

# MASTER SERVICES AGREEMENT

## SERVICE DESCRIPTION



### SERVICE DESCRIPTION: MULTITXT

#### 1. DEFINITIONS

**Charges** together means the Setup Fee, the Subscription Fee the message delivery charges and any other charges in respect of the availability and use of the Services as made available on multiTXT or otherwise provided to User;

**Cracking or hacking** means the circumvention of user authentication or security of any host, network, web server or account.

**Delivery Group** means your employees, contractors and agents with whom (i) you need to communicate for legitimate business purposes and (ii) you have an ongoing employment or commercial relationship, including your customers and clients.

**Default rate** is the rate of 1.5% per month or any other rate notified to you on your statement of charges. It applies from the date payment is due by you to the date we receive the payment in full.

**Interference** means interference or disruption with or to the Service to any user, host or network.

**Equipment** means the cellular telephone equipment and computing devices that can be used to access the mobile phone networks and the Internet respectively, acceptable to us for use with the Services;

**Fee Schedule** means our list of charges from time to time applicable;

**Login User** means an employee, agent, contractor or other representative of yours who you authorise to use the Service on behalf of you in the ordinary course of your business.

**Message** means a message sent by you or a Login User using a Service;

**Messaging** means website-initiated text messaging, multiTXT services, or any other form of communication facility and for clarity, SMS can be initiated via the web, email client, Outlook Messaging Service (OMS) or an API.

**multiTXT** service means the ability, once you have registered for the Service, for Login Users to send text messages to a Delivery Group from any web browser connected to the Internet as more particularly outlined in clause 3 of these terms and conditions.

**Network Operator** means an entity with whom we have entered into an interconnection agreement or arrangement (directly or indirectly) providing for the passing of customer generated or customer destined communications between us and that entity.

**Service** means our multiTXT service and any other service made available by us on our website from time to time.

**Setup Fee** means any set up fee agreed by the User;

**Spam or spamming** means use of the Internet's ability to communicate to an infinite number of remote users in a manner which will or is likely to annoy some or all those users, for example, by the transmission of unsolicited bulk messages (or "junk mail") of any kind. An important element of this annoyance is the cost to the recipient users in terms of misappropriation of Internet time and computer resources.

**Subscription Fees** means any monthly charge agreed by the User, payable in advance, and as varied from time to time by us;

**System** means that cellular radio telecommunications system and/or the internet communications system in which Services made available by us can be accessed for the delivery of such Services to the User;

**Trade marks** means the word or mark "One New Zealand", however represented, including stylised representations, all associated logos and symbols, and combinations of the foregoing with another word or mark, used on this site, that are the trademarks of One New Zealand or any of its associated companies.

**One New Zealand** means One New Zealand Group Limited and, where not repugnant to the context, any company within the Vodafone Group Plc group of companies, its subsidiaries, affiliates, officers and employees;

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**We** or **us** means One New Zealand, and our has a corresponding meaning;

**You** or **User** means the person or company registering or signing up for one or more Services (and your has a corresponding meaning).

### 2. SERVICE OBLIGATION AND LIABILITY

2. 1 We and our suppliers will not be liable for any loss of data or information resulting from delays, non-deliveries, missed deliveries or service interruptions caused by events beyond our control, our suppliers or by your acts or omissions. We and our suppliers specifically exclude any representation or warranty that:
- (a) the information, advice, opinions, representations or material received through the Service will be correct, accurate, timely or otherwise reliable; or
  - (b) the Service will be uninterrupted or error-free, that defects will be corrected, or that the Service, or the server that makes it available, is free of viruses or other harmful components;
- and are not to be liable for any action you take in reliance upon such information or the Service.
2. 2 Where you use, or hold yourself out as using, the Service for the purposes of a business, then the Consumer Guarantees Act statutory guarantees do not apply to your use of the Service.
2. 3 We exclude any liability of any kind (including loss of profits or revenue, loss of use, lost business or missed opportunities, wasted expenditure or savings you might have had) arising from:
- (a) your connection to the One New Zealand telecommunications network or the Internet;
  - (b) the supply of, or failure, interruption or delay in the supply of, the Service or any part of it;
  - (c) the fitness of the Service or any part of it for any particular purpose;
  - (d) errors in or omissions from any directory assistance listing or published directory assistance;
  - (e) your use of the Service.
2. 4 Save as expressly set out in these terms and conditions, all conditions or warranties which may be implied or incorporated into these terms and conditions by law or otherwise are expressly excluded to the extent permitted by law. In no circumstances whatsoever will we be liable for indirect, special, punitive, economic or consequential loss, to the extent permitted by law, arising out of or in any way connected with the use or performance of the Service, this website or related websites or otherwise howsoever arising whether based on contract, tort, negligence, strict liability or otherwise.

