

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 consists of: (1) these Business Terms and Conditions; (2) any Tariff for the Mobile Services requested by a Customer for its Customer Connections; (3) the Application for Mobile Services; (4) 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; (5) the User Guide (if any); and (6) terms and conditions relating to Mobile Services as published by Vodafone on its website from time to time, which apply in decreasing order of precedence.

2 Definitions and interpretation

2.1 Definitions

In this Agreement:

Account PIN means the business account password to be used by the Authorised Person to make changes to, or enquiries of, the Customer's account, as notified by the Customer from time to time;

Access Charge means a charge for accessing a particular Mobile Service as set out in a Tariff which is payable in addition to any usage Charges, but does not include any flagfall Charges;

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;

Application for Mobile Services or **AMS** means Vodafone's application form for Mobile Services, which sets out the Customer's details, the Mobile Services to be purchased by the Customer and other relevant details relating to the purchase of the Mobile Services;

Australian Consumer Law means the Australian Consumer Law as set out in the *Competition and Consumer Act 2010* (Cth);

Authorised Person means a person specified as such on the Application for Mobile Services or as otherwise notified by the Customer to Vodafone from time to time;

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

Call Charges means the charges for voice Mobile Services used by the Customer (excluding any Access Charges), specified in a Tariff, other Vodafone tariff brochures or as otherwise notified to the Customer on or before the Commencement Date and as varied by Vodafone in accordance with this Agreement from time to time;

Charges means all amounts, including the Mobile Service Charges and the Hardware Charges, charged by Vodafone to the Customer, as notified by Vodafone to the Customer in a Tariff, other Vodafone tariff brochures or as otherwise notified to the Customer on or before the Commencement Date and as varied by Vodafone in accordance with this Agreement from time to time;

Commencement Date means:

- (a) the date that Vodafone commences providing the Mobile Services to the Customer; or
- (b) if the Mobile Services are already being provided to the Customer prior to the date of this Agreement, the date nominated in the Application for Mobile Services;

Confidential Information means confidential information concerning the business and affairs of a party, a VHA Group entity or a Customer entity that a party obtains or receives from the other party or which arises out of the performance of the Mobile Services;

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 so Vodafone can provide Content to Customers using the Mobile Services;

Corporations Act means the *Corporations Act 2001* (Cth);

Customer means the customer specified in the Application for Mobile Services;

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

Data means email, internet, PXT, data and similar information, sent, received and accessed via the Vodafone Network;

Data Charges means the charges for Data Mobile Services used by the Customer, specified in a Tariff or as otherwise notified to the Customer on or before the Commencement Date and as varied by Vodafone in accordance with this Agreement from time to time;

Device means mobile handsets, personal digital assistants, smart phones, USB modems, data cards for use predominantly with voice and Data Mobile 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;

Early Exit Fee means the amount payable by a Customer upon Disconnection of a Customer Connection as set out in a Tariff. If a Customer Connection includes various Mobile Services that each have an Early Exit Fee, the Early Exit Fees are cumulative;

Excluded Loss means any loss of profits; loss of revenues; loss of anticipated savings; loss of data; loss of reputation; loss of goodwill; lost opportunities (including opportunities to enter into or complete arrangements with third parties); loss or damage sustained by the Customer in connection with any claim against the Customer or a Mobile User brought by a third party (except as expressly otherwise provided in this Agreement); loss of business and loss of management time; and 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;

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 Devices, 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:

Initialled by the Customer's authorised representative: _____

- (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 5 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 prior consent;

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 last day preceding the due date;

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 Tariffs, district Tariffs, 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 period over which a Customer Connection must remain committed to a Tariff as set out in that Tariff, the Application for Mobile Services or otherwise advised by Vodafone prior to the Commencement Date;

Minimum Customer Connections means the minimum number of Customer Connections that the Customer agrees to maintain during the Minimum Commitment Period for a Tariff (otherwise additional Charges may apply), as set out in the Application for Mobile Services, the Tariff or otherwise notified by Vodafone to the Customer prior to the Commencement Date;

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 Charges and other Mobile Service Charges payable by the Customer), as specified in a Tariff, Application for Mobile Services 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 Services means the telecommunications services and related ancillary services provided by Vodafone to the Customer under this Agreement;

