

## VODAFONE MESSAGING – STANDARD TERMS AND CONDITIONS

### 1 ABOUT THIS DOCUMENT

- (a) This document sets out Our standard terms and conditions for customers using Our messaging services. These terms and conditions, along with any other terms You agree to, are binding on You and Us.
- (b) Unless the context otherwise requires, words used in this document have the meaning given to them in Your Application and clause 16.
- (c) The Application includes a detailed description of each of the messaging services We offer, including the different features, options and availability relating to the service.
- (d) You may obtain a copy of the latest version of these terms and conditions from Us or on the Website.

### 2 THE AGREEMENT

#### 2.1 Agreement

Your Agreement with Us is made up of:

- (a) Your Application; and
- (b) these terms and conditions.

#### 2.2 Inconsistencies

If anything in these terms and conditions is inconsistent with Your Application then, unless otherwise expressly stated in the Application, these terms and conditions prevail to the extent of the inconsistency.

#### 2.3 Duration of Service

- (a) The Agreement commences when We accept Your Application. We will provide the Service to You from the Service Start Date.
- (b) We will provide the Service to You for the Minimum Term. If neither You nor We cancel the Service at the end of the Minimum Term, We will continue to supply the Service to You on a month-to-month basis in accordance with the Agreement.
- (c) If You do not wish to continue to use the Service on a month-to-month basis after the end of the Minimum Term, You must notify Us in accordance with clause 10.1.
- (d) If We choose not to continue to provide the Service to You after the end of the Minimum Term, We will notify You in accordance with clause 10.2.
- (e) If We wish to change the terms of the Agreement, including any fees or charges, at the end of the Minimum Term, We will notify You as set out in clause 2.4 before the end of the Minimum Term.

#### 2.4 Changes to the Agreement or Service

- (a) We may vary the Agreement and the Service at any time (**Change**).
- (b) Any Change We make will not take effect until Your next billing period after the date the Change is implemented.
- (c) Where a Change could be reasonably expected to adversely affect You, We will give You reasonable notice of the Change having regard to:
  - (i) the nature of the Change;
  - (ii) the means by which the notice is to be provided; and
  - (iii) the length of time before the Change is to occur.
- (d) If We make a Change during the Minimum Term that could, in Our reasonable opinion, cause more than a minor detriment to You, We will give You at least 21 days' notice of the Change and offer You the right to terminate the Agreement within 42 days of the date of Our notice without incurring any fees or charges, including any applicable Cancellation Fee, other than:
  - (i) Service usage or network access charges incurred up to the date on which the Agreement ends; and
  - (ii) any other outstanding amounts that cover installation costs or Equipment (where such Equipment can be used in connection with services provided by other suppliers).

- (e) If You are within the Minimum Term and You demonstrate to Us that a Change has caused more than minor detriment to You, You may terminate the Agreement without incurring any fees or charges, including any applicable Cancellation Fee, other than:
  - (i) Service usage or network access charges incurred up to the date on which the Agreement ends; and
  - (ii) any other outstanding amounts that cover installation costs or Equipment (where such Equipment can be used in connection with services provided by other suppliers).

## **2.5 When can You make changes to the Agreement**

Unless expressly set out in the Agreement, You cannot make any changes to the Agreement without first obtaining Our written consent.

## **3 SUPPLY OF THE SERVICE**

We will supply the Service described in the Application in accordance with the Agreement.

## **4 PERSONAL INFORMATION AND PRIVACY**

### **4.1 Collection**

We and/or Our agents and service providers may collect Personal Information about You for the primary purpose of providing You the Service. If You do not provide Personal Information to Us, We will not be able to provide the Service to You.

### **4.2 Use**

- (a) We may use Personal Information about You for purposes that are related to providing You with the Service and which You would reasonably expect Us to use that information for (including for billing purposes).
- (b) We may also undertake market and product analysis based on Your use of the Service.
- (c) We may contact You or send You information about new developments, products, services and special offers by post, telephone, or by any form of electronic message (including TXT, PXT™, Video PXT™, email, WAP and the world wide web). We may use any email address or other Personal Information You provide to Us at any time for this purpose.
- (d) Despite section 18(1) of the *Spam Act 2003* (Cth), You agree and acknowledge that any electronic message We send You will not contain an unsubscribe facility. You can, at any time, opt-out of receiving marketing material by contacting Customer Care. You agree and acknowledge that even if You opt-out, We will still need to send You essential information about Your account, Changes or other information which is legally required.
- (e) If the Agreement terminates or expires or if You opt-out of receiving marketing material, We will remove You from Our electronic message marketing distribution list. You agree and acknowledge that this removal may take up to 5 business days to take effect and You may continue to receive electronic messages from Us for up to 5 business days after the date of Your request to be removed from the distribution list or the Cancellation Date.

### **4.3 Access and Correction**

If You request in writing, We will:

- (a) provide You with access to Personal Information We have about You; or
- (b) correct Personal Information We have about You that is inaccurate, incomplete or out of date,

in accordance with Our privacy policy (which You can view on the Website) and the *Privacy Act 1988* (Cth),

### **4.4 Disclosure**

- (a) You agree that We may receive and disclose Personal Information or documents about You from or to:
  - (i) credit providers or credit reporting agencies for purposes permitted under the Privacy Act;
  - (ii) law enforcement agencies to assist them in the prevention of criminal activity;
  - (iii) other providers of telecommunications services and financial institutions if We suspect or are seeking to prevent or investigate fraud; or

- (iv) Our service providers, dealers and agents, or any Vodafone Group Company for purposes that are related to providing You with a telecommunications service and which You would reasonably expect Us to use that information for,

whether or not the recipients of the Personal Information are in or outside Australia.