### 3. MULTITXT SERVICE

3. 1 The User will:
- (a) provide true, accurate, current and complete information about the User and its Login Users as prompted by our registration staff or our online registration form (such information being the "Registration Data");
  - (b) maintain and promptly update the Registration Data to keep it true, accurate, current and complete. If the User provides any information that is untrue, inaccurate, not current or incomplete, or we have reasonable grounds to believe that such information is untrue, inaccurate, not current or incomplete, we have the right to suspend or terminate your account and refuse any and all current or future use of the Service (or any portion thereof);
  - (c) act in good faith at all times; and
  - (d) not, and will ensure that any Login Users do not, act or omit to act in a manner that brings, or is likely to bring us or Network Operators into disrepute or damage such businesses or reputations in any way.
3. 2 You shall specify the number of Login Users you require. Each Login User shall have a username and password.
3. 3 Once you have registered for the multiTXT service you can make use of the multiTXT service by logging on from any web browser connected to the Internet through this website in accordance with the instructions provided on the relevant web page for the service.

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3. 4 You shall not use the multiTXT service for:
- (a) the distribution of messages to third parties where such distribution can be considered as an information service or where the customer could be considered a content provider as that term is understood in relation to websites on the internet;
  - (b) the distribution or re-selling of any third party content or information;
  - (c) any marketing or promotional activities; or
  - (d) any purpose other than a valid business purpose as contemplated by these terms and conditions.
3. 5 You agree that when using the multiTXT service:
- (a) if any text messages being sent are over 160 characters in length, the text message will be disassembled and then concatenated into several smaller messages and sent as multiple messages marked 1/N, 2/N ... N/N to indicate the correct order for the recipient and you will be charged for each of the text messages required to be sent as a consequence;
  - (b) the username and password of each Login User may only be used by one person unless our prior written consent is obtained;
  - (c) we will not be responsible for delivering any Messaging other than to the Delivery Group.
3. 6 You acknowledge that the Service is a peer-to-peer only Service, where peer-to-peer is defined as messaging between one subscriber and another subscriber. A subscriber is defined as a natural person who has made identification known to a service provider, receives telecommunication services from said service provider and has been assigned a unique SMS- routable TN. In this context, the term "routable" means routed by us and our peering gateway partners. A service provider is defined as a provider of telecommunication services.
- Telecommunication services, for this purpose, include at a minimum, two-way text messaging services but may also include additional services, such as voice.
3. 7 You acknowledge that the Services may only be used by One New Zealand customers based in New Zealand

## 4. SUSPENSION AND TERMINATION OF SERVICE

4. 1 We may elect to suspend or terminate the Service immediately and without prior notice:
- (a) if you breach any of these terms and conditions including without limitation late or non- payment of sums due; or
  - (b) you become (or are likely to become) insolvent, bankrupt or where you are or might be a credit risk;
  - (c) a receiver, manager and receiver, or statutory manager is appointed over any or all of your assets;
  - (d) a resolution for liquidation is proposed or passed or proceedings to liquidate you are filed or presented;
  - (e) you die, or in the case of a partnership, it is intended to be dissolved; or
  - (f) if, for any reason whatsoever, we are unable to deliver the Service or otherwise is unable to perform our obligations set out in these terms and conditions;
  - (g) if for any reason we believe it is reasonable to do so.
4. 2 If you wish to terminate this contract, you may do so by giving us not less than 30 days' prior written notice of your intention to do so.
4. 3 From time to time the multiTXT platform, certain servers or the whole or part of the One New Zealand telecommunications network may be closed down for routine repair or maintenance work. We will endeavour to give as much notice as in the circumstances is reasonable and will endeavour to carry out such works during the scheduled maintenance periods as published from time to time.
4. 4 We reserve the right to deny, in our sole discretion, your access to the Service or any part of it without notice.

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### 5. USER CONDUCT AND OBLIGATIONS

