



Business Terms

1. OUR AGREEMENT

1.1 **Application:** These Business Terms apply if you are a business customer and you signed up to or re-signed for Services from 1 October 2017 (except to the extent we agree otherwise).

1.2 **Archived Terms and Conditions:** If you are a business customer who signed up to or re-signed for Services before 1 October 2017, please see our website www.vodafone.co.nz/legal/terms-conditions/archive/ for the terms and conditions that apply to your Services.

1.3 **Specific Terms and Conditions:** If a Service for which you have applied is subject to specific terms and conditions published on our Website, such as:

- (a) a Service Description;
- (b) a Pricing Plan; and/or
- (c) Change Fees;

those specific terms and conditions (as amended from time to time) form part of this Agreement. We may also include specific terms and conditions that form part of this Agreement in our Sign-up Agreements. If there is any inconsistency between these Business Terms and any other terms and conditions, then these Business Terms will take precedence, except as expressly stated otherwise.

1.4 **Subject to change:** These Business Terms may change from time to time. For the most up to date copy, please see vodafone.co.nz/legal/terms-conditions.

1.5 **It's important that you read all the terms in full, but some points we want to bring to your attention are:**

- (a) **Changes**– these Business Terms, your Services and the Charges you pay for those Services can be changed. When we are able to make these changes, what will happen to your Services or Charges (including the circumstances in which we can change the minimum monthly charge) and how we tell you about the changes is set out in clauses 7-10.
- (b) **Privacy** - we may collect information on how, when and where your Users or other representatives use our Services, and use this information to continually provide you innovative products and services tailored for your needs, wherever you are. If you want to know more about how we collect, use, store and protect information about your Users and other representatives and who we might share the information with, please read our [Privacy Policy](#).

2. TERM

2.1 **Term:** This Agreement will commence on the date we start providing Services to you (or such other date specified in your Sign Up Agreement) and continue until the Agreement is terminated in accordance with the Agreement.

2.2 **Service Term:** For each Service:

- (a) the Initial Term will commence on the date we start providing Services to you (or such other date specified in your Sign Up Agreement) and continue until the expiry of the initial term (**Initial Term**); and
- (b) following the Initial Term, the term will automatically continue until this Agreement, or the Service, is terminated in accordance with this Agreement (**Extended Term**).

2.3 **Commencement of Services:** We will begin providing Services to you in accordance with the timeframe set out in the Service Description or, if no timeframe is set out, within a reasonable time.

3. OUR COMMITMENT TO YOU

3.1 **Services:** We will provide the Services to you:

- (a) using all reasonable care and skill;
- (b) in a competent and professional manner;
- (c) in accordance with the applicable Service Descriptions, although we do not guarantee that the Services will be continuous or fault free; and
- (d) using people who have the necessary qualifications and experience.

3.2 **Faults:** If you report a fault to us, we will respond in accordance with the relevant Service Description, or otherwise within a reasonable period of time.

3.3 **Maintenance:** From time to time we may temporarily suspend or restrict a Service so that we can carry out maintenance and development work on the Network. We will always try to ensure that such suspensions or restrictions take place outside normal business hours.

4. YOUR COMMITMENT TO US

4.1 **Co-operation and access**

- (a) You will make sure that all information you give to us is complete and accurate. You must update us when your information changes (for example, if you change premises or your contact details).
- (b) If we provide Services that require locating our Equipment on your premises then you will give our representatives safe access to your premises so that we can install, inspect, maintain, replace or remove our Equipment.
- (c) You acknowledge that you have no ownership or other rights in our Equipment located on your premises, which shall remain our property (or the property of our suppliers).
- (d) If you are in rented premises then you will, before we install the Equipment, obtain the written permission of the owner that we are authorised to access, and locate our Equipment on, your premises for these purposes and that the owner will have no ownership or other rights in our Equipment.



Business Terms

(e) You will, if we ask you to, obtain any third party authorisation, licence, consent or acknowledgement that we reasonably require in connection with the provision of the Services and location of the Equipment (such as building consent).

4.2 **Your Equipment:** You will follow our reasonable instructions about modifications that you may need to make to your equipment so that you can use the Services, including modifications to avoid any danger or interference your equipment may cause to the Services, our Equipment or the Network.

4.3 **Our Equipment:** You will:

- (a) provide a safe and secure operating environment for our Equipment;
- (b) take reasonable precautions to protect our Equipment from radio or electrical interference and power fluctuations;
- (c) not damage or interfere with our Equipment; and
- (d) pay any costs or expenses we reasonably incur repairing or replacing any of our Equipment that is lost or damaged while located on your premises.

If our Equipment is no longer required, or if you damage or interfere with our Equipment, then we may remove it from your premises.