- (b) We may transfer Your Personal Information to a recipient outside Australia in any other ways permitted under the Privacy Act. We will ensure that any recipient of the information outside Australia will appropriately safeguard the information provided to them.
- (c) We may disclose Personal Information about You to other third parties if required by law or if We are permitted to make such disclosure under the Privacy Act 1988 or other legislation, including by providing Your name, address, telephone service number and other public number customer details for inclusion in the Integrated Public Number Database as required for emergency services, law enforcement and other approved purposes. We may also disclose Personal Information about You to third parties who agree with Us to keep Personal Information about You confidential. In all other circumstances, We will not disclose Personal Information about You without Your consent.
- (d) We recommend that You do not disclose to any person any security number, password or other identifier issued by Us (including but not limited to Your enquiry number, barring number or personal identification number). You acknowledge that We may disclose Your Personal Information to any person that provides Us with Your security number, password or other identifier.

#### **4.5 Acknowledgment**

You acknowledge and agree that any calls You make to Customer Care may be monitored and recorded for quality assessment and record-keeping purposes.

#### **4.6 Privacy Policy**

By providing Personal Information to Us and obtaining the Service, You acknowledge and consent to the collection, use and disclosure of Your Personal Information as set out in this clause 4 and in accordance with Our privacy policy which can be found on the Website.

### **5 USING THE SERVICE**

#### **5.1 Establishing the Service**

You must reasonably co-operate with Us to allow Us, or a Supplier, to establish and supply the Service to You safely and efficiently. If You do not do so, We may be entitled to cancel the Service under clause 10.2(b)(iv) or clause 10.2(b)(v) or suspend the Service under clause 11.1(a)(viii).

#### **5.2 Quality of the Service**

- (a) We will provide the Service to You with due care and skill. However, given the nature of the Service (including the Service's reliance on systems and services that We do not own or control), We cannot promise that the Service will be free from faults or interruptions and that it (and each of its features) will not be subject to congestion, "drop-outs" and/or loss of data. We do not guarantee transmission to or reception by You or any other person of any message or information, although You may still be charged. If a fault occurs, We will use reasonable efforts to correct the fault as soon as practicable.
- (b) You agree that the Service may not have coverage in all areas and may be affected by physical obstructions. It is Your responsibility to check that there is coverage in the areas and locations in which You wish to use the Service. You acknowledge and agree that, even within a coverage area, the Service may not be able to be used in areas where geographical or man-made features interfere with Our Network, for example, where there are mountains or road cuttings, or in parts of buildings such as lifts and basement car parks.
- (c) We use reasonable efforts to ensure that You will experience seamless handover between Our different Networks. However, there may be some impact on the Services that You are accessing at the time due to the different capabilities of the Network.
- (d) We may change the telecommunications network infrastructure constituting Our Network at any time. If We do so, We may be required to notify You and offer You a right to terminate as set out in clause 2.4.

### 5.3 Functionality

- (a) If You have elected to send or receive the Service to a mobile phone or pager, You acknowledge and agree that You may not be able to receive the Service if the relevant device:
- (i) is not switched on at the time a message is sent;
  - (ii) has insufficient memory to enable it to receive the Service;
  - (iii) does not have the necessary technical capability to enable it to receive the Service;
  - (iv) is not in a coverage area and/or if it requires coverage from a specific network, it is not in the specific network coverage area; or
  - (v) the sending or receiving mobile phone or pager is provided by a third party or uses a third party network,
- although You may still be charged for a message being sent (even if You do not receive it) and for the Service provided.
- (b) In respect of pagers, You acknowledge that if Your pager is not able (for any reason) to receive a message at the time a message is sent under the Service, the message will not be stored or re-sent at a later time and, as a result, You will not receive that message.
- (c) Having regard to the nature and limitations of the Service and the Network, You will not use or rely on the Services as the sole means of managing the safety, health, integrity or risks relating to any person, business or undertaking.

### 5.4 Content

- (a) You will ensure that any information You provide to Us in relation to the Service is accurate, complete and up-to-date.
- (b) We do not provide any security (such as encryption) over any content provided by third parties and provided to You or provided by You as part of the Service.
- (c) You agree that:
- (i) We are not responsible for the content of any messages sent using the Service and We are not obliged to check such content for accuracy or any other purpose;
  - (ii) We are not required to monitor Your access to the content of any messages sent or received using the Service or usage of the Service except where required by applicable laws and regulations, although We may do so;
  - (iii) You are responsible for any reliance on or use of the content of any messages sent or received using the Service;
  - (iv) You should make Your own enquiries before You do anything on the basis of the content of any messages sent or received using the Service; and
  - (v) You may find some content offensive, obscene or disturbing.

### 5.5 Permitted uses of the Service

- (a) When You use the Service You must:
- (i) use the Service only in accordance with the Agreement or otherwise in a manner approved by Us;
  - (ii) comply with:
    - (A) all laws (including the *Spam Act 2003*(Cth) and the *Do Not Call Register Act 2006*(Cth)), regulations and guidelines concerning the Service;
    - (B) all directions by a Regulator; and
    - (C) all notices issued by authorisation of or under law; and
  - (iii) co-operate with Us and give Us any information We may require from You from time to time in relation to the Service;
  - (iv) follow Our reasonable instructions regarding the use of the Service;
  - (v) notify Us as soon as You become aware of any claim You may have against Us in relation to the Service; and

- (vi) comply with any rules imposed by any third party whose services You access using the Service or whose network Your data traverses.
- (b) You must not:
  - (i) use, or attempt to use, the Service:
    - (A) to break any law or to infringe another person's rights (including damaging any property or injuring or killing any person or infringing someone's copyright);
    - (B) to transmit, publish or communicate material which is unlawful, defamatory, offensive, abusive, indecent, menacing or unwanted;
    - (C) to send unsolicited commercial electronic messages (spam) or knowingly send any viruses;
    - (D) to expose Us to liability; or
    - (E) in any way which damages, interferes with or interrupts the Service, Our Network or a Supplier's Network used to supply the Service;
  - (ii) resell, distribute or reproduce any part of the Service; or
  - (iii) make use of the Service or Our Network without charge, when a charge is normally payable.
- (c) You must not, and must not allow any other person to, use the Service (or any of its features) to send or make available material which:
  - (i) is indecent, obscene, pornographic, offensive, racist, menacing, unlawful or confidential;
  - (ii) defames another person;
  - (iii) harasses or abuses another person or violates their privacy;
  - (iv) contravenes any applicable laws, regulations, or industry codes, standards, content requirements or statements; or
  - (v) is misleading and/or deceptive as to Your identity,

and You agree that We reserve the right to refuse to forward any such material at any time and shall have no liability in doing so.
- (d) We may ask You to stop doing something which We reasonably believe is contrary to clauses 5.5(a) to 5.5(c) above. You must immediately comply with any such request. If You do not, then We may take any steps reasonably necessary to ensure compliance with clauses 5.5(a) to 5.5(c) above or the request.
- (e) You acknowledge that We, or any Supplier whose Network is used to supply the Service, may be required to intercept communications over the Service and may also monitor Your usage of the Service and communications sent over it.
- (f) You must ensure that any person You allow to use the Service complies with the Agreement as if they were You.
- (g) If You do not comply with this clause 5.5, We may be entitled to cancel the Service under clause 10.2(b)(iv) or 10.2(b)(v) or suspend the Service under clause 11.1(a)(viii).