5. 1 Any unauthorised use of the Service, is expressly prohibited. The User agrees to abide by all applicable local, national and international laws and regulations and is solely responsible for all acts or omissions that occur under its account or password, including the content of any transmissions through the Service. By way of example, and not as a limitation, the User agrees not to:
- (a) use the Service in connection with chain letters, junk Speed mail, junk SMS messages, spamming or any unsolicited messages (commercial or otherwise);
  - (b) will not modify, copy, distribute, transmit, display, perform, publish, reproduce, license, create derivative works from, assign, transfer or sell any information, software, products or services obtained from or via the website;
  - (c) will use the Messaging only to send data or information that is proper and related to a particular forum;
  - (d) will not (or will not authorise or permit any other party to) use the Service, Messaging or our telecommunications network to receive or transmit material which is in violation of any law or regulation (including without limitation the Unsolicited Electronic Messages Act 2007 and the Privacy Act 1993), which is obscene, threatening, menacing, offensive, defamatory, in breach of confidence, in breach of any intellectual property right (including copyright), or otherwise unlawful;
  - (e) will not perform or permit performance of any activity, such as cracking or hacking, nor perform or permit performance of Interference;
  - (f) will not knowingly or recklessly transmit any electronic material (including viruses) through the Service which will cause or is likely to cause detriment or harm, in any degree, to computer systems owned by us or other Internet users;
  - (g) not use our Trade Marks without our express written consent;
  - (h) will permit your account to be used by a single user only and not by simultaneous access using the same log-in;
  - (i) as the registered user of the account, will keep the username and password secure and not let them become public knowledge and that the password will not be stored anywhere on a computer in plain text;
  - (j) will inform us immediately the password becomes known to any other unauthorised user;
  - (k) will not spam, nor forward or propagate chain messages nor solicit messages for any address other than its own except with the full consent of the owner of the referred address;
  - (l) transmit any material that contains viruses, Trojan horses, worms, time bombs, cancel bots, or any other harmful or deleterious programs;
  - (m) allow any user other than a Login User to use or access the Service and you remain solely responsible for any such unauthorised access or use; and you acknowledge that any breach of these obligations will entitle us to immediately terminate the Service to you without notice.
5. 2 You agree to fully indemnify and to hold us harmless from and against any claim brought by a third party resulting from the use of the Service or our telecommunications network and the Internet by you and in respect of all losses (whether direct, indirect, consequential or otherwise), costs, actions, proceedings, claims, damages, expenses (including reasonable legal costs and expenses), or liabilities, however suffered or incurred directly by us in consequence of your breach or non-observance of these terms and conditions.
5. 3 You are to defend and pay all costs, damages, awards, fees (including any reasonable legal fees) and judgments awarded against us arising from any claim referred to in clause 5.2 and are to provide us with notice of such claims, full authority to defend, compromise or settle such claims and reasonable assistance necessary to defend such claims, at your sole expense.
5. 4 You are liable to pay all and any additional charges in connection with the use of the Service including those which may be levied by your telephone and/or Internet service provider.
5. 5 You acknowledge that you are responsible for ensuring that no unauthorised access to the Service is obtained through your account and that it is liable for all such activities conducted through such account whether authorised or not.

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### 6. SECURITY

- 6.1 You acknowledge that we are unable to exercise control over, and make no representations, warranties or conditions concerning, the security or content of data or information passing over our telecommunications network, other Network Operators' systems, the Internet or via the Service.
- 6.2 You acknowledge that the Service is available via the Internet and although we will endeavour to maintain the security of information we cannot guarantee that information you receive or supply when using the Service will be secure at all times.

### 7. CONNECTION TO OTHER NETWORKS AND THIRD PARTY SITES

- 7.1 The Service may be used by you to link into other websites or networks worldwide, and you agree to comply with to the acceptable use policies of such networks. You accept that we do not control such linked sites and are not responsible for, and makes no representations concerning any linked site, any link contained in a linked site or their contents.
- 7.2 Any inclusion of links into other websites or networks is for your convenience and does not imply our endorsement of the material available on or via those websites or networks or any association with their operators.
- 7.3 We do not represent that the content or services available from third party sites are appropriate or available for use in all parts of New Zealand. If you access other content or other services from third party sites, we are not responsible for your compliance with local laws or other applicable laws.

### 8. PASSWORD AND USERNAME

- 8.1 We reserve the right to change your password and user name at any time at your sole discretion.
- 8.2 The security of your Data may be maintained through the use of data encryption, data security protocols, passwords and other methods which we may employ, or which we may require or suggest that you should employ. User agrees that we have no responsibility of liability for the deletion or failure to store any Data transmitted by you or anyone else to the Service.

### 9. RESTRICTION ON SUB-LEASING/RE-SELLING

You in entering into this contract undertake that you will not assign, re-sell, sub-lease or in any other way transfer the Service or part of it. Contravention of this restriction in any way, whether successful or not, will result in the Service being terminated by us forthwith.

### 10. PROFLIGATE USE

Profligate use of our telecommunications network and the Internet is prohibited. We consider that any applications which transmit live video, live audio or make similar traffic demands across our network by whatever means constitutes making profligate use of our network. Use of IP Multicast, other than by means provided and co-ordinated by us is also prohibited.

### 11. PROTECTION OF PERSONAL INFORMATION

- 11.1 We reserve the right to put the names, email addresses and other information from the registration form (online or paper based) and/or the Registration Data relating to you or from use of the Service by you into a computerised directory either:
- (a) for use by One New Zealand or the Vodafone group of companies for marketing purposes; or
  - (b) in connection with the prevention or detection of crime and fraud; or
  - (c) we may make the information collected from you available to other suppliers of services which, in our opinion, you may be interested in;
- unless specific written instructions are received from you.

