretation

- (a) In this agreement, headings and bold type are for convenience only and do not affect the interpretation of this agreement and, unless the context otherwise requires:
 - (1) words importing the singular include the plural and vice versa;
 - (2) other parts of speech and grammatical forms of a word or phrase defined in this agreement have a corresponding meaning;
 - (3) words importing a gender include any gender;
 - (4) an expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body corporate and any Government Agency;
 - (5) a reference to a clause, party, annexure or schedule is a reference to a clause of, and a party, annexure and schedule to, this agreement and a reference to this agreement includes any annexure and schedule;
 - (6) a reference to a statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws amending, consolidating or replacing it, whether passed by the same or another Government Agency with legal power to do so, and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute;
 - (7) a reference to a party to a document includes that party's successors and permitted assigns;
 - (8) a reference to an agreement includes an undertaking, deed, agreement or legally enforceable arrangement or understanding whether or not in writing;
 - (9) a reference to this agreement means these Business Customer Terms and Conditions;
 - (10) a reference to A\$ and \$ means the lawful currency of Australia; and
 - (11) a reference to time is to the time in New South Wales, Australia.
- (b) No provision of this agreement will be construed adversely to a party solely on the ground that the party was responsible for the preparation of this agreement or that provision.
- (c) Unless otherwise expressly stated, including means "including but not limited to" and "include" and "includes" have corresponding meanings.
- (d) Where the day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the next Business Day.

3 Mobile Services

3.1 Supply of Mobile Services

- (a) Vodafone must supply the Mobile Services to the Customer in accordance with the terms of this agreement.
- (b) If the Customer requests Vodafone to supply additional Mobile Services and Vodafone agrees to do so, Vodafone must supply the additional Mobile Services on the terms of this agreement and any additional terms notified by Vodafone to the Customer.

3.2 Variation of Mobile Services

- (a) Subject to clause 10.2, Vodafone may vary the characteristics of any Mobile Service, including price:
 - (1) without notice, if the variation is likely to benefit the Customer or have a neutral or minor detrimental impact on the Customer; or
 - (2) by giving notice in writing to the Customer not less than 21 days prior to the date on which the variation is intended to take effect if the variation is other than as described in clause 3.2(a)(1).
- (b) If Vodafone varies or amends any characteristics of the Mobile Services pursuant to clause 3.2(a)(2), Vodafone will offer the Customer the right to terminate the agreement within 42 days of the notice without incurring fees or charges other than:
 - (1) usage or network access charges incurred up to the date the agreement ends; and
 - (2) any outstanding amounts that cover installation costs or Hardware (where that Hardware can be used in connection with services supplied by other suppliers).

3.3 Customer Connections

- (a) The Customer may access and use the Mobile Services through the Customer Connections.
- (b) The Customer is responsible for use of the Mobile Services through any Customer Connection, including payment of all Charges accrued in relation to the Customer Connection, whether or not such use was authorised by the Customer.
- (c) The Customer may request and Vodafone may agree to supply the Mobile Services to additional Customer Connections on the terms of this agreement and any additional terms notified by Vodafone to the Customer.
- (d) To create additional Customer Connections an Authorised Person of the Customer must contact Vodafone and follow Vodafone's procedures for creation of additional Customer Connections, as varied from time to time.
- (e) The Customer acknowledges and agrees that if Vodafone complies with a request to create additional Customer Connections from a person who purports to be an Authorised Person and who quotes the Customer's BAN Password, Vodafone will deem the request to be properly authorised by the Customer and the Customer will be

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responsible for all Charges associated with the request, even if the request is not in fact authorised by the Customer.

- (f) The Customer must maintain the minimum number of Customer Connections as detailed in the Application Form for the Minimum Commitment Period. The Customer remains liable for the Minimum Spend Amounts for the minimum number of Customer Connections even if the minimum Customer Connections are not maintained by the Customer throughout the Minimum Commitment Period.

3.4 Disconnections

- (a) Vodafone must disconnect a Customer Connection promptly after Vodafone's receipt of a notice from the Customer requesting Vodafone to Disconnect the Customer Connection.
- (b) On Disconnection of a Customer Connection, the Customer must pay to Vodafone:
 - (1) all Charges due and payable to Vodafone in respect of that Customer Connection up to and including the date of Disconnection; and
 - (2) an Early Exit Fee, if the Disconnection occurs before the expiry of the Minimum Commitment Period for that Customer Connection.

4 Hardware

4.1 Hardware

If the Customer requests Vodafone to supply Hardware to the Customer and Vodafone agrees to do so, Vodafone must supply the Hardware on the terms of this agreement and such other terms as may be notified by Vodafone to the Customer.

4.2 Delivery

- (a) Vodafone must deliver Hardware to the Customer at the delivery location agreed by the parties (**Delivery Location**).
- (b) Vodafone is not liable to the Customer for any delay in delivery of any Hardware.

4.3 Title to & risk in Hardware

- (a) Risk of loss of or damage to Hardware passes to the Customer on delivery of the Hardware to the Delivery Location.
- (b) Title to Hardware passes to the Customer when the Customer pays the Charges for the Hardware to Vodafone in accordance with clause 10.

4.4 Manufacturer warranties

- (a) Vodafone assigns, to the extent that it is lawfully able to do so, to the Customer the benefit of any warranties given to Vodafone by the manufacturer of any Hardware supplied by Vodafone under this agreement.
- (b) To the full extent permitted by Law, Vodafone will not provide the Customer with any warranties or guarantees in addition to those specified in clause 4.4(a) in relation to Hardware.

4.5 Additional Hardware

- (a) To purchase additional Hardware an Authorised Person of the Customer must contact Vodafone and follow Vodafone's procedures for purchase of additional Hardware, as varied from time to time.
- (b) The Customer acknowledges and agrees that if Vodafone complies with a request to purchase additional Hardware from a person who purports to be an Authorised Person and who quotes the Customer's BAN Password, Vodafone may treat the request as having been properly authorised by the Customer and the Customer will be responsible for all Charges associated with the request, even if the request is not in fact authorised by the Customer.

5 SIM Cards

- (a) Vodafone grants the Customer a licence to use SIM Cards, but does not transfer title to the SIM Cards to the Customer.
- (b) The Customer must:
 - (1) keep the SIM Cards in its possession or within its control;
 - (2) keep the SIM Cards in good condition;
 - (3) return any SIM Card to Vodafone immediately on request; and
 - (4) notify Vodafone immediately of any loss of or damage to any SIM Card.