## 5.6 Limits

The use of the Service may be limited, for example there may be limits on the number or size of messages You can send or receive or relating to message storage capacity (if any). Any applicable limits will be communicated to You in advance. If You exceed these limits You may not be able to use the Service until You adhere to the limits, for example by reducing the message size or the number of messages stored.

## 5.7 Unusually High Use

We may contact You if We become aware of an Unusually High Use of the Service by You (including to verify any costs or charges which You may have incurred). However, We are under no obligation to do so. If We do, We may ask You to make a pre-payment usage charge under clause 9.1(b). We may also be entitled to suspend the Service under clause 11.1(a)(iii).

## **5.8 Ownership of Service Numbers**

- (a) We will provide You with a service number for your Service.
- (b) You acknowledge that:
  - (i) the allocated service number remains Our property and cannot be ported to another carrier or carriage service provider; and
  - (ii) upon cancellation of the Service, You must cease to use the allocated service number, and it may be allocated to another customer.

## **6 EQUIPMENT**

### **6.1 Your responsibilities**

- (a) You must ensure that all equipment You use in connection with the Service and the way You use that equipment complies with:
  - (i) all laws;
  - (ii) all directions by a Regulator;
  - (iii) all notices issued by authorisation of or under law; and
  - (iv) reasonable directions by Us.
- (b) If You breach clause 6.1(a) above, We may:
  - (i) disconnect the equipment from the Service; and
  - (ii) suspend the Service; or
  - (iii) cancel the Service in accordance with clauses 10.2(b)(iv) or 10.2(b)(v).
- (c) We will try to give You reasonable notice before taking any action under clause 6.1(b) above. We may take any such action under clause 6.1(b) immediately if there appears to be an emergency.

### **6.2 Purchased Equipment**

- (a) If You purchase any Equipment (such as pagers or handsets) directly from Us (such as from a Vodafone shop, Customer Care, or the Website) You will enter into a separate agreement with Us for the purchase of such Equipment.
- (b) We will retain ownership of the Equipment purchased from Us until You have paid for it in full.
- (c) You will be responsible for any Equipment as soon as it is delivered to You. If You damage or lose any Equipment before You have paid for it in full, or the Equipment is stolen, You will still be required to pay for the full price of that Equipment (except to the extent We are liable to You for the loss or damage under the laws referred to in clause 12.2(b)).
- (d) You are responsible for arranging Your own insurance for any Equipment.

### **6.3 Malicious Code**

We will not be responsible for any harm You suffer from a virus or other malicious or manipulating program which infiltrates Your equipment, whether it was transmitted via the Services or otherwise, and You remain responsible for all charges for the use of any Services caused by such virus or program.

## **7 NETWORK MAINTENANCE, FAULT REPORTING AND RECTIFICATION**

### **7.1 Maintenance on the Network used to supply the Service**

- (a) We may conduct maintenance on Our Network and maintenance may be conducted on a Supplier's Network used to supply the Service. The Service may be unavailable or limited during periods of maintenance.
- (b) We will try to conduct scheduled maintenance on Our Network outside normal business hours, but We may not always be able to do so.

### **7.2 Reporting faults**

- (a) You can report faults to Our 24 hour fault reporting service via the Website or by contacting Customer Care.

- (b) Before You report a fault to Us, You should ensure that the fault is not caused by any equipment that We are not responsible for, such as equipment that is owned by You or is not provided by Us for You to use in connection with the Service.

### **7.3 Assisting Us in investigating and repairing a fault**

You must provide all reasonable assistance to enable Us or Our Personnel, or where necessary a Supplier, to investigate and repair a fault.

### **7.4 Our responsibility for repairing faults**

- (a) We will repair faults within Our Network.
- (b) Unless the Application expressly provides otherwise, We are not responsible for repairing any fault in the Service where the fault arises in or is caused by:
  - (i) a Supplier's Network;
  - (ii) equipment that We are not responsible for such as equipment that is owned by You or is not provided by Us for You to use in connection with the Service; or
  - (iii) facilities outside Our Network.
- (c) If We investigate a fault and determine that the fault is attributable to an Excluded Event, then We may charge You for any costs We incur in investigating and repairing the fault.

## **8 FEES AND CHARGES**

### **8.1 Fees and charges for using the Service**

- (a) You must pay the fees and charges for the Service which are set out in the Application, Miscellaneous Charges and all applicable government Taxes and charges.
- (b) You must pay all fees and charges which are incurred in respect of the Service even if You did not authorise its use.
- (c) Subject to Your rights under the laws referred to in clause 12.2(b), You must pay the fees and charges for the Service even if the Service is unavailable or You are unable to access the Service.

### **8.2 Additional fees and charges**

In addition to the fees and charges You incur in the normal use of the Service (including an Access Fee, where applicable), We may charge You an administration fee and other similar fees and charges as set out in the Application or notified by Us from time to time, including via the Website. These fees and charges may include suspension fees or Cancellation Fees, late payment fees, payment dishonour fees and reconnection or reactivation fees.

## **9 PAYMENTS**

### **9.1 Frequency**

- (a) We will bill You monthly, unless otherwise set out in the Application.
- (b) We may also ask You to make a pre-payment usage charge or request that You make an interim good-faith payment. For example, We may do this where there has been an Unusually High Use of the Service.