Mobile Service Charges means the charges for the Mobile Services (which includes Call Charges and Data Charges), specified in a Tariff, other Vodafone tariff brochures or as otherwise notified to the Customer on or before the Commencement Date and as varied by Vodafone in accordance with this Agreement from time to time;

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;

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;

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

Qualifying Mobile Service Charges means those Mobile Service Charges specified in a Tariff as contributing to the satisfaction of the Minimum Spend Amount, but always excluding GST, Hardware Charges, monthly Access Charges and interest Charges and after taking into account any credits given by Vodafone;

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
 - (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 an electronic format, 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 Bodies Corporate has the meaning given in the Corporations Act 2001 (Cth);

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;

Suspension Event means the suspension by Vodafone or a member of the VHA 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 organisation 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 service organisations;
- (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 means the Charges, commitments by Vodafone and a Customer (eg. Minimum Commitment Period, Minimum Spend Amount, Minimum Customer Connections, Early Exit Fee and Technology Fund) and terms and conditions for a particular Mobile Service;

Technology Fund means the Hardware credit, if any, specified in a Tariff;

Telecommunications Act means the *Telecommunications Act 1997* (Cth);

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

Vodafone Group means Related Bodies Corporate of Vodafone, and includes majority shareholders, which are those shareholders of Vodafone which (directly or indirectly) own at least 15 percent of the issued share capital;

Vodafone means Vodafone Pty Limited ABN 76 062 954 554 of Level 1, 177 Pacific Highway, North Sydney 2060;

Vodafone Customer Service means Vodafone's service centre which can be reached by calling 1300 650 410 or any other telephone number notified by Vodafone from time to time;

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 Network means the mobile telecommunications networks operated by Vodafone Network Pty Limited ABN 31 081 918 461 and any of its Related Bodies Corporate;

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

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) Unless otherwise expressly stated, including means "including but not limited to" and "include" and "includes" have corresponding meanings.
- (b) 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.
- (c) A reference to A\$ and \$ means the lawful currency of Australia; and a reference to time is to the time in New South Wales, Australia.

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) Vodafone may vary the characteristics of any Mobile Service, including by ceasing to offer a Mobile Service or varying the 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 the Customer as much Reasonable Notice as practicable but 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 amounts that cover installation and equipment costs for equipment installed by or on behalf of Vodafone to the extent those costs have not been paid by the Customer (where that equipment can be used in connection with services supplied by other suppliers).

3.3 Customer Connections

- (a) The Customer is responsible for any 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.
- (b) 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.

(c) If a Tariff includes Minimum Customer Connections, the Customer must use its best endeavours to connect the Minimum Customer Connections to the Vodafone Network as soon as possible after the Commencement Date.

(d) If a Tariff includes a Minimum Spend Amount that is achieved by the Qualifying Mobile Service Charges, and in any month the sum of the Qualifying Mobile Service Charges incurred by the Customer under that Tariff is less than the Minimum Spend Amount multiplied by the number of Customer Connections on that Tariff, the Customer must pay to Vodafone an amount as set out in that Tariff.

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 as determined and set out in a Tariff.

3.5 The Customer's Account PIN

- (a) The Customer must keep its Account PIN confidential and must not disclose its Account PIN to any person other than an Authorised Person.
- (b) The Customer acknowledges and agrees that any person who has access to the Account PIN may, by using the Account PIN, amongst other things:
 - (1) access information relating to the use of the Mobile Services by the Customer and its Mobile Users;
 - (2) access sensitive or personal information about the Customer and its Mobile Users, including the Customer's payment or credit card details; and
 - (3) add to or change Mobile Services and/or purchase additional Hardware and Mobile Services.

(c) The Customer acknowledges and agrees that Vodafone may treat a request by any person who purports to be an Authorised Person and quotes the Account PIN (or can otherwise verify they are an Authorised Person in accordance with Vodafone's security procedures) as properly authorised by the Customer and the Customer is responsible for any obligations, changes to Mobile Services and Hardware or Charges (including additional Customer Connections), which are made or incurred as a result of such a request, even if the request is not in fact authorised by the Customer.