6 Handset and SIM Blocking

- (a) Within 20 Business Days from the Customer advising Vodafone that a SIM and/or GSM Handset of the Customer has been lost or stolen, the Customer may request Vodafone to block the SIM and/or GSM Handset. If a SIM and/or GSM Handset is blocked it will not be able to be used on the Vodafone Network to:
 - (1) make or receive voice calls (except calls to emergency "000" and "112" numbers); or
 - (2) send or receive TXT or PXT messages.
- (b) Vodafone will not block a GSM Handset where:
 - (1) to Vodafone's knowledge, the GSM Handset shares an international mobile equipment identity number with another GSM Handset connected to the Vodafone Network; or
 - (2) to do so would adversely impact upon another person's use of the Mobile Services in good faith.
- (c) The Customer acknowledges that SIM and/or GSM Handset blocking is at all times subject to technical limitations.

7 Service Limitations

The Customer agrees that:

- (a) a Mobile User's ability to access and use any particular Mobile Service will depend upon the features and functionality of the Hardware used;
- (b) the Mobile Services are not available outside the Mobile Service Area;

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- (c) within the Mobile Service Area, there may be some areas in which the one or more Mobile Services are not available, including where a Mobile User is required to roam on an interconnected network; and
- (d) the Mobile Services are not free from faults, drop-outs or interruptions.

8 Content

8.1 Functionality - Content

The Customer acknowledges and agrees that Content may not be able to be sent or received, or that sending or receipt of Content may be delayed, if:

- (a) the Hardware of the Mobile User is not switched on at the time the Content is sent by the sender of the Content;
- (b) the Hardware of the Mobile User or SIM is full of Content or otherwise has insufficient memory to enable it to receive the Content;
- (c) the Hardware of the Mobile User does not have the necessary technical capability to enable it to receive the Content;
- (d) the Hardware of the Mobile User is not in the Mobile Service Area;
- (e) the mobile device or other receiving device of the recipient is not switched on at the time the Content is sent;
- (f) the mobile device or other receiving device of the recipient has insufficient memory to enable it to receive the Content;
- (g) the mobile device or other receiving device of the recipient does not have the necessary technical capability to enable it to receive the Content;
- (h) the mobile device or other receiving device of the recipient is not in an area where the telecommunications network of their supplier provides coverage; or
- (i) the telecommunications network of the recipient's supplier of telecommunications services is congested or has faults or interruptions.

8.2 Content Services

- (a) The Customer agrees that its ability to use the Mobile Services to access, use, download and upload or send Content will depend upon the features and functionality of the Hardware used by the Customer and the nature and quality of the Content being accessed or sent.
- (b) Vodafone does not give any assurance as to, and is not liable in respect of, the currency, availability, accuracy, security or quality of the Content.
- (c) Vodafone does not provide any security (such as encryption) over any Content.
- (d) Vodafone does not conduct virus checks on Content.
- (e) Vodafone is not obliged to check the Content for accuracy or any other purpose, or monitor access to Content or usage of the Mobile Services, although it is entitled to do so.

- (f) Some Content accessed through Vodafone may not be current due to delays by third parties in giving such Content, or information which is needed to compile such Content, to Vodafone.

- (g) Vodafone may be required to substantially Adapt the visual and/or audio impression of, or underlying code of any:

- (1) Content, the format of which is not compatible with the Customer's mobile device, in order to deliver it (or a part of it) to the Customer's mobile device; or
- (2) Content sent, the format of which is not compatible with the receiving device of the recipient of the Content, in order to deliver it (or part of it),

and the Customer consents to Vodafone making any such Adaptation as Vodafone considers is reasonably required, and to any temporary copying undertaken in the process of delivery.

- (h) The Customer is responsible for any reliance on or use of the Content received and any Content sent.
- (i) The Customer acknowledges that some Content may be offensive, obscene or disturbing to the Customer.
- (j) The Customer is responsible for ensuring that any third parties who hold copyright or any other Intellectual Property Rights in any Content being sent by the Customer or any other person from a Customer Connection has consented to the Content being sent and any Adaptation which may result from it.

8.3 Obligations regarding Content

- (a) The Customer must comply, and must ensure that each Mobile User complies, with any rules imposed by a Content Provider whose Content the Customer accesses using the Mobile Services.
- (b) The Customer must only use, and must ensure that each Mobile User only uses, the Content for personal and non-commercial purposes, and not otherwise copy, publish, re-distribute, re-communicate or commercially exploit the Content in any form or by any method (unless the Content Provider's rules state otherwise).

8.4 Variations in Charges due to Adaptations of Content

- (a) The Customer acknowledges that due to any Adaptations to Content Vodafone makes in accordance with this agreement:
 - (1) the size of any Content a Mobile User receives may be substantially different from that which was sent; and
 - (2) the size of any Content sent by a Mobile User may be substantially different from that which is received by the person to whom it is sent.
- (b) The Customer agrees that, unless otherwise specified, Vodafone will charge the Customer in respect of:
 - (1) the size of the Content received by a Mobile User; and
 - (2) the size of any Content delivered to the person to whom it is sent.

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9 User Obligations

- 9.1** When using Mobile Services, the Customer must comply with, and must ensure that the Mobile Users comply with:
- (a) Vodafone's reasonable instructions;
 - (b) the User Guides;
 - (c) the Vodafone Fair Use Policy; and
 - (d) any licence terms of any third party provider of Content.
- 9.2** The Customer must ensure that Mobile Users, when using the Mobile Services, only use devices approved by Vodafone for use on the Vodafone Network.
- 9.3** The Customer must ensure that Mobile Users are informed and consent to Vodafone's rights to collect Personal Information about the Mobile User in accordance with clause 20.
- 9.4** The Customer must not, and must ensure the Mobile Users do not:
- (a) use the Mobile Services:
 - (1) in contravention of any applicable Law;
 - (2) in any manner that is offensive, immoral, indecent, pornographic, racist, menacing, threatening or abusive or likely to damage the reputation of Vodafone;
 - (3) in any manner that is defamatory or tortious or constitutes a breach of contract, confidence or Intellectual Property Rights;
 - (4) in any publicity or other promotional activity, state or imply any approval by Vodafone of any activities or use of the Mobile Services by the Customer or refer to Vodafone in any way without the prior written approval of Vodafone;
 - (5) in a way that interferes with the use of the Mobile Services by other customers of Vodafone;
 - (6) to create, initiate or send Malicious Communications;
 - (7) to create, initiate or send unsolicited communications for fraudulent, deceptive or misleading purposes;
 - (8) to create, initiate or send unsolicited communications for marketing or advertising purposes without lawful grounds; or
 - (9) to make any hoax call, including to an emergency service, or transmit any material that is misleading or deceptive as to the identity of the Mobile User;
 - (b) interfere with the use of the Vodafone Network by other customers of Vodafone;
 - (c) do anything that is likely to damage the Vodafone Network or any network that is connected to the Vodafone Network; or
 - (d) re-sell, re-supply, distribute or otherwise commercially exploit the Mobile Services or engage in conduct which would deem the

Customer a "Carriage Service Provider" as defined by the Telecommunications Act.