4.4 **Use of Services:** You will:

- (a) not use the Services in any way which is unlawful;
- (b) not use the Services in any way which could interfere with or damage our Network, any other Network Operator's network, or another customer's enjoyment of our services. This includes but is not limited to auto dialling, continuously call forwarding, and use of cellular trunking units or SIMboxes;
- (c) give us and our third party suppliers such access to your premises as is reasonably necessary to enable us or our third party suppliers to fix any fault with the Services or implement any change of technology as provided for in clause 9.4;
- (d) follow our and any manufacturer's reasonable instructions about the use of the Services;
- (e) keep any password, PIN or security code we give you confidential, and update it in accordance with prudent security practices;
- (f) only use the Services for the purposes for which they are provided;
- (g) not use or install any device and/or hardware in connection with the Services, where that device, hardware and/or installation is not approved by us, or which masks or in any way alters the true origin or termination of any call or other transmission; and
- (h) only use the Services for your own internal business requirements and not sell, rebill or otherwise provide

any of the Services to anyone else without our prior written consent.

4.5 **Third Parties:** You acknowledge and agree that:

- (a) we are not responsible for ensuring that the Services are unable to be misused by you or any third party; and
- (b) you are responsible for your misuse of the Services and for any use of the Services by any User or third party, whether authorised by you or not.

4.6 **Reimbursement for breach:** If you breach clause 4.4 and we incur costs as a result of your breach, you will, if we ask you to, reimburse us for our reasonable costs in relation to that breach.

5. CHARGES, INVOICING AND PAYMENT

5.1 **Responsibility for Charges:** You will pay and are responsible for the Charges for the Services and/or Products that we provide in accordance with the Agreement, irrespective of who ultimately uses them.

5.2 **GST:** All Charges exclude GST unless otherwise indicated.

5.3 **Invoices:** The Charges will apply from the date you are connected to the Network so that you are able to receive the Services. We will invoice you at approximately monthly intervals for the Services and/or Products we provide to you. Fixed charges will normally be invoiced in advance and other charges will normally be invoiced in arrears.

5.4 **No set-off, counterclaim or deduction:** Subject to clause 6.1, you will pay each invoice by the Due Date and without set-off, counterclaim or deduction.

5.5 **Unpaid amounts:** If any invoiced amount (other than an amount which is disputed in accordance with clause 6.1) remains unpaid after the Due Date we may charge you a Late Payment Fee.

5.6 **Part payment:** Part payment of your invoice will not amount to a full and final settlement unless we have agreed to this in writing.

5.7 **Collection costs:** If we have to spend money on collecting overdue amounts from you, then you will reimburse us for those costs.

5.8 **Additional charges:** If we provide you with additional services such as technical or administration support (including providing paper invoices, service suspension, call barring, redirection, or fixing faults that are not faults on our Services) we may charge you for these.

6. DISPUTED INVOICES

6.1 **Notice:** If you think there is a mistake in an invoice, you must let us know in writing prior to the Due Date and, if you do so, you may withhold payment of the disputed part of the amount payable. You must pay any undisputed amount by the Due Date.

6.2 **Response procedure:** If we agree that there has been a mistake, we will issue a credit note or adjust your next



Business Terms

invoice accordingly as soon as reasonably practicable. If we do not agree that there has been a mistake, you can escalate the matter in accordance with clause 23.

7. SERVICE AND PRICING PLAN MIGRATION

7.1 Service migration: Where:

- (a) an alternative Service becomes available; and
- (b) such Service is materially the same as, provides materially the same functionality as or performs to the same specifications as, an existing Service already being provided to you by us under the Agreement (as the case may be),

we may provide you with the alternative Service in place of the existing Service already being provided to you. We will give you at least 20 Business Days written notice of such migration.

7.2 Pricing Plan migration: We **may** change your Pricing Plan at any time if it will have a neutral or positive effect on you. Changing your Pricing Plan may include changing the entitlements within the Pricing Plan, migrating you to a different Pricing Plan and/or changing the name of the Pricing Plan. We do not need to give you notice.

7.3 No right of dispute: You will have no right to dispute any migration that is made in accordance with clause 7.1 or 7.2.

7.4 Deemed variation: On migration of a Service or Pricing Plan in accordance with clause 7.1 or 7.2, our Agreement will be deemed to be varied to the extent that the Services to be provided to you will be varied in accordance with the migration.

7.5 Migration versus right to end availability: This clause 7 does not affect our right to end the availability of a Service in accordance with clause 9.

7.6 No Impact on Charges: You will not incur any additional charges, or changes to your existing Charges, where we migrate a Service or a Pricing Plan under this clause 7.

