



# 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 for Mobile Services, the Customer agrees to be bound by:
  - (1) this agreement;
  - (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.
- (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:

**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;

**Associate** has the meaning given in the Corporations Act;

**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;

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

**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;

**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

Initialed by the Customer's authorised representative: \_\_\_\_\_

(c) directly or indirectly provides services for, on behalf of or with the permission of any entity referred to in (a) or (b), 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 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;

**Dispute** has the meaning given in clause 26.1(a);

**Dispute Notice** has the meaning given in clause 26.1(c);

**Dispute Representative** has the meaning given in clause 26.2(a);

**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;

**Escalation Representative** has the meaning given in clause 26.2(a);

**Excluded Loss** means any:

- (a) loss of profits;
- (b) loss of revenues;
- (c) loss of anticipated savings;
- (d) loss of data;
- (e) loss of reputation;
- (f) loss of goodwill;
- (g) lost opportunities, including opportunities to enter into or complete arrangements with third parties;
- (h) loss of management time;
- (i) 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; or
- (j) loss of business; and
- (k) 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:

- (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;

**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;

**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;

**MMS** means multimedia messaging service which enables Mobile Users to send graphics, photos, audio clips, video clips, or any combination of the above, within specified size limits, over the Vodafone Network;

**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;

**Network Enhancements** has the meaning given to that term in clause 9.6(a);

**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](http://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;

**PXT message** means the Mobile Service which is described as PXT or otherwise known as MMS;

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

**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;

**SMS** means short messaging service which enables Mobile Users to send short text messages over the Vodafone Network;

**Subsidiary** has the meaning given in the Corporations Act;

**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);

**TXT message** means the Mobile Service known as TXT or otherwise known as SMS;

**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;

**VHA Group** means Vodafone Group plc and CK Hutchison Holdings Limited and any company in which either Vodafone Group plc or CK Hutchison Holdings Limited (directly or indirectly) owns more than 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](http://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 Companies;

**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) 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) 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 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 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 may access and use the Mobile Services through the Customer Connections.
- (b) Each Customer Connection is subject to its Tariff or Tariffs. A Tariff applies to all Customer Connections made under that Tariff.
- (c) 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.
- (d) 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.
- (e) 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.
- (f) 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 Account PIN (or can otherwise verify they are an Authorised Person in accordance with Vodafone's security procedures), Vodafone will deem the request to be 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.
- (g) 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.
- (h) 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, 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](http://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 Additional Hardware

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.

### 4.6 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](http://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 is not switched on at the time the Content is sent by the sender of the Content;
- (2) the Hardware of the Mobile User or SIM is full of Content or otherwise has insufficient memory to enable it to receive the Content;
- (3) the Hardware of the Mobile User does not have the necessary technical capability to enable it to receive the Content;
- (4) 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;
- (5) the receiving device of the recipient is not switched on at the time the Content is sent;
- (6) the receiving device of the recipient does not have the necessary technical capability to enable it to receive the Content; or
- (7) the network of the recipient's telecommunications supplier 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) Vodafone is not 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 the Mobile Services, including loss or damage caused by a virus.
- (g) Some Content accessed through Vodafone may not be current due to delays by third parties in providing such Content, or information which is needed to compile such Content, to Vodafone.
- (h) 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 Device, in order to deliver it (or a part of it) to the Customer's 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),
  - (3) 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.

- (i) The Customer is responsible for any reliance on or use of the Content received and any Content sent.
- (j) The Customer acknowledges that some Content may be offensive, obscene or disturbing to the Customer.
- (k) 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, Mobile Users 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 recipient.
- (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 recipient.

## 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 21.

### 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 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) to create, initiate or send Malicious Communications;
  - (6) to create, initiate or send unsolicited communications for fraudulent, deceptive or misleading purposes;
  - (7) to create, initiate or send unsolicited communications for marketing or advertising purposes without lawful grounds; or
  - (8) 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 engage in conduct which would deem the Customer a "Carriage Service Provider" as defined by the Telecommunications Act.

### 9.5 Complaints against Customer or Mobile User

- (a) 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.
- (b) The exercise of Vodafone's rights under this agreement is not dependent on the outcome of any proceedings by the police or other authorities.

### 9.6 Access to Customer's premises

- (a) The Customer acknowledges that in order to maintain or improve access to and use of the Mobile Services or the Vodafone Network, Vodafone may need to inspect, install and maintain equipment at the premises occupied by the Customer (**Network Enhancements**).
- (b) Subject to sub clause (c), the Customer grants to Vodafone and its Personnel the irrevocable right to, upon not less than 5 Business Days notice, access any of the Customer's premises at all reasonable times for the purposes of performing those Network Enhancements that Vodafone



considers necessary to generally improve access to and use of the Mobile Services or the Vodafone Network.