- 9.5** Any complaints made against the Customer or a Mobile User in respect of any of the above may be investigated and may involve Vodafone cooperating with the police or other authorities, including providing the police or other authorities with evidence and information about the Customer, the Mobile User and the complaint.
- 9.6** Vodafone may terminate this agreement, or any particular Mobile Service, if Vodafone is reasonably satisfied, having investigated the complaint, that the Customer or a Mobile User has breached the prohibitions in clause 9.4.
- 9.7** This right of termination is not dependent on the outcome of any proceedings by the police or other authorities.

10 Charges

10.1 Charges

- (a) The Customer must pay:
 - (1) the Mobile Service Charges;
 - (2) additional charges in respect of roaming by Mobile Users on networks other than the Vodafone Network; and
 - (3) the Hardware Charges for any Hardware supplied under this agreement.
- (b) Vodafone may round up Charges to the nearest cent.

10.2 Variations

- (a) Vodafone may, by notifying the Customer, vary the Hardware Charges.
- (b) International roaming charges are variable. Vodafone may vary the Charges in respect of international roaming on networks other than the Vodafone Network from time to time. The Customer may contact Vodafone to obtain current price information prior to using international roaming.
- (c) Charges in respect of international services on networks other than the Vodafone Network are variable. Vodafone may vary the Charges in respect of international services on networks other than the Vodafone Network from time to time. The Customer may contact Vodafone to obtain current price information prior to using international services.
- (d) Vodafone is reliant on third parties that are Content Providers to provide some of the Content. Vodafone may vary the price of Content at any time where the variation results from an increase in price from a Content Provider to Vodafone, provided that:
 - (1) within a reasonable period of any proposed increase in price Vodafone must provide Reasonable Notice to the Customer if the Customer has used the relevant Content service within the previous six months; and
 - (2) the Customer may elect not to use the

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Content service without attracting any additional charges for making that election.

- (e) Vodafone may, at any time after the expiry of the Minimum Commitment Period, vary the Mobile Service Charges by giving the Customer not less than 21 days Reasonable Notice.

10.3 Payment

- (a) The Customer must pay the amounts payable under this agreement within 20 Business Days after the date Vodafone issues an invoice in respect of such amounts.
- (b) The Customer must make such payments without:
 - (1) set-off; or
 - (2) any deduction or withholding, except as required by applicable Law.

10.4 Payment dispute

- (a) If the Customer disputes that any amount invoiced by Vodafone under this agreement is payable, the Customer must:
 - (1) notify Vodafone of the dispute within 14 calendar days of the date Vodafone issued the invoice; and
 - (2) pay to Vodafone any invoiced amounts that are not in dispute.
- (b) If it is determined that the disputed amount is payable by the Customer, the Customer must immediately pay to Vodafone the disputed amount plus interest on the disputed amount calculated in accordance with clause 10.5.

10.5 Interest

The Customer must pay interest on any amount that is due and payable but unpaid to Vodafone under this agreement, calculated daily at the Interest Rate from the due date until the date on which it is paid.

10.6 Records

The Charges payable by the Customer will be calculated by reference to data recorded or logged by Vodafone or the operator of any interconnected network and such data will be conclusive evidence of the Customer's usage of the Mobile Services.

11 GST

- (a) Words used in this clause 11 which have a defined meaning in the GST Law, have the same meaning as in the GST Law unless the context otherwise indicates.
- (b) Unless expressly included, the consideration for any supply under or in connection with this agreement does not include GST.
- (c) To the extent that any supply made under or in connection with this agreement is a taxable supply, the recipient must pay, in addition to the consideration to be provided under this agreement for that supply (unless it expressly includes GST) an amount equal to the amount of that consideration (or its GST exclusive market value) multiplied by the rate at which GST is imposed in respect

of the supply. The additional consideration is payable at the same time and in the same manner as the consideration to which it relates.

- (d) The supplier must issue a tax invoice to the recipient of the supply at the time of payment of the GST inclusive consideration or at such other time as the parties agree.
- (e) Where the recipient of a supply under this agreement has an adjustment event that decreases the amount of GST that the recipient is required to remit to the Commissioner of Taxation, the supplier shall issue to the recipient an adjustment note in accordance with the GST Law within 14 days of becoming aware of the need to make the adjustment.
- (f) If either party is entitled under this agreement to be reimbursed or indemnified by the other party for a cost or expense incurred in connection with this agreement, the reimbursement or indemnity payment must not include any GST component of the cost or expense for which an input tax credit may be claimed by the party being reimbursed or indemnified, or by its representative member.

12 Suspension of services

12.1 Suspension of a Customer Connection or Mobile Services

- (a) Vodafone may, without notice to the Customer, suspend any Customer Connection or suspend access to any Mobile Services through any Customer Connection, if:
 - (1) in Vodafone's opinion, the Charges accrued in relation to that Customer Connection are unusually high as described under the Vodafone Fair Use Policy;
 - (2) the Customer is in material breach of this agreement;
 - (3) for a reasonable period for maintenance, repair or similar operational reasons;
 - (4) there are reasonable grounds for suspecting fraud or other illegal conduct in relation to the services supplied under this agreement by the Customer or any other person using the Mobile Services or conduct that breaches the prohibitions in clause 9.4;
 - (5) a Force Majeure Event occurs;
 - (6) a Suspension Event occurs;
 - (7) the Customer does not pay any invoice by the due date; or
 - (8) the Customer re-sells any of the Mobile Services supplied under this agreement or otherwise engages in conduct which deems the Customer to be a carriage service provider within the meaning of the Telecommunications Act.
- (b) Vodafone may suspend any Customer Connection or suspend access to any Mobile Services through any Customer Connection after taking reasonable steps to give notice to the Customer of the suspension if there are reasonable grounds for believing the Customer represents a credit risk in relation to the Mobile Services

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supplied under this agreement.