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11.2 Without limiting the generality of the clause 11.1, our use of your personal information (including that of your Login Users) for which we may use your information and the persons to whom we may disclose it are set out in greater detail in our Privacy Policy.

### 12. CHARGES

- 12.1 You will be charged for your use of the Service and all Messaging services covered by these terms and conditions at the then current rates charged by us. The Charges may include without limitation, Setup Fees, Subscription Fees and usage Charges. We reserve the right to vary the Charges from time to time.
- 12.2 We will send you a statement for the charges on a regular basis. You must pay the total amount on this statement by the date specified on the statement.
- 12.3 You are responsible for all charges payable in respect of the Services (if any) and the Messaging services no matter who incurs them.
- 12.4 We may charge for some Services in arrears depending on when charges come through from other Network Operators. You will be charged interest on amounts not paid by the due date at the Default rate and you will also have to pay any reasonable expenses (including solicitor and own client costs) we incur in collecting any money that you owe to us or in exercising any of our other legal rights. You must advise when you change your address.
- 12.5 If you believe there is a mistake on your statement, you must notify us as soon as possible. If we agree with you that there has been a mistake, we will correct it. Otherwise you must pay your statement by the due date.
- 12.6 We can use any credit balance or security balance in any or your accounts or use any money we owe you to cover your outstanding charges. Subject to that right we will refund any unused credit or security advances in your account in respect of this Agreement at the end of this Agreement. We will hold any security deposit in a non-interest bearing account.
- 12.7 We can, at our discretion, impose credit limits for your use of the Services and we will try to notify you as soon as we impose such limits. You must observe any credit limits we set from time to time. We may restrict your use of the Services without further notice to you if you exceed the credit limits hawse have set. However, you will continue to be liable for all charges incurred in excess of any credit limit in place.
- 12.8 You may request a credit limit for your use of the Services and we will put that in place in accordance with your instructions. We may restrict your use of the Services without further notice to you if you exceed the credit limit set you. We will try to stop your use of the Services if your credit limit is reached. However, you will continue to be liable for all charges incurred in excess of any credit limit in place.

### 13. CREDIT REFERENCES

- 13.1 You authorise us to check your credit status with any credit reference agency as we see fit from time to time and to pass credit information about you to any credit reference agency at any time.
- If you are not satisfied with the information about you which we receive from any credit reference you must deal directly with the credit reference agency.
- 13.2 If you do not give us the names of any credit referees when we ask for them, or we are dissatisfied with the information regarding your credit status, we can decline your application or terminate your use of the Service.
- 13.3 We may ask for a security deposit and/or impose other conditions on you upon approving your application. These may include, but are not limited to, a mandatory payment method or credit limit.

### 14. SMS BUNDLES

You acknowledge and agree that you will not use SMS bundles as part of the Service.

### 15. GENERAL

- 15.1 **Assignment** – We are entitled to assign this Agreement either in whole or in part. This Agreement is personal to you who is not entitled to assign this Agreement in whole or in part.

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15. 2 **Changes to these terms and conditions** – We reserve the right to vary these terms and conditions from time to time. Such changes will be notified to you by posting the new terms and conditions on our website. Changes in this manner will be deemed to have been accepted if you continue to use the Service after a period of two weeks from the date of posting on the website.
15. 3 **Force Majeure** – We will not be liable in respect of any failure to comply with our obligations under these terms and conditions as a result of any cause beyond our reasonable control including without limitation an Act of God, inclement weather, act or omission of government or other networks or other competent authority or other party for whom we are not responsible.
15. 4 **Agents of One New Zealand** – We are entitled to subcontract or delegate the performance of any of our rights or obligations under this Agreement. Without limiting this, we may appoint an agent to provide billing services (including credit checking and control), and customer services. Invoices issued by our agent shall be binding on you and payment of those invoices in full to our agent will be a valid discharge of your liability to pay those invoices under this Agreement. Our agents can enforce those obligations expressed to be for their benefit in accordance with the Contracts (Privity) Act 1982.
15. 5 **Jurisdiction** – These terms and conditions shall be governed by and construed in accordance with the laws of New Zealand and you agree to submit to the exclusive jurisdiction of the courts of New Zealand.
16. **COPYRIGHT**
16. 1 All content on this website is copyright protected. One New Zealand and/or any member of the Vodafone Group Plc group of companies and/or our suppliers. All rights reserved.
16. 2 multiTXT, multiTXT Pro and other names of One New Zealand products and services referenced on this website are trademarks (whether registered or not) of One New Zealand. Other products and company names mentioned on this website may be trademarks of the relevant owners.