- (c) If the Customer leases or licences any premises it occupies from a third party, the Customer must, at its own cost, use all reasonable endeavours to obtain any necessary consents (eg. landlord's consent) required to enable Vodafone to access the Customer's premises to perform the Network Enhancements.
- (d) The Customer must, at its own cost, provide all reasonable support to Vodafone and its Personnel to perform the Network Enhancements, including providing access to electrical power and the internet.
- (e) At any time at Vodafone's request, including on expiry or termination of this agreement, the Customer must, at its own cost, do all things necessary (including procuring necessary consents) to enable Vodafone to recover all equipment which it installed at the Customer's premises when making a Network Enhancement.
- (f) The Customer acknowledges that any failure of the Customer to comply with this clause may result in degradation to the Customer's access to or use of the Mobile Services or Vodafone Network coverage.

## 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(h);
  - (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 19.2(a) of this agreement.

### 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 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.
- (e) 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:
  - (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 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 Technology Fund

- (a) The Customer will only be entitled to a Technology Fund if that entitlement is specified in a Tariff.
- (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 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

### 13.1 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) Vodafone undertakes any maintenance or repair or for any similar operational reasons, provided the suspension is only for a reasonable period of time;
- (4) Vodafone has reasonable grounds for suspecting fraud or other illegal conduct, in relation to the services supplied under this agreement, by the Customer, Mobile User or any other person using the Mobile Services;
- (5) Vodafone is reasonably satisfied that the Customer or a Mobile User has breached the prohibitions in clause 9.4;
- (6) a Force Majeure Event occurs;
- (7) a Suspension Event occurs;
- (8) the Customer does not pay by the due date any invoice issued by Vodafone under this agreement or under any other agreement between Vodafone and the Customer; or
- (9) 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 supplied under this agreement.
- (c) If Vodafone suspends access to the Mobile Services through a Customer Connection pursuant to clause 13.1(a) or 13.1(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 13.1(a)(3), 13.1(a)(4), 13.1(a)(5), 13.1(a)(6) or 13.1(a)(7), Vodafone must use its reasonable endeavours to recommence supply of the Customer Connection or access to Mobile Services, as soon as practicable.

### 13.2 Consequences of suspension

Nothing in clause 13.1(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 Access Charges) 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 Mobile Services offered under this agreement.

## 14 Term and termination

### 14.1 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 (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 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 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 13.1(a)(3), 13.1(a)(6) or 13.1(a)(7) for a period of 30 days or more.

### 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 or under any other agreement between the Customer and Vodafone:
  - (1) within 30 days from the due date for payment in respect of any undisputed amounts; or
  - (2) within 30 days from the date the dispute is resolved in respect of any disputed amount which is subsequently found to be payable by the Customer;
- (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 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 amounts owing to Vodafone;
- (d) the Customer Connection is ported to a supplier other than Vodafone in accordance with clause 19.2;

- (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 VHA 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;
- (i) Vodafone is reasonably satisfied that the Customer or a Mobile User has breached the prohibitions in clause 9.4;
- (j) Vodafone suspends a Customer Connection or access to the Mobile Services pursuant to clauses 13.1(a) or 13.1(b) for a period of 30 days or more;
- (k) 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;
- (l) the Customer becomes a Subsidiary of another corporation;
- (m) any Competitor of Vodafone:
  - (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.

### 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:

- (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 Claims pending or threatened against it, or by it, which may have a material effect on the subject matter of 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 Customer indemnity

- (a) 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, Vodafone Network, 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.
- (b) This indemnity does not apply to any loss or damage that Vodafone has caused, including by reason of the breach of a guarantee set out in the Australian Consumer Law.
- (c) The Customer's obligations under this indemnity will continue despite:
  - (1) the termination of this agreement; or
  - (2) the occurrence of any other thing, until all monies the Customer owes to Vodafone have been paid in full.