- (c) If Vodafone suspends access to the Mobile Services through a Customer Connection pursuant to clause 12.1(a) or 12.1(b) but does not suspend the Customer Connection, the Customer continues to be liable to pay any Charges payable in relation to the Customer Connection during the period of suspension.
- (d) If the Customer notifies Vodafone that the SIM Card for a Customer Connection has been lost or stolen:
 - (1) Vodafone must promptly suspend access to the Mobile Services through that Customer Connection; and
 - (2) the Customer is responsible for all Charges accrued in relation to that Customer Connection until it is suspended.
- (e) If Vodafone suspends a Customer Connection or access to Mobile Services through any Customer Connections pursuant to clause 12.1(a)(3), 12.1(a)(4), 12.1(a)(5) or 12.1(a)(6), Vodafone must use its reasonable endeavours to recommence supply of the Customer Connection or access to Mobile Services, as soon as practicable.

12.2 Consequences of suspension

Nothing in clause 12.1(c) excludes or limits any right the Customer may have to a pro-rata refund, as determined by Vodafone acting reasonably, of relevant Charges (not including any monthly connection fee) for the period the Mobile Service is suspended, unless the suspension is:

- (a) at the Customer's request;
- (b) for the Customer's material breach of the agreement;
- (c) for a system or network outage that results in the Mobile Service being inaccessible for an insignificant period; or
- (d) because Vodafone has reasonable grounds to believe that the Customer represents a credit risk in relation to the relevant component of the services offered under this agreement.

13 Term and termination

13.1 Term

- (a) This agreement commences on the Commencement Date and continues until terminated in accordance with its terms.
- (b) Either party may terminate this agreement with effect no earlier than the expiry of the Minimum Commitment Period by giving not less than 30 calendar days notice to the other party.

13.2 Termination by Customer

The Customer may terminate this agreement immediately by notice to Vodafone if:

- (a) Vodafone breaches its obligations under this agreement and:
 - (1) the breach is material and cannot be remedied; or
 - (2) the breach can be remedied, but Vodafone does not remedy it within 30 calendar days of receipt of a

notice from the Customer specifying the breach and requiring the breach to be remedied;

- (b) Vodafone suffers an Insolvency Event; or
- (c) Vodafone suspends a Customer Connection or access to the Mobile Services pursuant to clauses 12.1(a)(3), 12.1(a)(5) or 12.1(a)(6) for a period of 30 calendar days or more.

13.3 Termination by Vodafone

Vodafone may terminate this agreement immediately by notice to the Customer if:

- (a) the Customer fails to pay any:
 - (1) undisputed amount owing to Vodafone within 30 calendar days from the due date for payment; or
 - (2) disputed amount owing to Vodafone which is subsequently found to be payable by the Customer within 30 calendar days from the date the dispute is resolved;
- (b) the Customer breaches its obligations under this agreement and:
 - (1) the breach is material and cannot be remedied; or
 - (2) the breach can be remedied, but the Customer does not remedy it within 30 calendar days of receipt of a notice from Vodafone specifying the breach and requiring the breach to be remedied;
- (c) the Customer suffers an Insolvency Event and Vodafone has a reasonable belief that it is unlikely to receive or retain payment for amount owing to Vodafone;
- (d) if the Customer Connection is ported to a supplier other than Vodafone in accordance with clause 18.2;
- (e) the Customer, or any of its directors or officers, is convicted of a serious criminal offence;
- (f) the Customer, in the reasonable opinion of Vodafone, brings any member of the Vodafone Group into disrepute;
- (g) Vodafone determines that it will cease to offer all the Mobile Services in the Australian mobile telecommunications market;
- (h) Vodafone has reasonable grounds to suspect fraud or other illegal conduct in relation to the Mobile Services supplied under this agreement, by the Customer or any other person using the Mobile Services, or conduct that breaches the prohibitions in clause 9.4;
- (i) Vodafone suspends a Customer Connection or access to the Mobile Services or access to them pursuant to clauses 12.1(a) or 12.1(b) for a period of 30 calendar days or more;
- (j) any licence, authorisation, consent, approval or permit required by Vodafone to supply the Mobile Services cannot be obtained from, or is withdrawn by, any Government Agency or other third party, or it is not commercially practicable to obtain or maintain any such licence, authorisation, consent, approval or permit;
- (k) the Customer becomes a Subsidiary of another corporation;
- (l) any Competitor of Vodafone;

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- (1) has or obtains (either itself or through its Associates) voting power in respect of not less than 20 per cent of all marketable securities (each as defined in the Corporations Act) issued by the Customer;
- (2) appoints one or more directors to the Customer's board; or
- (3) becomes able to materially influence the business decisions of the Customer.

13.4 Consequences of termination

On expiry or termination of this agreement:

- (a) Vodafone will cease to supply the Mobile Services and will Disconnect the Customer Connections;
- (b) the Customer must immediately pay to Vodafone all Charges due and payable to Vodafone, including any amounts referred to under clause 3.4(b);
- (c) each party must promptly return, or at the other party's direction destroy, any Confidential Information of the other party in its possession, custody or control; and
- (d) for Prepay Customers, Vodafone will cause any remaining unexpired credit in the Prepay Account to be refunded or applied to another Mobile Service or Customer Connection.

14 Warranties

14.1 Authority

Each party represents and warrants to the other party that:

- (a) its execution of this agreement has been properly authorised;
- (b) it is entitled to enter into this agreement and perform its obligations under this agreement;
- (c) this agreement constitutes a legal, valid and binding obligation on it enforceable in accordance with its terms by appropriate legal remedy;
- (d) this agreement does not conflict with or result in the breach of or default under any provision of its constitution or any provision of any law to which it is subject; and
- (e) to its knowledge there are no actions, claims, proceedings or investigations pending or threatened against it, or by it, which may have a material effect on the subject matter of this agreement.

14.2 Customer's acknowledgement

The Customer acknowledges that, other than as expressly set out in this agreement, no representations or warranties were made or given to it by Vodafone or any other person in relation to this agreement.

15 Customer indemnity

The Customer indemnifies Vodafone against any Claim made against Vodafone by any third party arising out of or in relation to use of Mobile Services, Hardware or Content by the Customer or any Mobile User, and any damage, loss, liability, cost, charge, expense, outgoing or payment which Vodafone

pays, suffers, incurs or is liable for in connection with any such Claim.

16 Liability

16.1 Subject to clauses 16.2 and 16.3:

- (a) Vodafone is not liable for any Excluded Loss suffered in connection with this agreement, whether arising under contract, tort (including negligence) or otherwise; and
- (b) the aggregate liability of Vodafone for loss or damage sustained by the Customer in connection with this agreement (whether the claim in relation to the loss or damage arises under statute, in contract or in tort) in any Year is limited to the greater of:
 - (1) the aggregate of the amounts paid by the Customer to Vodafone under this agreement in the period of 3 months immediately preceding the occurrence of the event which gave rise to the loss or damage under this agreement; and
 - (2) the amount that is three times the Minimum Spend Amount under this agreement.