### **9.2 Details of bill**

We will try to include on Your bill all fees and charges for the relevant billing period. However, You acknowledge that this is not always possible and We may include these unbilled charges in a later bill(s). In any event, We will not bill You for fees and charges that are older than 160 days from the date You incurred the charge, unless We are permitted to do so by a relevant industry code. The initial bill may also contain a charge for connection.

### **9.3 Payment methods**

- (a) You must pay Your bill using the method set out in the Application.
- (b) We will not charge a fee for paying Your bill by direct debit. We will charge a fee for paying Your bill by credit card or for mailing You paper bills as set out in the Miscellaneous Charges (except in exceptional circumstances, for example, bills for disabled and disadvantaged customers).

## 9.4 Direct debit payments

This is your Direct Debit Request Service Request Agreement with Vodafone Hutchison Australia Pty Limited (ABN 76 096 304 620) (**Direct Debit Agreement**). It sets out your obligations in undertaking a direct debit arrangement with us. The Agreement forms part of the terms and conditions of your *direct debit request*.

### Definitions

*account* means the account held at *your financial institution* from which *we* are authorised to arrange for funds to be debited.

*business day* means a day other than a Saturday or a Sunday or a public holiday listed throughout Australia.

*debit day* means the day that payment by *you* to Vodafone is due.

*debit payment* means a particular transaction where a debit is made.

*direct debit request* means the written, verbal or online request between *you* and Vodafone to debit funds from your nominated account.

*your financial institution* is the financial institution where *you* hold the *account* that *you* have authorised *us* to arrange to debit.

*we, us* and *our* means Vodafone Hutchison Australia Pty Limited ABN 76 096 304 620

### 9.4.1 Debiting your Account

**9.4.1.1** By written, verbal or online request you have authorised us (Vodafone (ID 031349)) to arrange for funds to be debited from your account through the Bulk Electronic System (BECS).

**9.4.1.2** We will only arrange for funds to be debited from your account if we have sent to the address/email address nominated by you, a billing advice which specifies the amount payable by you to us and when it is due. The due date will be at least 14 days after the date your bill was sent to you. Where the due date falls on a non-business day, we will draw the amount on the next business day.

**9.4.1.3** We will continue to rely on your authority to directly debit the amount of each bill from your nominated account until you advise us of any changes to the arrangements. We reserve the right to cancel the direct debit request if one or more drawings are returned unpaid by your nominated financial institution and to arrange with you an alternate payment method.

**9.4.1.4** If a company utilising a corporate account – You warrant and represent that you are an authorised representative of the Company and able to enter into this Direct Debit Request on behalf of the company.

### 9.4.2 Changes by us

**9.4.2.1** We may vary any details of this Direct Debit Agreement or a direct debit request at any time by giving you at least fourteen (14) day's notice.

### 9.4.3 Changes by you

**9.4.3.1** Subject to 9.4.3.2, you may change or cancel the arrangements under a direct debit request by contacting us at least 2 business days before your payment due date by calling us on 1300 133 585 (local call rate applies). You can also contact your financial institution at least 5 business days before your payment due date if you wish to stop a direct debit payment.

**9.4.3.2** If you cancel your direct debit request through your financial institution without notifying us or providing us with an alternative means of payment, additional charges may apply.

### 9.4.4 Your obligations

**9.4.4.1** It is your responsibility to ensure that there are sufficient clear funds available in your account to allow a debit payment to be made.

**9.4.4.2** If there are insufficient funds in your account;

- (a) you may be charged a fee and/or interest by your financial institution
- (b) you may also incur fees or charges imposed or incurred by us; and
- (c) you must arrange for the debit payment to be made by another method

**9.4.4.3** You are responsible for checking that all billing information provided to you is correct before the associated direct debit transaction occurs. You should also check your account statement to verify that the amounts debited from your account are correct.

#### **9.4.5 Disputes**

**9.4.5.1** If you believe that there has been an error in debiting your account you should notify us directly on 1300 133 585 (local call rate applies)

**9.4.5.2** any queries you may have about an error made in debiting your account should be directed to us in the first instance so that we can attempt to resolve the matter between us and you. If we cannot resolve the matter you can still lodge a direct debit claim through your financial institution.

#### **9.4.6 Accounts**

You should check:

- (a) with your financial institution whether direct debiting is available from your account; and
- (b) your account details which you have provided to us are correct.

#### **9.4.7 Confidentiality**

**9.4.7.1** We will make reasonable efforts to keep any such information that we have about you confidential and secure and to ensure that any of our employees or agents who have access to information about you do not make any unauthorised use, modification, reproduction or disclosure of that information.

**9.4.7.2** We will only disclose information that we have about you:

- (a) to the extent specifically required by law; or
- (b) for the purposes of this Direct Debit Agreement (including disclosing information in connection with any query or claim)

#### **9.4.8 Notice**

**9.4.8.1** If you wish to notify us about anything relating to this Direct Debit Agreement you should contact Customer Care on 1300 133 585 (local call rate applies).

**9.4.8.2** We will notify you by sending a bill advice to the address/email address you have given us.

**9.4.8.3** Any notice will be deemed to have been received two business days after it is posted/sent.

#### **9.5 Due date for payment**

You must pay the entire amount billed by the due date specified in the payment notification, bill or as otherwise notified by Us.

#### **9.6 Consequences of non-payment**

- (a) If You do not pay Your bill by the date the payment is due We will notify You and request immediate payment. If You fail to pay the overdue amount within a reasonable time as set out in the notice, We may:
  - (i) charge You a late fee as set out in the Application;
  - (ii) suspend, cancel or limit the Service, in accordance with clause 10 or clause 11, as relevant. If We suspend or cancel the Service, We may charge You a suspension fee or Cancellation Fee. If the Service is cancelled, disconnected or deactivated, You may have to pay a reconnection or reactivation fee as set out in the Application for the reconnection or reactivation of the Service (except that You will not have to pay such a fee if the Service was suspended or cancelled due to a mistake on Our behalf). If the Service is cancelled, disconnected or deactivated, the default leading to the cancellation, disconnection or deactivation may be disclosed to a credit reporting

agency, collection agency and/or debt buyer and may be added to Your credit file with a credit reporting agency;

- (iii) engage a debt collection agent to recover the money You owe Us or institute legal proceedings against You to recover the money You owe Us. You must reimburse Us any reasonable costs that We incur in pursuing payment of amounts You Owe Us; and
- (iv) on-sell any unpaid amounts to a third party. If We do this, any outstanding amounts will be payable to that third party. We will notify You within 25 business days that any unpaid amounts You owe Us have been sold to a third party (or arrange for the purchaser to notify You of this).