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 Hardware 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) In addition to assigning the warranties in clause 4.4(a), Vodafone may provide the Customer with additional warranty periods on specified Hardware from time to time. Details of any additional warranty periods offered on specified Hardware and associated terms can be provided on request or located at www.vodafone.com.au.

(c) To the full extent permitted by Law, Vodafone will not provide the Customer with any warranties or guarantees in addition to those specified in clauses 4.4(a) and (b) in relation to Hardware.

4.5 Hardware locked to the Vodafone Network

(a) Vodafone may, at its discretion, supply Hardware to the Customer that is "locked" and may only be used on the Vodafone Network.

(b) Some Hardware that has been "locked" may not be able to be unlocked.

(c) When certain Hardware is able to be unlocked, Charges may apply to unlock that Hardware. Details on unlocking Hardware can be located in the Hardware packaging, by calling Vodafone Customer Service or visiting www.vodafone.com.au/unlock.

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 Device and SIM Blocking

(a) Within 20 Business Days from the Customer advising Vodafone that a SIM or Device of the Customer has been lost or stolen, the Customer may request Vodafone to block the SIM or Device or both. If a SIM or Device is blocked it will only be able to make calls to emergency "000" and "112" numbers.

(b) Vodafone will not block a Device where:

- (1) to Vodafone's knowledge, the Device shares an international mobile equipment identity number with another Device 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 Device 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) some Hardware may not be able to access 3G Mobile Services in certain parts of the Mobile Service Area where the Hardware specification is incompatible with the Vodafone Network or interconnected network technology used in that area;

(c) it is responsible for all Hardware and software necessary to use the Vodafone Network;

(d) the availability of the Mobile Services outside of Australia is subject to network availability in that location, individual Hardware capabilities and the limitations of overseas telecommunications networks;

(e) the Mobile Services in Australia are not available outside the Mobile Service Area;

(f) within the Mobile Service Area, there may be some areas in which one or more Mobile Services are not available, including where a Mobile User is required to roam on an interconnected network;

(g) the Mobile Services are not free from faults, drop-outs or interruptions;

(h) the Vodafone Network 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;

(i) where any Mobile 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; and

(j) it has satisfied itself as to the suitability of the Mobile Service Area after its review of the coverage maps published by Vodafone.

8 Content

8.1 Functionality - Content

(a) Vodafone does not warrant or guarantee the extent to which a Device will be able to access information on the internet or elsewhere.

(b) The Customer is responsible for the security and integrity of any information the Customer transmits or receives.

(c) 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:

- (1) the Hardware of the Mobile User does not have the necessary technical capability to enable it to receive the Content or the receiving device of the recipient does not have the necessary technical capability to enable it to receive the Content;
- (2) the Hardware of the Mobile User is not in the Mobile Service Area or the receiving device of the recipient is not in an area where the network of their telecommunications supplier provides coverage; or
- (3) the network of the recipient's telecommunications supplier is congested or has faults or interruptions.

8.2 Content

(a) The Customer agrees that it is responsible for its use, and the Mobile Users' use, of the Content and shall:

- (1) take all necessary and prudent measures to ensure the data security of the Content; and
- (2) conduct all necessary virus checks of any information or material obtained using the Mobile Services..

9 User Obligations

9.1 Compliance

When using Mobile Services, the Customer must comply with, and must ensure that the Mobile Users comply with:

- (a) Vodafone's reasonable instructions;
- (b) this Agreement;
- (c) any Tariff on which a Customer Connection is connected;
- (d) the User Guides;
- (e) the Vodafone Fair Use Policy; and
- (f) any licence terms of any third party provider of Content.

9.2 Only use approved Devices

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 Consent to collection of Personal Information

The Customer must ensure that Mobile Users are informed of and consent to Vodafone's rights to collect Personal Information about the Mobile User in accordance with clause 19.