16.2 If the Trade Practices Act 1974 (Cth) (TPA) or any other legislation implies a condition or warranty into this agreement in respect of goods or services supplied, and Vodafone's liability for breach of that condition or warranty may not be excluded but may be limited, clause 16.1 does not apply to that liability and instead Vodafone's liability for any breach of that condition or warranty is limited to:

- (1) in the case of a supply of goods, Vodafone doing any 1 or more of the following (at its election):
 - (A) replacing the goods or supplying equivalent goods;
 - (B) repairing the goods;
 - (C) paying the cost of replacing the goods or of acquiring equivalent goods; or
 - (D) paying the cost of having the goods repaired; or
- (2) in the case of a supply of services, Vodafone doing either or both of the following (at its election):
 - (A) supplying the services again; or
 - (B) paying the cost of having the services supplied again.

16.3 Nothing in this agreement is intended to exclude, restrict or modify rights which the Customer may have under the TPA or any other legislation which may not be excluded, restricted or modified by agreement.

17 Contract management

- (a) Vodafone must appoint the Vodafone Representative to supervise the performance of Vodafone's obligations under this agreement.
- (b) The Customer must appoint the Customer Representative to liaise with the Vodafone Representative.
- (c) The Vodafone Representative and the Customer Representative will serve as the principal interface between the parties with respect to all commercial

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issues relating to this agreement.

18 Compliance

18.1 Intercept

Vodafone may, at any time and in its absolute discretion monitor and intercept the Customers' or any Mobile User's use of the Mobile Services and Content if required by applicable Law.

18.2 Mobile numbers

- (a) The Customer may, at its cost, request Vodafone to port a mobile number from one mobile telecommunications service provider to another.
- (b) If the Customer makes such a request, the Customer appoints Vodafone as its agent for the purposes of completing any form authorising the porting of the mobile number on the Customer's behalf.
- (c) Vodafone is not liable to the Customer if Vodafone is required by Law to vary or withdraw any mobile number allocated to the Customer.

18.3 Calling number display

The Customer agrees that a mobile number will be sent to, and will be visible on the screen of the receiving device of, each person to whom:

- (a) a Mobile User makes a voice or data call, unless the call identity function is deactivated, either through a function on the Hardware (if it has the necessary technical capability) or on a call-by-call basis by dialling 1831, or such other number as may be in use to allow the blocking of call identity from time to time, before the number is dialled; and
- (b) a SMS or MMS message is sent, and that sending the mobile number with such a message cannot be deactivated.

19 Confidential Information

19.1 Confidentiality

- (a) Each party agrees to keep confidential, and not to use or disclose, other than as permitted by this agreement, any Confidential Information of the other party.
- (b) The obligation of confidence in clause 19.1(a) extends to Confidential Information provided to or obtained by a party before entering into this agreement.

19.2 Exclusions

The obligation of confidence in clause 19.1 does not apply to Confidential Information that is:

- (a) required to be disclosed by applicable law or the rules of any stock exchange upon which the recipient's securities are listed, provided that the recipient:
 - (1) discloses the minimum amount of Confidential Information required to satisfy the law or rules; and
 - (2) before disclosing any information, the recipient

provides a reasonable amount of notice to the discloser and exhausts all reasonable steps (whether required by the discloser or not) to maintain such Confidential Information in confidence;

- (b) in the public domain otherwise than as a result of a breach of this agreement or another obligation of confidence;
- (c) independently developed by the recipient; or
- (d) already known by the recipient independently of its involvement in this agreement or interaction with the other party and free of any obligation of confidence.

19.3 Permitted disclosures

- (a) Each party may disclose Confidential Information of the other party only on a "need-to-know" and confidential basis:
 - (1) with the prior written consent of the other party; or
 - (2) to its Personnel,for the exercise of rights or the performance of obligations under this agreement.
- (b) Each party who discloses Confidential Information of the other party pursuant to clause 19.3(a) must ensure that such information is kept confidential by the recipients.

19.4 Preventing disclosures

Each party must take all steps and do all such things as may be reasonably necessary, prudent or desirable in order to safeguard the confidentiality of the Confidential Information of the other party.

19.5 Remedies for breach

- (a) Each party acknowledges that the value of the other party's Confidential Information is such that an award of damages or an account of profits may not adequately compensate if this clause 19 is breached.
- (b) Each party acknowledges that, without in any way compromising its right to seek damages or any other form of relief in the event of a breach of this clause 19, a party may seek and obtain an ex-parte interlocutory or final injunction to prohibit or restrain the other party or its Personnel from any breach or threatened breach of this clause 19.

20 Privacy

20.1 The Customer acknowledges that in order for Vodafone to comply with its obligations under this agreement, Vodafone may from time to time collect Personal Information from the Customer, including the Personal Information of Mobile Users.

20.2 The Customer must provide all required notices to and obtain all necessary consents from all individuals, including Mobile Users, to permit Vodafone to Process all Personal Information obtained by it in accordance with the Privacy Requirements and this clause.

20.3 The Customer consents to Vodafone's collection, use and disclosure of Personal Information collected from the Customer for purposes including:

- (a) assessing creditworthiness;

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- (b) all purposes associated with the provision of mobile telecommunications products and services to the Customer, including billing and account management;
- (c) implementing this agreement;
- (d) business planning and product development;
- (e) assisting law enforcement agencies in relation to the enforcement of criminal and other laws;
- (f) assisting in internal investigations conducted by Vodafone into suspected fraud, misuse of the Mobile Services or other unlawful activities; and
- (g) complying with applicable laws, regulations and industry codes.

20.4 The Customer consents to Vodafone's disclosure of Personal Information collected from the Customer to:

- (a) members of the Vodafone Group; and
- (b) Vodafone's service and content providers, distributors and agents for purposes related to providing the Customer with mobile telecommunications products and services.

20.5 Vodafone must provide the Customer with access to the Customer's Personal Information held by Vodafone in accordance with the Privacy Requirements.

20.6 The Customer acknowledges that Vodafone relies on the Customer's representations that it will provide notice and obtain all consents from Mobile Users to allow Vodafone to collect Personal Information under this clause.

20.7 The Customer acknowledges that any calls made to Vodafone's customer call centres may be monitored and/or recorded for quality assessment purposes.