- (b) In taking any action under this clause 9.6, We will comply with Our obligations under any applicable industry code.

## 9.7 Suspension of payment obligations

Where a specified amount for the use of the Service is disputed and is subject to an open complaint that is unresolved by Us, the Telecommunications Industry Ombudsman or a relevant recognised third party, We will suspend Your payment obligations for that specified amount until the complaint has been investigated and resolved, and for at least 7 business days after You are advised of the outcome of Your complaint. However, You will still be required to pay Us for any other fee and charges that You owe Us.

## 10 CANCELLING THE SERVICE

### 10.1 Your right to cancel the Service

- (a) You may cancel the Service at any time:
  - (i) by cancelling it in the manner specified in the Application; or
  - (ii) by giving Us 30 days' notice (note that You are required to give Us this notice if You do not wish to continue to use the Service after the end of the Minimum Term, otherwise We will continue to supply the Service to You in accordance with clause 2.3(c)); or
  - (iii) by giving Us notice if:
    - (A) We breach a material term of the Agreement and We cannot remedy that breach, including where there are prolonged or repeated interruptions to Your access to, or use of, the Service and the loss was not a result of circumstances reasonably attributable to You or equipment that We are not responsible for, such as equipment that is owned by You or is not provided by Us for You to use in connection with the Service; or
    - (B) We breach a material term of the Agreement and We can remedy that breach, but We do not remedy that breach within 30 days after You give Us notice requiring us to do so.
  - (iv) in accordance with clause 2.4;
- (b) If the Agreement is an unsolicited consumer agreement under the Australian Consumer Law, You may also cancel the Service in accordance with any termination rights You may have in respect of the unsolicited consumer agreement.

### 10.2 Our right to cancel the Service

- (a) After the end of the Minimum Term, We may cancel the Service at any time, in whole or in part, by giving You at least 30 days' notice. Note that We may cancel the Service at the end of the Minimum Term by giving You at least 30 days' notice in accordance with clause 2.3(d).
- (b) We may cancel the Service at any time, in whole or in part, if:
  - (i) there is an emergency;
  - (ii) We reasonably suspect fraud by You or any other person in connection with the Service;
  - (iii) any amount owing to Us in respect of the Service is not paid by its due date and We give You notice requiring payment of that amount and You fail to pay that amount in full within 10 business days after We give You that notice, unless otherwise set out in the Agreement;

- (iv) You breach a material term of the Agreement (including clauses 5.1 and 5.5) or a number of less material terms and such breaches together amount to a material breach or otherwise misuse the Service and You cannot remedy that breach;
  - (v) You breach a material term of the Agreement (other than a breach which separately gives rise to rights under this clause) (including clauses 5.1 and 5.5) and You can remedy that breach but fail to do so within 7 days after We give You notice requiring You to do so;
  - (vi) We are required to do so to comply with an order, instruction, request or notice of a Regulator, an emergency services organisation, any other competent authority or by authorisation of or under law (for example, under the *Copyright Act 1968* (Cth));
  - (vii) You suffer an Insolvency Event;
  - (viii) You die or, if You are a partnership, the partnership is dissolved or an application is made to dissolve the partnership;
  - (ix) the Service is suspended for more than 14 days, unless otherwise set out in the Agreement;
  - (x) any Intervening Event prevents the supply of the Service in accordance with the Agreement for more than 14 days; or
  - (xi) We are otherwise entitled to do so under the Agreement.
- (c) We will try to give You as much notice as We reasonably can before We cancel the Service. However, if We consider it reasonably necessary, We may cancel the Service immediately and without notice to You.

### **10.3 Consequences of cancellation**

- (a) The Agreement terminates when the Service is cancelled.
- (b) If the Service is cancelled:
  - (i) You are liable for any fees and charges incurred up to and including the Cancellation Date, including any outstanding charges relating to Equipment, provided that despite any other clause of this Agreement, You will not be liable for any fees or charges if You cancel the Service in accordance with clause 10.1(b).
  - (ii) You are liable to pay a Cancellation Fee, except where:
    - (A) You cancel the Service in accordance with clause 2.3(c), clause 2.4 or clause 10.1(a)(iii);
    - (B) We cancel the Service in accordance with clause 2.3(d) or clause 10.2(b)(x);
    - (C) We cancel the Service in accordance with clause 10.2(b)(i), 10.2(b)(vi) or 10.2(b)(x) and it is unreasonable for Us to charge You a Cancellation Fee;
  - (iii) You authorise Us to apply any overpayment on Your account and/or money that You have paid in advance for the Service which is being cancelled to pay for any undisputed outstanding charges (including the Cancellation Fee, if any); and
  - (iv) subject to clause 10.3(b)(iii), and unless set out in the Application, We will refund to You any overpayment on Your account and any money that You have paid in advance for the Service which is being cancelled on a pro-rata basis.
- (c) If the Service is cancelled as a result of circumstances reasonably attributable to You before the Service Start Date. You must pay Us any infrastructure and installation costs incurred by Us in connection with preparations for supplying the Service to You.
- (d) If You wish to reinstate the Service You should contact Us through Customer Care. If the Service is cancelled as a result of circumstances reasonably attributable to You, and We reinstate the Service, then You may have to pay Us a reconnection or reactivation fee. However, You will not have to pay Us a reconnection or reactivation fee if Your Service is cancelled as a result of a mistake on Our behalf.
- (e) If You are able to use the Service after the Cancellation Date, You are liable for any fees and charges incurred by You for that use, in addition to any other fees and charges under this clause 10.3.