9.4 Use of Mobile Services

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 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;
 - (4) to create, initiate or send Malicious Communications; communications for fraudulent, deceptive or misleading purposes; or unsolicited communications for marketing or advertising purposes without lawful grounds;
 - (5) 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 Mobile Services or 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 otherwise engage in conduct which would deem

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

9.5 Access to Customer's premises

(a) The Customer must do all things reasonably necessary (including procuring any necessary consents) to grant Vodafone and its Personnel with reasonable access to the Customer's premises at Vodafone's request:

- (1) to inspect, install and maintain equipment as necessary to maintain and improve access to and use of the Mobile Services; and
- (2) to enable Vodafone to recover all equipment (including on expiry or termination of this Agreement) which it installed at the Customer's premises under clause 9.5(a)(1).

10 Charges

10.1 Charges

(a) The Customer must pay all Charges including:

- (1) the Mobile Service Charges;
- (2) additional charges in respect of roaming by Mobile Users on networks other than the Vodafone Network;
- (3) the Hardware Charges for any Hardware supplied under this Agreement;
- (4) any Minimum Spend Amount shortfall calculated under clause 3.3(d);
- (5) any applicable Early Exit Fee on Disconnection of a Customer Connection; and
- (6) any other Charges set out in a Tariff or Vodafone's standard Charges, as published by Vodafone from time to time for a Mobile Service where a Charge for that Mobile Service is not set out in a Tariff.

(b) Vodafone may round up Charges to the nearest cent.

(c) Mobile Service Charges payable under clause 10.1(a)(1) above are payable from the Commencement Date and do not commence from the time of successful port if requested under clause 17.2(a) of this Agreement.

10.2 Variations

(a) Vodafone may, by notifying the Customer, vary the Hardware Charges.

(b) International roaming / services Charges are variable. Vodafone may vary the Charges in respect of international roaming / 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 roaming / services.

(c) 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 provides Reasonable Notice to the Customer if the Customer has used the relevant Content service within the previous 6 months; and
- (2) the Customer may elect not to use the Content service without attracting any additional Charges for making that election.

(d) Vodafone may, at any time after the expiry of the Minimum Commitment Period, vary any 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 27 days after the date Vodafone issues an invoice in respect of such amounts.

(b) The Customer must make such payments without set-off or any deduction or withholding, except as required by applicable Law.

10.4 Payment dispute

(a) If the Customer genuinely disputes that any amount invoiced by Vodafone under this Agreement is payable, the Customer must:

- (1) notify Vodafone of the dispute within 14 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.

11 Additional Terms if Technology Fund provided

- (a) Only if a Technology Fund is specified in the Tariff will the Customer be entitled to a Technology Fund.
- (b) The amount of the Technology Fund will be specified in a Tariff or otherwise notified by Vodafone to the Customer in writing.
- (c) The Technology Fund may only be used by the Customer towards the purchase of eligible Hardware from Vodafone or Vodafone's nominee, unless otherwise specified in a Tariff.
- (d) Any Hardware purchased from Vodafone or Vodafone's nominee using the Technology Fund must be used on the Vodafone Network during the Minimum Commitment Period set out in the relevant Tariff.
- (e) In some cases, a Tariff may express the Technology Fund as a number of specific Devices as opposed to a credit amount.
- (f) The Technology Fund is not transferable or redeemable for cash.
- (g) Upon the termination or expiry of the Minimum Commitment Period in the relevant Tariff, the Customer forfeits any amount remaining in the Technology Fund.

12 GST

- (a) Words used in this clause 12 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.
- (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.

13 Suspension of services

(a) **Suspension with notice:** Vodafone may, after providing notice to the Customer and allowing Customer 10 days to remedy the issue (if issue is capable of being remedied), suspend any Customer Connection or suspend access to any Mobile Services through any Customer Connection, if:

- (1) the Customer is in material breach of this Agreement;
- (2) Vodafone is reasonably satisfied that the Customer or a Mobile User has breached the prohibitions in clause 9.4; or
- (3) the Customer does not pay by the due date any invoice issued by Vodafone under this Agreement.

(b) **Suspension without notice:** Vodafone may, without notice to the Customer, suspend any Customer Connection or suspend access to any Mobile Services through any Customer Connection, if:

- (1) Vodafone has reasonable grounds for suspecting fraud or other illegal conduct, in relation to the Mobile Services supplied under this Agreement, by the Customer, Mobile User or any other person using the Mobile Services;
- (2) Vodafone undertakes any maintenance or repair or for any similar operational reasons, provided the suspension is only for a reasonable period of time;

- (3) In Vodafone's opinion, the charges accrued in relation to that Customer Connection are unusually high as described under the Vodafone Fair Usage Policy;
- (4) a Force Majeure Event occurs; or
- (5) a Suspension Event occurs.