21 Insurance

- (a) Vodafone will maintain the following insurance for the term of this agreement:
 - (1) public liability insurance for the value of \$10,000,000 for any one occurrence; and
 - (2) product liability insurance for the value of \$10,000,000 for any one occurrence and in the aggregate for one year.
- (b) Vodafone will provide the Customer with a copy of a certificate of currency for the above insurances on request, but no more than once a Year.

22 Subcontractors

- (a) Vodafone may appoint agents and subcontractors to perform any of its obligations under this agreement.
- (b) Vodafone will be liable for the acts or omissions of any agent or subcontractor appointed by Vodafone as fully as if they were acts and omissions of Vodafone.

23 Non-solicitation

Each party agrees not to:

- (a) entice away or attempt to entice away any employee or contractor of the other party; or

- (b) engage or employ any person for a period of six months after the person ceases to be engaged or employed by the other party without the prior consent of the other party.

24 Force Majeure Events

- (a) Vodafone is not liable for any delay or failure to perform its obligations pursuant to this agreement if such delay or failure is due to a Force Majeure Event.
- (b) Where a Force Majeure Event prevents or delays Vodafone from performing any obligation under this agreement, that obligation is suspended as long as the Force Majeure Event subsists.

25 Dispute resolution

25.1 Dispute

- (a) This clause applies to any dispute or disagreement arising out of or relating to this agreement, including any dispute arising out of or relating to the existence, formation, breach or termination of this agreement or any claim in tort, in equity or pursuant to any statute (Dispute).
- (b) A party must not commence any arbitration or court proceedings relating to a Dispute unless it has complied with the provisions of this clause, except where:
 - (1) a party seeks urgent injunctive relief; or
 - (2) the Dispute relates to compliance with this clause.
- (c) If a party considers that a Dispute has arisen, it must give a notice to the other party. The notice must set out reasonable particulars of the matter in dispute (Dispute Notice).

25.2 Meeting of representatives

- (a) Within 5 Business Days of the giving of a Dispute Notice, the parties must each nominate a representative who has express authority to resolve the Dispute or initiate proceedings for resolving the Dispute (Dispute Representative) and a representative to whom the Dispute is to be escalated (Escalation Representative) should the parties fail to resolve the Dispute in accordance with this clause 25.2, and give written notice to each other party of the identity of those representatives.
- (b) Within 5 Business Days of the date when both parties have nominated their Dispute Representatives, the Dispute Representatives nominated under clause 25.2(a) must meet at a place nominated by Vodafone to seek to resolve the Dispute by negotiation. All aspects of the meeting, except the fact of its occurrence, must be kept confidential and all communications between representatives at the meeting are made on a without prejudice basis.

25.3 Escalation of Dispute to appropriate executive

- (a) If the parties fail to resolve the Dispute in accordance with clause 25.2(b) within 15 Business Days of the date of a Dispute Notice, either party may request that the

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Dispute be considered by the Escalation Representatives.

- (b) On a request being made under clause 25.3(a), the Escalation Representatives, or if applicable, their nominees, must:
 - (1) promptly commence discussions to attempt to resolve the Dispute; and
 - (2) negotiate in an effort to resolve the Dispute without the necessity of resorting to any formal proceedings.
- (c) All aspects of the meeting, except the fact of its occurrence, must be kept confidential and all communications between representatives at the meeting are made on a without prejudice basis.
- (d) If the Escalation Representatives, or if applicable, their nominees, cannot resolve the Dispute within 20 Business Days after the notice of Dispute is given (or any longer period agreed between the parties), either party may commence legal proceedings in relation to the Dispute.

25.4 Continued performance

- (a) The parties will continue performing their respective obligations under this agreement while the Dispute is being resolved, unless and until such obligations are terminated or expire in accordance with the provisions of this agreement.
- (b) Where a Dispute is reasonably foreseeable, each party must use all reasonable endeavours to ensure that it is dealt with at a sufficiently early stage to ensure that there is a minimum effect on the ability of either party to perform its obligations under this agreement.

26 Costs and expenses

- (a) Unless expressly stated otherwise, each party must do anything which it is obliged to do under this agreement at its own cost, whether or not it acts at the request of any other party.
- (b) For the avoidance of doubt, each party must pay its own legal costs and expenses in respect of the negotiation, preparation and completion of this agreement.

27 General

27.1 Notices

- (a) Any notice, approval, consent or other communication in connection with this agreement must be in writing and may be given by hand, post or facsimile to the Customer's address for service of notices set out in the Application Form and to the following address for Vodafone:

Vodafone Pty Limited
799 Pacific Highway
Chatswood NSW 2067
Attention: General Counsel
Facsimile: 02 9415 7041

with a copy to the Vodafone Representative.

- (b) A notice, approval, consent or other communication is taken to have been received:

- (1) if delivered by hand to the receiver, at the time of delivery;
- (2) if posted in a postage paid envelope addressed to the receiver, three Business Days after the date of posting; and
- (3) if given by facsimile, on receipt by the sender of a confirmation message from the receiver or confirmation answerback code of the receiver, except where the receiver notifies the sender of an incomplete transmission.

27.2 Governing law and jurisdiction

- (a) This agreement is governed by the laws of New South Wales.
- (b) The parties irrevocably submit to the non-exclusive jurisdiction of the courts of New South Wales.

27.3 No partnership

Nothing in this agreement may be deemed to constitute a partnership, joint venture or agency between the Customer and Vodafone.

27.4 Assignment and novation

- (a) Subject to clause 27.4(b), neither party may assign any of its rights or novate its rights and obligations under this agreement without the other party's prior written consent.
- (b) Vodafone may, in its absolute discretion, assign its rights or novate its rights and obligations under this agreement to a Related Company or to any purchaser of all or a substantial part of its business without the Customer's consent, and if required by Vodafone, the Customer agrees to enter into a novation deed in the form specified by Vodafone to enable Vodafone to formalise a novation of its rights and obligations under this agreement.

27.5 Variation

Except as expressly otherwise provided in this agreement, a variation of any term of this agreement must be in writing and signed by the parties.

27.6 Further action

Each party must do all things and execute all further documents necessary to give full effect to this agreement.

27.7 Entire agreement

This agreement, and any document referred to in it, contains the entire agreement of the parties with respect to its subject matter, and supersedes all previous agreements, proposals, representations, correspondence and discussions.

27.8 Counterparts

This agreement may be executed in any number of counterparts.

Schedule 1 – Mobile Services & Mobile Services Specific Terms

1 UMTS/GPRS

1.1 Access

UMTS/GPRS may only be accessed with a UMTS/GPRS Compatible Device.