8. CHANGES TO CHARGES

8.1 Changes during an Initial Term: During the Initial Term we may:

- (a) change a recurring fixed Charge in association with a Regulatory Event or a change in the price from a third party supplier (such as a Network Operator) of a direct input required for the Service;
- (b) change a recurring fixed Charge for any reason other than the reasons set out in clause 8.1(a); and/or
- (c) change any Charge (other than a recurring fixed Charge) or introduce other Charges at any time.

8.2 Changes during an Extended Term: During an Extended Term, we may change and/or introduce Charges in respect of a Service.

8.3 Notice and your rights: We will give you notice of any change to the Charges in accordance with clause 10.1 and

you may have rights in respect of any such change as set out in clause 10.3.

9. VARIATION TO AND ENDING AVAILABILITY OF SERVICES

9.1 Right to vary or end availability during an Initial Term: During the Initial Term we may, without liability to you, vary or end the availability of any or all of the Services provided to you where:

- (a) the variation or end of availability will have a neutral or positive effect on you; or
- (b) such action is required:
 - (i) to comply with applicable law or regulation;
 - (ii) because of a change imposed by a third party supplier (including a Network Operator); or
 - (iii) due to a change in our operations or services, where such change affects at least 90% of the customers who receive the Service(s) which we wish to vary or end the availability of.

9.2 Right to vary or end availability during the Extended Term: During the Extended Term, we may, without liability to you, vary or end the availability of any or all of the Services.

9.3 Notice and your rights: We will give you notice of any variation to or end of the availability of any or all of the Services in accordance with clause 10.1 and 10.2 and you may have rights in respect of any such change as set out in clause 10.3.

9.4 Technology: Without limiting any of our other rights under this Agreement, we may, from time to time, change the technology or other means by which we provide any of the Services. We are not required to give you notice of any change to the technology which we use to provide any of the Services.

10. NOTICE OF CHANGES AND RIGHT TO TERMINATE

10.1 Notice of variation: Where we make a change to the Charges, a variation to the Services, or a change to the Business Terms which we reasonably consider:

- (a) will have a neutral or positive effect on you, we may make the change immediately without notifying you; or
- (b) will have a material detrimental effect on you, we will provide you with at least 20 Business Days written notice except where the variation is made under clause 9.1(b)(i) in which case we may have to give you a shorter notice period.

10.2 Notice of ending availability: Where we end the availability of a Service, we will provide you with at least 20 Business Days' written notice except where we end the availability under clause 9.1(b)(i) in which case we may have to give you a shorter notice period.



Business Terms

- 10.3 **Right to terminate:** If you can show us that:
- (a) a change under clause 8.1(a) or 8.1(b) (but not a change under clause 8.1(c) or 8.2) has a material detrimental effect on you; or
 - (b) a variation to, or the end of the availability of, a Service made under clause 9 has a material detrimental effect on you,

you may terminate the affected Service on 20 Business Days' prior written notice to us. Such right must be exercised within 20 Business Days of receipt of our notice to increase the Charges or vary or end the availability of a Service (as applicable).

11. CREDIT ARRANGEMENTS

We may pass on your information to credit reporting organisations so that they can run credit checks on our behalf at any time. We may also let those organisations know if you have not paid our Charges. At any time those organisations may pass on to us information about you that they hold. We will use that information to make decisions about providing or continuing to provide you with Services. Those organisations may keep any information about you that we have passed on to them and use it for the purposes of their businesses, which may include supplying it to other entities that use their services. We may suspend or stop providing Services to you if we receive an unsatisfactory credit check about you.

12. PHONE NUMBERS, ADDRESSES AND OTHER CODES

- 12.1 **Allocation and ownership:** We may allocate Phone Numbers, electronic addresses, and other codes to you, as may other Telecommunications Service Providers. These do not belong to you.
- 12.2 **Change:** We may be required by law, under contracts with Network Operators or for other reasons, to change your Phone Number(s), electronic address(es) or code(s). We will use reasonable endeavours to give you notice of any change required. We will not be liable for any costs which you, or anyone else, may incur as a result of such change.
- 12.3 **Emergency services:** Your Phone Number may be displayed to emergency service providers and to us.

13. SUSPENSION OF SERVICES

- 13.1 **Suspension for breach:** We may restrict or suspend the provision of Services at any time if you breach the Agreement or if we consider (acting reasonably) that you have breached the Agreement. We will use reasonable endeavours to give you notice of our intention to suspend, however it will not always be possible for us to do so.
- 13.2 **Disconnection and reconnection charges:** If we suspend the provision of Services to you and you did in fact breach our Agreement, we may require you to pay a temporary disconnection Charge and/or a reconnection Charge (which would be a condition of lifting any such suspension).