(c) If Vodafone suspends access to the Mobile Services through a Customer Connection pursuant to clause 13(a) or 13(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 13(b)(2), 13(b)(3), 13(b)(4) or 13(b)(5), Vodafone must use its reasonable endeavours to recommence supply of the Customer Connection or access to Mobile Services, as soon as practicable.

14 Term and termination

14.1 Term and termination for convenience

- (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 (and if there are multiple Minimum Commitment Periods, the expiry of the last Minimum Commitment Period) by giving not less than 30 days' notice to the other party.

14.2 Termination for cause

Either party may terminate this Agreement immediately by notice to the other party if:

- (a) the other party 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 other party does not remedy it within 30 days of receipt of a notice from the non-breaching party specifying the breach and requiring the breach to be remedied;
- (b) the other party suffers an Insolvency Event.

14.3 Termination by Vodafone

Vodafone may terminate this Agreement, or any particular Mobile Service, immediately by notice to the Customer if:

- (a) the Customer fails to pay any amount owing to Vodafone under this Agreement within 30 days from the due date for payment; or
- (b) the Customer Connection is ported to a supplier other than Vodafone in accordance with clause 17.2;
- (c) Vodafone determines that it will cease to offer all the Mobile Services in the Australian mobile telecommunications market;
- (d) 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;
- (e) Vodafone is reasonably satisfied that the Customer or a Mobile User has breached the prohibitions in clause 9.4;
- (f) Vodafone suspends a Customer Connection or access to the Mobile Services pursuant to clauses 13(a) or 13(b) for a period of 30 days or more;
- (g) 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.

14.4 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); and

- (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.

15 Warranties

15.1 Authority

Each party represents and warrants to the other party that it is entitled to enter into this Agreement and perform its obligations under this Agreement.

15.2 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.

16 Liability

- (a) Except where Vodafone is negligent or otherwise liable to the Customer under this Agreement and to the extent permitted by Law, the Customer agrees to use the Mobile Services (and each of its features) and the Content accepting full risk and responsibility in doing so.
- (b) To the extent permitted by Law, Vodafone is not responsible for and has no liability to the Customer in respect of:
 - (1) the Customer or any other person using the Mobile Services (or any of its features) or accessing or using Data or Content or any purpose;
 - (2) the accuracy, completeness, currency or quality of Content or Data which Vodafone has not provided or is not responsible for or is otherwise in breach of the Customer's obligations under this Agreement regarding the use of Mobile Services;
 - (3) Vodafone Adapting any Content or Data to enable it to be received or sent (which the Customer agrees Vodafone may do as Vodafone reasonably determines);
 - (4) the Customer or any person not receiving any Content or Data, or a delay in the Customer or any person receiving any Content or Data; or
 - (5) the loss of or any damage to the Customer's Hardware after it has left Vodafone's possession.
- (c) Subject to clause 16(d) 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 - including without limitation negligence), or otherwise, in any Year is limited to the aggregate of the amounts paid by the Customer to Vodafone under this Agreement in the period of 12 months immediately preceding the occurrence of the event which gave rise to the loss or damage under this Agreement.
- (d) To the maximum extent permitted by Law, Vodafone is not liable for, and no measure of damages will, include Excluded Loss whether in contract, tort (including without limitation negligence), in equity, under statute, under an indemnity, whether or not such loss or damage was foreseeable and even if advised of the possibility of the loss or damage.
- (e) For any liability which is not otherwise accepted by Vodafone under this clause 16 and cannot lawfully be excluded but can be limited, Vodafone's liability is limited to:
 - (1) in the case of goods,
 - (A) the replacement of the goods or the supply of equivalent goods;
 - (B) the repair of the goods;
 - (C) the payment of the cost of replacing the goods or acquiring equivalent goods; or
 - (D) the payment of the cost of having the goods repaired; and
 - (2) in the case of services,
 - (A) the supply of the services again; or
 - (B) the payment of the cost of having the services supplied again.
- (f) Except as provided in clause 16(e), nothing in this Agreement excludes, restricts or modifies rights which the Customer has under the Australian Consumer Law in respect of the consumer guarantees.