1.2 Functionality

- (a) Vodafone does not warrant or guarantee the extent to which a UMTS/GPRS Compatible Device will be able to access information on the internet or elsewhere. The ability of the Customer to access, use and download information will depend on the features and functionality of the UMTS/GPRS Compatible Device and the nature and quality of the information being accessed.
- (b) UMTS/GPRS may be subject to congestion, delays or loss of transmitted data and Vodafone will not be liable to the Customer for any congestion, delays or loss of transmitted data.

1.3 Provision of GPRS

- (a) Vodafone may withdraw access to UMTS/GPRS or any component of UMTS/GPRS at any time without notice and without any liability to the Customer in connection with the withdrawal of access.
- (b) The Customer acknowledges that the UMTS/GPRS service area may be smaller than the Mobile Service Area available for other services.
- (c) The Customer must comply with all conditions imposed by any content provider when accessing content using UMTS/GPRS.
- (d) Where any UMTS/GPRS services are provided by a third party supplier to Vodafone, and are re-supplied by Vodafone to the Customer, the Customer must comply with any conditions of access to those services which are imposed on Vodafone by the third party supplier.

1.4 Customer's Obligations

In using UMTS/GPRS:

- (a) the Customer is responsible for all Hardware and software necessary to use UMTS/GPRS;
- (b) the Customer is responsible for the security and integrity of any information the Customer transmits or receives;
- (c) the Customer acknowledges that Vodafone does not monitor and is not obliged to monitor the content of information or material available using UMTS/GPRS or the internet; and
- (d) the Customer acknowledges Vodafone will not be liable for loss or damage suffered by the Customer, a Mobile User or any other person as a result of using information or material obtained using UMTS/GPRS, including loss or damage caused by a virus.

2 VPN SERVICES

2.1 Establishment of a VPN Private Numbering Plan

- (a) Vodafone will not supply any VPN Services to the Customer until the VPN Private Numbering Plan is established by Vodafone.
- (b) To establish the VPN Private Numbering Plan the

Customer must give Vodafone written notice of the numbers it wishes to be included in the VPN Private Numbering Plan including:

- (1) at least one Customer Fixed Line Number (if the VPN Fixed to Mobile Calls service is required); and
- (2) any eligible Mobile Connections selected by the Customer.

2.2 Amendments to VPN Private Numbering Plan

- (a) The Customer may add or remove a Customer Fixed Line Number or Mobile Connection to or from the VPN Private Numbering Plan by notifying Vodafone of the requested amendment.
- (b) Requested amendments to the VPN Private Numbering Plan will be made by Vodafone as soon as reasonably practicable following the requested amendment.

2.3 VPN Private Numbering Plan

If Vodafone is supplying VPN Services to the Customer and Vodafone determines that a number in the VPN Private Numbering Plan is an Invalid Number, Vodafone may:

- (a) remove the Invalid Number from the VPN Private Numbering Plan; and
- (b) charge the Customer:
 - (1) for all calls made from a Mobile Connection to the Invalid Number at the rate applicable for calls made from a Mobile Connection to a number outside the VPN Private Numbering Plan; and
 - (2) for all calls made from the Invalid Number at the rate applicable for calls made from a number outside the VPN Private Numbering Plan.

3 VPN FIXED TO MOBILE CALLS

3.1 Availability

A Customer will only be able to make VPN Fixed to Mobile Calls if:

- (a) the Customer specifies in the Application Form or the Customer otherwise indicates it wishes to be supplied with the capability to make VPN Fixed to Mobile Calls; and
- (b) the Customer Network is configured in accordance with clause 3.2 of this Schedule 1 to enable the Customer to make VPN Fixed to Mobile Calls;
- (c) the Service Provider Network is capable of being configured to enable the Customer to make VPN Fixed to Mobile Calls;
- (d) the Customer's fixed lines are owned by Telstra Corporation Limited or Singtel Optus Pty Limited, although the Service Provider Network may be different.

3.2 Configuration for VPN Fixed to Mobile Calls

- (a) In order to be able to make VPN Fixed to Mobile Calls, the Customer must, at its own cost, ensure that:
 - (1) the Customer PABX is configured to insert the SAC before each call from a Customer Fixed Line Number to any mobile number;

Schedule 1 – Mobile Services & Mobile Services Specific Terms

- (2) the Customer Network is otherwise configured in accordance with Technical Standards; and
 - (3) the Service Provider Network is configured to recognise the SAC and forward to the Vodafone Network all relevant call signalling information for calls from a Customer Fixed Line Number to any mobile number.
- (b) As soon as reasonably practicable, the Customer must notify Vodafone in writing that it has carried out each of the obligations in clause 3.2 (a) of this Schedule 1.
- (c) Subject to any legislative requirement, the Customer must not configure the Customer PABX or the Customer Network to enable the Customer to use services offered by a competitor of Vodafone which would enable the Customer to make calls which are the same or substantially similar to VPN Fixed to Mobile Calls.
- (d) The VPN Fixed to Mobile Calls service is not available as a stand alone Mobile Service. The Customer must accept VPN Mobile Originating Calls if the Customer wishes to have access to the VPN Fixed to Mobile Calls service.
- (e) The VPN Fixed to Mobile Calls service is not subject to the Minimum Commitment Period.
- (f) The following Vodafone mobile numbers cannot be accessed through the VPN Fixed to Mobile Calls service: 0414121121 and 0414123123.

3.3 Testing and Maintenance

The Customer is responsible, at its own cost, for ensuring that:

- (a) all appropriate technical and other tests are performed to ensure the Customer PABX, the Customer Network and the Service Provider Network are configured under clause 3.2 of this Schedule 1; and
- (b) the Customer PABX, the Customer Network and the Service Provider Network are configured, operated and maintained under clause 3.2 of this Schedule 1 while Vodafone enables the Customer to make VPN Fixed to Mobile Calls.

3.4 Adjustments at Vodafone's Request

At Vodafone's request, the Customer must, at the Customer's cost:

- (a) make any reasonable adjustment to the Customer PABX or the Customer Network; and
- (b) ensure that the provider of the Service Provider Network makes any reasonable adjustment to the call signalling configuration of the Service Provider Network to ensure the proper functioning of VPN Fixed to Mobile Calls.

3.5 Call charges

- (a) Vodafone will charge the Customer for all calls made from the VPN Fixed Line Number to a VPN Mobile Connection and other mobiles within Australia.
- (b) The Customer will be responsible to the Service Provider Network for all charges for calls made from the VPN Fixed Line Number to other fixed line numbers and to international, special or premium numbers.