## **11 SUSPENDING THE SERVICE**

### **11.1 Our rights to suspend the Service**

- (a) We may suspend the Service at any time if:
  - (i) We have the right to cancel or terminate the Service in accordance with the Agreement;
  - (ii) doing so is necessary to allow Us or a Supplier to repair, maintain or service any part of Our Network or a Supplier's Network used to supply the Service;
  - (iii) We reasonably believe there has been an Unusually High Use of the Service;
  - (iv) We receive a serious complaint against You which We have reasonable grounds to believe is genuine and which We reasonably believe gives rise to a threat or risk to the security of the Service or Our Network;
  - (v) We have other reasonable grounds for believing that:
    - (A) a threat or risk exists to the security of the Service or the integrity of Our Network and that suspending Your Service will minimise the threat or risk;
    - (B) You no longer live or work within the areas in which Our Network operates;
    - (C) Your communications with any of Our Personnel have been menacing, threatening, amount to harassment or have otherwise been unacceptable;
  - (vi) We receive notice from You, or someone authorised by You, confirming the loss or theft of Equipment or otherwise strongly believe that Equipment has been lost or stolen;
  - (vii) there are problems interconnecting Our Network with any Supplier's Network;
  - (viii) We are entitled to cancel the Service under clause 10.2; and
  - (ix) We are otherwise entitled under the Agreement to suspend the Service.
- (b) We will try to give You as much notice as We reasonably can before We suspend the Service. However, if We consider it reasonably necessary, We may suspend the Service immediately without notice to You.
- (c) If We suspend the Service, We may later cancel the Service for the same or a different reason.

### **11.2 Consequences of suspension**

- (a) You will not be able to use the Service while it is suspended.
- (b) You must continue to pay any applicable Access Fees for the Service while it is suspended.
- (c) If the Service is suspended and the suspension was not as a result of circumstances reasonably attributable to You (including a mistake on Our behalf) or was attributable to Equipment We are responsible for, You will be entitled to a refund or a rebate of any Access Fees for the period of suspension. You should contact Customer Care for Your refund or rebate.
- (d) If the Service is suspended as a result of circumstances reasonably attributable to You, You may have to pay Us a suspension fee. You should check the Application to see if a suspension fee applies. If You wish to lift a suspension of the Service, You should contact Us through Customer Care.

## **12 LIABILITY**

### **12.1 Your liability to Us**

- (a) You are not liable to Us for any consequential losses We suffer or for any loss, damage, costs, expenses and charges that We incur which are not a direct result of something You have done (except under an indemnity granted to Us under this Agreement (such as under clause 12.1(b) below)).
- (b) We are not liable (whether in contract, tort (including negligence), statute or otherwise) to any person, including any person You communicate with using the Service. If any person makes a claim against Us arising from or in relation to:
  - (i) the use (or the attempted use) of the Service by You;
  - (ii) equipment used by You in connection with the Service;

- (iii) the content of any messages sent using the Service; or
- (iv) Your non-compliance with relevant laws whilst using the Service,

You indemnify Us against (and must pay Us for) all loss, damage, costs, expense and charges We suffer in connection with such claims.

- (c) This indemnity does not apply to any loss of damage that We have caused, including by reason of the breach of a guarantee set out in the Australian Consumer Law.
- (d) Your obligations under this indemnity will continue despite the termination of the Agreement or the occurrence of any other thing until all monies You owe Us have been paid in full.

## 12.2 Our liability to You

### (a) General

- (i) We have responsibilities and obligations under the law, including under:
  - (A) the Telecommunications Legislation;
  - (B) the Competition and Consumer Act; and
  - (C) applicable laws, regulations and codes.
- (ii) Except as set out in clauses 12.2(b) and 12.2(c) below, nothing in the Agreement excludes, restricts or modifies any non-excludable rights that You have under existing laws or regulations, including any rights under the Australian Consumer Law.

### (b) Australian Consumer Law – consumer guarantees

- (i) The Australian Consumer Law provides consumers with certain 'consumer guarantees'. These guarantees apply where the goods and services We supply to You 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 You. With respect to goods, these guarantees include a guarantee that the goods:
  - (A) are of acceptable quality (unless We made known to You the reasons why the goods may not be of acceptable quality before purchase, for example, by drawing any fault or defect to Your attention);
  - (B) fit for the purpose which We represented to You;
  - (C) fit for the purpose or task for which You acquired the goods, provided You made that purpose known to Us before purchase;
  - (D) match the description, sample or demonstration model You were provided; and
  - (E) comply with any express warranty given in relation to the goods.
- (ii) With respect to services, these guarantees include that:
  - (A) the services will be rendered with due care and skill;
  - (B) the services and any product resulting from the services will be fit for the purpose or task for which You acquired the services or the result You expected the services to achieve, provided You made the purpose or result known to Us before purchase; and
  - (C) if a time is not specified for completion of the services, the services will be supplied within a reasonable time.
- (iii) These guarantees give You rights against Us that We cannot limit or exclude, subject to clause 12.2(b)(iv). For example, if a failure to meet a guarantee is a major failure, then in relation to goods and depending on the circumstances, You may be entitled to a replacement or refund and, in relation to services, You may be entitled to terminate the Agreement and obtain a refund. If a failure does not amount to a major failure, You are entitled to ask Us to remedy the failure. In this case, We are able to choose how to remedy the failure, including by repairing or replacing goods.

This clause 12.2(b)(iii) is only intended to provide some examples of the rights You may have against Us. It is not an exhaustive statement of the circumstances in which You may be entitled to a remedy under the Australian Consumer Law.