17 Compliance

17.1 Intercept

If required by applicable Law, Vodafone may monitor and intercept the Customer's or any Mobile User's use of the Mobile Services and Content or provide a legally authorised person with access to do so.

17.2 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.

17.3 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.

18 Confidential Information

18.1 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 18.1(a) extends to Confidential Information provided to or obtained by a party before entering into this Agreement.

18.2 Exclusions

The obligation of confidence in clause 18.1 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.

18.3 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,
 - (3) 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 18.3(a) must ensure that such information is kept confidential by the recipients.

18.4 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 18 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 18, 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 18.

19 Privacy and Marketing

19.1 Collection of Personal Information

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.

19.2 Customer to obtain all necessary consents

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.

19.3 Necessary Consents

The Customer consents, and must procure the consent of Mobile Users, to Vodafone's collection, use and disclosure of Personal Information collected from the Customer for purposes including:

- (a) assisting law enforcement agencies in relation to the enforcement of criminal and other laws;
- (b) assessing creditworthiness;
- (c) all purposes associated with the provision of mobile telecommunications products and Mobile Services to the Customer, including billing and account management;
- (d) implementing this Agreement;
- (e) business planning and product development;
- (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.

19.4 Disclosure of Personal Information to third parties

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

- (a) members of the VHA Group; and
- (b) Vodafone's service and Content Providers, distributors and agents for purposes related to providing the Customer with the Mobile Services.

19.5 Access to Personal Information

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

19.6 Customer Acknowledgements

The Customer acknowledges that:

- (a) 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; and
- (b) any calls made to Vodafone's customer call centres may be monitored and/or recorded for quality assessment purposes.

19.7 Marketing

- (a) The Customer acknowledges and consents, and must procure the consent of Mobile Users, to:
 - (1) Vodafone undertaking market and product analysis based on the Mobile Users' use of the Mobile Services; and
 - (2) Vodafone contacting the Customer and the Mobile Users with information about new developments, products, services and special offers, including by electronic communications.

The Customer may withdraw such consent at any time by providing Vodafone with written notice.

- (b) Despite section 18(1) of the Spam Act 2003 (Cth), the Customer agrees, and must procure the Agreement of each Mobile User, that any message Vodafone sends to Mobile Users will not need to contain an unsubscribe facility but that a Mobile User may opt-out of receiving marketing material by contacting Vodafone Customer Service.

- (c) Subject to receiving the Customer's prior written consent, Vodafone may use the Customer's brand name or trade mark in any press release, marketing activity or promotion to identify the Customer as having purchased Vodafone's Mobile Services. The Customer's consent may not be unreasonably withheld or delayed.

20 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.

21 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.

22 Dispute resolution

22.1 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").

22.2 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 22.2, 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 22.2(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.

22.3 Escalation of Dispute to appropriate executive

- (a) If the parties fail to resolve the Dispute in accordance with clause 22.2(b) within 15 Business Days of the date of a Dispute Notice, either party may request that the Dispute be considered by the Escalation Representatives.
- (b) On a request being made under clause 22.3(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.

22.4 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.

23 General

23.1 Notices

- (a) Any notice (other than a requirement for Vodafone to provide Reasonable Notice), approval, consent or other communication in connection with this Agreement must be in writing and may be given by hand, post or email to the Customer or Customer Representative's address or email address set out in the Application for Mobile Services and to the following address for Vodafone:

Vodafone Pty Limited
Level 1, 177 Pacific Highway
North Sydney 2060
Attention: General Counsel
Email: As provided from time to time with a copy to the Vodafone Representative.

23.2 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.

23.3 Assignment and novation

- (a) Subject to clause 23.3(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 member of the VHA Group 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.

23.4 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.

23.5 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.

23.6 Counterparts

This Agreement may be executed in any number of counterparts.

If you do not understand this Agreement please call:

Vodafone 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.