3.6 Expenditure Ratio

In the event that the ratio of the Customer's expenditure on VPN Fixed to Mobile Calls to the Customer's expenditure on VPN Mobile Originating Calls exceeds the ratio set by Vodafone from time to time, Vodafone reserves the right to suspend and/or terminate the Customer's ability to make VPN Fixed to Mobile Calls.

4 VPN INTERNET PROVISIONING SERVICE

4.1 Supply by Vodafone

If the VPN Internet Provisioning Service is to be supplied to the Customer under the Contract:

- (a) the Customer acknowledges that the internet is not free from faults and Vodafone is not responsible for any errors or omissions which occur in the provision of any of the Mobile Services as a result of the Customer's use of the VPN Internet Provisioning Service; and
- (b) Vodafone will give the Customer a VPN Security Login which will enable the Customer to use the VPN Internet Provisioning Service.

4.2 Customer Responsibilities

If the VPN Internet Provisioning Service is supplied to the Customer by Vodafone under the Contract, the Customer is responsible for:

- (a) accessing the internet at its own cost and paying all charges, fees and rates attributable to the internet access;
- (b) ensuring that the Customer's VPN Security Login is not disclosed to or used by any unauthorised person;
- (c) notifying Vodafone as soon as the Customer becomes aware that the VPN Security Login has been disclosed to an unauthorised person;
- (d) any loss or damage, whether direct or indirect, arising from any unauthorised use or disclosure by any person of the VPN Security Login; and
- (e) any modifications to the Mobile Services made by the Customer using the VPN Internet Provisioning Service.

5 Internet TXT services (including GROUPTXT) and TXT

5.1 Use of Internet TXT Mobile Services and TXT

If Internet TXT Mobile Services or TXT Mobile Service is supplied to the Customer by Vodafone:

- (a) The Customer must at all times compose and convey TXT messages which:
 - (1) comply with all applicable laws and regulations and the requirements of any government or statutory body and all codes of practice (including the SMS SPAM Code guidelines) in all respects; and
 - (2) are for permission based activities.

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- (b) For the purposes of the Internet TXT Mobile Service, the Customer must provide Vodafone with the name of a Mobile User who is authorised to use the Internet TXT Mobile Service list at the time of application for the service. Only a Mobile User so authorised may use the Internet TXT Mobile Service and access Vodafone's Network.
- (c) The Customer:
 - (1) is liable for all acts and omissions of any authorised Mobile User of the Internet TXT Mobile Service;
 - (2) must not install, introduce or knowingly use illegal or unauthorised software or hardware in connection with the Customer's access to the Internet TXT Mobile Service or Vodafone's systems;
 - (3) must take all actions necessary to ensure that the Customer's information technology environment is secure and that all reasonable precautions are taken by the Customer to protect Vodafone and Vodafone's Network including virus scanning and the screening of authorised Mobile Users of the Internet TXT Mobile Service; and
 - (4) acknowledges that the Internet TXT Mobile Service may be withdrawn by Vodafone at any time without notice.

- (a) VPN Services
- (b) VPN Fixed to Mobile Calls
- (c) VPN Internet Provisioning Service; and
- (d) VPN Private Numbering Plan.

7 Data Bundles

- (a) A Data Bundle can be added to Customer Connections at the request of the Customer.
- (b) Data associated with a Data Bundle cannot be shared between Customer Connections.
- (c) Charges are on a per Kilobyte (KB) basis, based on the amount of data sent or received by the Mobile User.
- (d) Unused data is forfeited at the end of each month.
- (e) A session begins when the Mobile User connects to the GPRS network and ends when the connection is disconnected.
- (f) Data Bundles can be varied by the Customer once a month. Such a variation must be requested by the Customer at least one day prior to the next billing period and will take effect from the start of the next billing period.

6 Associated Individuals or Businesses

6.1 General

- (a) The terms of this clause 6 of Schedule 1 apply to Associated Customers.
- (b) Each Associated Customer is solely responsible for paying all Charges that become due in relation to their Vodafone account by the method notified by Vodafone to the Customer from time to time.
- (c) Associated Customers may only join a VPN Private Numbering Plan that has been established by Vodafone for another Vodafone customer. Vodafone will not establish a VPN Private Numbering Plan for an Associated Customer.
- (d) Associated Customers may only transfer their Customer Connection to another Vodafone account or tariff plan prior to the expiry of the Minimum Commitment Period with the approval of Vodafone.

6.2 Connection Bonus

- (a) If the Associated Customer is entitled to a "connection bonus", if any is specified in the Application Form (a Connection Bonus), the amount of a Connection Bonus (if any) will be notified by Vodafone to the Associated Customer in writing.
- (b) The Connection Bonus (if any) may be used by the Associated Customer towards the purchase of Hardware from Vodafone or Vodafone's nominee, or as a credit against the Customer's Charges as specified in the Application Form.

6.3 Terms not applicable to Associated Customers

The following clauses of this agreement will not apply to Associated Customers:

Schedule 2 – Mobile Office add-on

1 Availability

- (a) A Customer can select the Mobile Office add-on for an additional monthly access Fee, per Customer Connection, as specified in the Tariff Sheets.
- (b) Mobile Office will apply to all VPN Mobile Connections in the Business User Group.

2 Included services

- (a) To be eligible for Mobile Office call rates, as specified in the Tariff Sheets, all calls from a VPN Mobile Connection must originate from within Australia.
- (b) Calls from a VPN Mobile Connection to a VPN Fixed Line Number are subject to the Vodafone Fair Use Policy.
- (c) Conference calls originating from a VPN Mobile Connection will be charged for each mobile or fixed line connection connected to that conference call in accordance with the Mobile Office call rates, as specified in the Tariff Sheets.
- (d) Conference calls from a VPN Mobile Connection to another VPN Mobile Connection or a VPN Fixed Line Number are subject to the Vodafone Fair Use Policy.
- (e) Voicemail call return is charged in accordance with the Mobile Office call rates, as specified in the Tariff Sheets. Voicemail call return cannot be used to return calls to non-standard numbers, such as international, special or premium numbers.

If you do not understand this Agreement please call:

Customer Service on **1300 650 410**; or

The National Relay Service on **13 3677** for communications assistance; or

The Translating and Interpreting Service on **13 14 50** to ask an interpreter to contact us for help.

Please contact our Customer Service if you would like a copy of this Agreement in an alternative format, for example, large print size.

You may access these Business Customer Terms and Conditions at **www.vodafone.com.au**

For a full copy of your agreement, please contact your Vodafone Representative.

Current as at 1 April 2007.