- (iv) Where the goods or services supplied to You are not of a kind ordinarily acquired for personal, domestic or household use or consumption, Our 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 You, which We cannot limit) is limited to doing one or more of the following:
    - (A) in the case of goods:
      - (aa) the replacement of the goods or the supply of equivalent goods;
      - (ab) the repair of the goods;
      - (ac) the payment of the cost of replacing the goods or acquiring equivalent goods; or
      - (ad) the payment of the cost of having the goods repaired; and
    - (B) in the case of services,
      - (aa) the supply of the services again; or
      - (ab) the payment of the cost of having the services supplied again.
  - (v) We cannot limit Our liability as set out in clause 12.2(b)(iv) if You establish that it would not be fair or reasonable for Us to do so.
  - (vi) Except as provided in clause 12.2(b)(iv), nothing in the Agreement excludes, restricts or modifies rights which You have under the Australian Consumer Law in respect of the consumer guarantees.
- (c) **Exclusion of liability**
- (i) Subject to Our obligations under the laws referred to in clauses 12.2(a) and 12.2(b), to the maximum extent permitted by law:
    - (A) Our aggregate liability to You for all loss or damage sustained by You in connection with this Agreement (whether in contract, tort (including negligence) statute or otherwise) in any year is limited to the aggregate of the amounts paid by You to Us under this Agreement in the period of 6 months immediately preceding the occurrence of the event which gave rise to the loss or damage under this Agreement or, if this Agreement started less than 6 months before the relevant event, since the start of the Agreement.
    - (B) If You have contributed to any loss or damage You are claiming against Us, Our liability is reduced to the extent of Your contribution.
    - (C) We are not liable to You (whether in contract, tort (including negligence), statute or otherwise) for any consequential losses You suffer or for any costs, expenses, loss or charges (including loss of business, loss of profits or loss of data) that You incur in relation to the Service or in connection with this Agreement, whether or not such loss or damage was foreseeable and even if advised of the possibility of the loss or damage.

## 13 COMPLAINTS

- (a) If You are unhappy about any aspect of the Service, You should contact Us first to resolve the complaint. You may communicate to Us by contacting Customer Care, by writing to Us, by sending Us a fax or through the Website. We will investigate Your complaint in accordance with Our complaints policy which can be found at [www.vodafone.com.au](http://www.vodafone.com.au) or can be provided to You directly by Customer Care on request.
- (b) If You request Us to provide You with information held by Us about You and We agree to provide You with the information, We may charge You Our reasonable costs to provide You information, except where You request access to Your Personal Information held by Us which is not yet archived. We will inform You of the amount of Our reasonable costs before We charge You for those costs.
- (c) If You are not satisfied with how Your complaint has been handled, You may request a supervisor or manager to review Your complaint and Our handling of it. If Your complaint is not resolved to

Your satisfaction, You can, depending on the nature of the complaint, contact the Telecommunications Industry Ombudsman (who deals with unresolved complaints between consumers and providers), the relevant State/Territory Office of Fair Trading (which can inform You of Your rights and provide assistance in relation to any dispute with Us), the Australian Communications and Media Authority or the Australian Competition and Consumer Commission. If You have a privacy complaint, You can address Your complaint to Our Privacy Officer (whose contact details can be found on Our Privacy Policy or can be provided to You on request) and/or lodge a complaint with the Federal Privacy Commissioner. Our complaints policy is in addition to any rights You have under law.

## **14 ASSIGNMENT**

### **14.1 Our right to assign**

- (a) We may assign some or all of Our rights under the Agreement (where those rights are assignable) to any person.
- (b) We may transfer some or all of Our obligations under the Agreement to any person that is able to perform those obligations.
- (c) We may perform any of Our obligations under the Agreement by arranging for them to be performed by another person, including a Supplier. We will still be responsible for the performance of the obligations.
- (d) We will comply with Our obligations under any applicable industry codes in assigning Our rights and obligations under this clause 14.1.

### **13.2 Your right to assign**

You may not transfer Your rights and obligations under the Agreement to another person without first obtaining Our consent in writing. We will not unreasonably withhold consent. We consider it reasonable to withhold consent if the other person does not satisfy Our usual pre-conditions for supplying the Service, which may include a credit assessment, verification of personal details and employment check. The fee for a transfer is set out in the Miscellaneous Charges.

## **15 GENERAL**

### **15.1 Governing Law**

The Agreement is governed by the laws of the Australian state or territory that is specified as being Your address in Your Application or, if no address is stated or the address is outside Australia, then the Agreement is governed by the laws of the Australian state or territory in which You were living on the Service Start Date. You and We submit to the non-exclusive jurisdiction of the courts of that State.

### **15.2 Notices**

You agree that, unless You notify Us Otherwise, We may give any written notice to You in connection with, or required by, this Agreement by sending the notice to the email address or postal address set out in the Application or by sending a TXT message to the mobile phone number set out in the Application.

### **15.3 Consent – Business Customers**

We may need Your consent to do certain things. If You are a Business Customer, You may nominate (in writing) operational contacts who are authorised to give Your consent and to have access to Our support and maintenance staff. If You do not nominate any operational contacts We may rely on the authority of any of Your employees who tell Us they have authority to give Your consent, as long as We act in good faith.

### **15.4 Intellectual property protections**

- (a) We own all material (including Intellectual Property Rights) developed by Us or Our Personnel, or at Our or their direction.
- (b) We may permit You to use this material, or other material licensed by Us, as part of the Service. This permission is subject to any conditions which We may impose from time to time and will cease when the Service is cancelled.
- (c) You must not infringe any person's Intellectual Property Rights (such as by using, copying or distributing data or software without the permission of the owner) in using the Service. If You breach this clause 15.4(c), We may cancel the Service under clause 10.2(b)(iv), 10.2(b)(v) or 11.1(a)(viii).

## 15.5 Intervening Events

If an Intervening Event occurs then, other than with respect to an obligation to pay money, We will not be liable for failing to perform an affected obligation. We must notify You of the Intervening Event and use Our best efforts to resume performance in accordance with the Agreement as soon as reasonably possible. Your obligations continue during the Intervening Event, except if You are not able to perform Your obligations because We are unable to perform Our obligations due to the Intervening Event.

## 15.6 Carriage Service Provider

- (a) You represent that You are not a carrier or carriage service provider.
- (b) If You are or become a carrier or carriage service provider, We may immediately cancel the Service by giving You notice.
- (c) If We cancel the Service under this clause 15.6, We will negotiate in good faith with You to enter into an alternative agreement governing supply of the Service, on terms to be agreed.