## 17 Liability

### 17.1 Consumer guarantees and Vodafone's liability to the Customer

- (a) The Australian Consumer Law provides consumers with certain 'consumer guarantees'. These guarantees apply where the goods and services Vodafone supplies to the Customer are of a kind ordinarily acquired for personal, domestic or household use or cost less than \$40,000, and in the case of goods, are not re-supplied by the Customer.
- (b) With respect to goods, these guarantees include a guarantee that the goods:
  - (1) are of acceptable quality (unless Vodafone made known to the Customer the reasons why the goods may not be of acceptable quality before purchase, for example, by drawing any fault or defect to the Customer's attention);
  - (2) fit for the purpose which Vodafone represented to the Customer;
  - (3) fit for the purpose or task for which the Customer acquired the goods, provided the Customer made that purpose known to Vodafone before purchase;
  - (4) match the description, sample or demonstration model the Customer was provided; and
  - (5) comply with any express warranty given in relation to the goods.
- (c) With respect to services, these guarantees include that:
  - (1) the services will be rendered with due care and skill;

- (2) the services and any product resulting from the services will be fit for the purpose or task for which the Customer acquired the services or the result the Customer expected the services to achieve, provided the Customer made the purpose or result known to Vodafone before purchase; and

- (3) if a time is not specified for supply of the services, the services will be supplied within a reasonable time.

- (d) These guarantees give the Customer rights against Vodafone that Vodafone cannot limit or exclude, subject to clause 17.1(e).

- (e) Where the goods or services supplied to the Customer are not of a kind ordinarily acquired for personal, domestic or household use or consumption, Vodafone's liability for breach of a guarantee (other than liability for guarantees as to title, undisclosed securities and undisturbed possession in relation to goods supplied to the Customer, which Vodafone cannot limit) is limited to doing one or more of the following:

- (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) Vodafone cannot limit its liability as set out in clause 17.1(e) if the Customer establishes that it would not be fair or reasonable for Vodafone to do so.

- (g) Except as provided in clause 17.1(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.

### 17.2 Other matters and Vodafone's liability to the Customer

All of the provisions of this clause 17.2 are to be read subject to the provisions of clause 17.1.

- (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 for any purpose (including a purpose in breach of this agreement);
  - (2) the Customer or any other person accessing or using Content or doing anything on the basis of the Content;



- (3) the Customer using the Content in a manner or for a purpose that is not authorised or otherwise permitted by this agreement or the Content Provider;
  - (4) any person accessing or using Data the Customer sends or doing anything on the basis of Data the Customer sends;
  - (5) any Content the Customer receives or Data the Customer sends which Vodafone has not provided or is not responsible for, being inaccurate, incomplete, not current or of inadequate quality, or otherwise in breach of the Customer's obligations under this agreement regarding use of the Mobile Services;
  - (6) Vodafone Adapting any Content or Data to enable it to be received or sent (which under clause 8.2(h) the Customer agrees Vodafone may do as Vodafone reasonably determines);
  - (7) the Customer not receiving any Content, or a delay in the Customer receiving any Content the Customer has requested;
  - (8) any person to whom the Customer sends or attempts to send Data not receiving the Data, or a delay in that person receiving the Data;
  - (9) the Customer's handset becoming blocked by reason of it sharing an international mobile equipment identity number with another customer's handset which Vodafone has blocked; or
  - (10) the loss of or any damage to the Customer's Hardware after it has left Vodafone's possession.
- (c) Subject to clause 17.2(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 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 3 times the Minimum Spend Amount multiplied by the Minimum Customer Connections.
- (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.

## 18 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 issues relating to this agreement.

## 19 Compliance

### 19.1 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.

### 19.2 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.

### 19.3 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.

## 20 Confidential Information

### 20.1 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 20.1(a) extends to Confidential Information provided to or obtained by a party before entering into this agreement.

### 20.2 Exclusions

The obligation of confidence in clause 20.1 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.

### 20.3 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 20.3(a) must ensure that such information is kept confidential by the recipients.

### 20.4 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.

### 20.5 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 20 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 20, 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 20.

## 21 Privacy and Marketing

### 21.1 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.

### 21.2 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.

### 21.3 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.

### 21.4 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.

### 21.5 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.

### 21.6 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.

### 21.7 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.
- (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.

## 22 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.

## 23 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.

## 24 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 6 months after the person ceases to be engaged or employed by the other party without the prior consent of the other party.

## 25 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.

## 26 Dispute resolution

### 26.1 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**).

### 26.2 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 26.2, 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 26.2(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.

### 26.3 Escalation of Dispute to appropriate executive

- (a) If the parties fail to resolve the Dispute in accordance with clause 26.2(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 26.3(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.

### 26.4 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.

## 27 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.

## 28 General

### 28.1 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 or Customer Representative's address and facsimile number 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  
Facsimile: 02 8904 0457

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, 3 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.

## 28.2 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.

## 28.3 No partnership

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

## 28.4 Assignment and novation

- (a) Subject to clause 28.4(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 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.

## 28.5 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.

## 28.6 Further action

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

## 28.7 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.

## 28.8 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](http://www.vodafone.com.au)

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