## 15.7 Waiver

- (a) If We do not exercise, or delay in exercising, a power or right We have under this Agreement, We do not necessarily waive Our entitlement to exercise that right at any later time. Any waiver will only be effective if it is in writing and specific.
- (b) If We exercise a power or right We have under this Agreement, this does not preclude Us from exercising the same, or any other, power or right in the future.

## 15.8 Commission

We may pay a commission to any of Our Personnel or Our Suppliers in connection with the Agreement.

# 16 DEFINITIONS AND INTERPRETATION

## 16.1 Definitions

**Access Fee** means the fixed payment for access to the Service payable on a regular basis (often monthly). The Access Fee is payable regardless of the actual usage of the Service. A minimum monthly charge and minimum monthly service charge are also Access Fees.

**Agreement** has the meaning given to it in clause 2.1.

**Application** means the part of the Agreement which is the written application You complete to request that We supply the Service to You.

**Australian Consumer Law** means Schedule 2 of the Competition and Consumer Act.

**Business Customer** means any customer We classify as a business and who is a business or non-profit organisation (including a body corporate, sole trader or partnership) using the Service for business purposes.

**Cancellation Date** means:

- (a) the date 30 days after You notify Us that You wish to cancel the Service, unless We agree otherwise;
- (b) the date at least 30 days after We notify You that We will be cancelling the Service; or
- (c) as otherwise set out in the Agreement.

**Cancellation Fee** means the cancellation fee or termination charge which may be payable on cancellation of the Service during the Minimum Term. Unless otherwise indicated in the Application, any Cancellation Fee payable is set out in the Application.

**Change** has the meaning given to it in clause 2.4(a).

**Competition and Consumer Act** means the *Competition and Consumer Act 2010 (Cth)*.

**Customer Care** means Our customer support service, the contact details for which can be found on the Website.

**Equipment** means any equipment We or Our Personnel may provide or lease to You to use in connection with the Service.

**Excluded Event** means:

- (a) a breach of the Agreement by You;
- (b) a negligent or fraudulent act or omission by You or any of Your Personnel; or

- (c) a failure of any of Your equipment.

**Insolvency Event** means:

- (a) if You are a natural person – bankruptcy proceedings are commenced against You or You are declared bankrupt; or
- (b) if You are a body corporate – a receiver, liquidator, provisional liquidator or administrator is appointed to You, You enter into an arrangement with Your creditors or a class of Your creditors, You become unable to pay Your debts when they are due, or You are wound up.

**Intellectual Property Rights** means any intellectual or industrial property rights (including any registered or unregistered trademarks, patents, designs, or copyright).

**Intervening Event** is an event outside Your or Our reasonable control which affects Our ability to supply the Service. An Intervening Event includes the following events: failure of any electrical power supply, failure of air-conditioning or humidity control, electromagnetic interference, fire, storm, flood, earthquake, accident, war, the change or introduction of any law or regulation (including the Telecommunications Legislation) or an act or omission of any third party or any failure of any equipment owned or operated by any third party (including any Regulator, any Supplier or any of their Personnel).

**Minimum Term** means the minimum period of time for which You have agreed to receive the Service. The Minimum Term begins on the Service Start Date and runs for the period of time stated on the Application, unless otherwise set out in the Agreement.

**Miscellaneous Charges** means the charges for standard items and services as notified by Us from time to time via the Website.

**Network** means any interconnected telecommunications equipment, facilities, or cabling.

**Our Network** means the Network We use to supply the Service.

**Personal Information** means information from which identity is apparent or can reasonably be ascertained. Personal Information includes names, addresses and other details, and personal or commercial credit ratings.

**Personnel** of a person (including Us) means that person's employees, agents, contractors or other representatives.

**Regulator** means the Australian Communications and Media Authority, the Australian Competition and Consumer Commission, the Communications Alliance, the Privacy Commissioner, the Telecommunications Industry Ombudsman or any other relevant government or statutory body or authority.

**Service** means the service described in the Application and any related goods, including Equipment, and ancillary services which We supply to You in connection with that Service.

**Service Start Date** means the date on which We start supplying the Service to You, unless otherwise specified in the Application.

**Supplier** means any supplier of goods or services, including interconnection services, which are used directly or indirectly by Us to supply the Service to You. Where a Supplier supplies goods or services to You directly, that Supplier is not acting in its capacity as Supplier, but rather is a third party providing services directly to You.

**Tax** means any value-added or goods and services tax (including GST), withholding tax, charge (and associated penalty or interest), rate, duty or impost imposed by any authority at any time but does not include any taxes on income or capital gains.

**Telecommunications Legislation** means the *Telecommunications Act 1997*(Cth), the *Telecommunications (Consumer Protection and Service Standards) Act 1999*(Cth) and Part XIB, Part XIC and related provisions of the Competition and Consumer Act.

**Unusually High Use** means high out of pattern usage of the Service on a short term basis or a sustained high usage which exceeds the general average usage of customers.

**Vodafone Group Company** means any company that controls, is controlled by or is under common control with Us.

**We** means the company specified in the Application as supplying the Service (and **Us, Our and Ours** are to be construed accordingly).

**Website** means [www.vodafonemessaging.com.au](http://www.vodafonemessaging.com.au).

**You** means the person or entity specified in the Application as receiving the Service (and **Your and Yours** are to be construed accordingly).

## 16.2 Interpretation

- (a) The following words have the same meanings in the Agreement as they have in the Telecommunications Legislation:
  - (i) carriage service;
  - (ii) carriage service provider;
  - (iii) carrier; and
  - (iv) facility.
- (b) The singular includes the plural and vice versa.
- (c) One gender includes the others.
- (d) A person includes a body corporate.
- (e) Different grammatical forms of the same word(s) have the same meaning.
- (f) Examples or words of inclusion are illustrative only and do not limit what else might be included.
- (g) A reference to a statute, ordinance, code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them.
- (h) A reference to A\$, \$A, dollar or \$ is to Australian currency, unless otherwise stated.
- (i) If an act must be done on a specified day which is not a business day, it must be done instead on the next business day.
- (j) A party includes the party's executors, administrators, successors and permitted assigns.