14. TERMINATION

- 14.1 **Licence suspension or termination:** If any of our licences or rights required to operate the Network are terminated or suspended, or any agreement with any of our Network Operators expires or is terminated, and we cannot, as a result, continue to provide some or all of the Services, we may cease providing any Service or terminate our Agreement immediately. If this happens, we will give you written notice.
- 14.2 **Our termination on notice:** If the Initial Term of a Service has expired, we may cease providing that Service by giving you 20 Business Days' written notice.
- 14.3 **Your termination on notice for convenience:** Subject to clause 15.2, you may terminate any Service for convenience by giving 20 Business Days' written notice to us at any time, provided that you pay any Early Termination Charges, where applicable. You must pay our Charges through the 20 Business Day notice period, even if termination takes effect after the end of the Initial Term.
- 14.4 **Material breach:** If you are in material breach of the Agreement, we may give you written notice to remedy the breach. If the breach is incapable of remedy or is not remedied within 20 Business Days of the notice, then we may give you written notice immediately terminating the Agreement.
- 14.5 **Fraud:** We may terminate the Agreement immediately if we reasonably suspect fraud by you or on your behalf.
- 14.6 **Insolvency events:** If either party:
- (a) (or any of its holding companies) goes into liquidation, bankruptcy, administration or receivership or enters into a compromise with its creditors (or it appears that any of these events is likely to happen);
 - (b) has a receiver or statutory manager appointed over any or all of its assets; or
 - (c) is removed from the Companies Register (other than as a result of a solvent amalgamation), is dissolved or dies;
- then the other party may give written notice immediately terminating the Agreement.

15. CONSEQUENCES OF TERMINATION

- 15.1 **Consequences:** When the Agreement is terminated or Services have ceased to be provided to you:
- (a) you will be disconnected from the Network so that you are no longer able to receive the relevant Services;
 - (b) clauses 13 to 25 (inclusive) together with the other provisions of the Agreement which are required to give effect to those clauses or which naturally survive, will remain in effect;
 - (c) you must immediately return to us any information, equipment or any other item which is in your possession and which belongs to us; and



Business Terms

- (d) we may access your premises to remove our Equipment. If we are unable to gain access we may invoice you and you will pay the standard replacement charge for the Equipment in question.
- 15.2 **Early Termination Charges payable:** You will be liable to pay Early Termination Charges, where applicable, if any Service is terminated prior to the expiry of the Initial Term:
- (a) by you under clause 14.3 (termination for convenience); or
 - (b) by us under clause 14.4 (your material breach) or clause 14.5 (your insolvency).
- 15.3 **Early Termination Charges not payable:** You will not be liable to pay us Early Termination Charges if any Service is terminated prior to the expiry of the Initial Term for that Service:
- (a) by you under clause 10.3 (right to terminate), clause 14.4 (our material breach) or clause 14.5 (our insolvency);
 - (b) by us under clause 14.1 (licence suspension or termination); or
 - (c) by either party under clause 25.5 (force majeure).
- 15.4 **Termination of Services:** Termination of the Service(s) provided under the Agreement will have the effect of terminating the Agreement in its entirety.
- 15.5 **No prejudice:** Termination and the rights set out in this clause 15 are without prejudice to any other rights, remedies or obligations either party may have under the Agreement or at law.
- ### 16. INFORMATION AND CONFIDENTIALITY
- 16.1 **Personal Information:** We collect, use and disclose Personal Information about you, your Users or other representatives in accordance with:
- (a) the Privacy Act 1993;
 - (b) the Telecommunications Information Privacy Code 2003;
 - (c) our Privacy Policy; and
 - (d) the Agreement.
- 16.2 **Privacy Policy:** For the purposes of the Agreement, references to 'you' (and similar words) in the Privacy Policy will be construed as references to your Users or other representatives.
- 16.3 **User consent:** You confirm that your Users and representatives consent to and authorise our collection and use of their Personal Information in accordance with clause 16.1.
- 16.4 **Confidentiality:** The Agreement and any information that has been provided under the Agreement by you or us that is not publicly available, is confidential. That information will not be disclosed by you or us, except:
- (a) as required by law;
 - (b) as is necessary to satisfy the requirements of any regulatory agency or stock exchange;
 - (c) where the other party otherwise agrees in writing;
 - (d) as is necessary or provided for under the Agreement; or
 - (e) to your or our professional advisors and consultants.
- 16.5 **Security of data:** You acknowledge that unless otherwise provided for under any security service you elect to purchase from us, we are unable to exercise control over, and make no representations or warranties concerning, the security or content of data or information passing over the Network, any systems operated by third parties and the internet.
- ### 17. INTELLECTUAL PROPERTY RIGHTS
- 17.1 **Our intellectual property:** You acknowledge that all rights to intellectual property contained in or relating to the Services and/or the Equipment (including any improvements or changes to any Service or to the Equipment) (**Intellectual Property**) belong to us or to our licensors.
- 17.2 **Licence:** We license you to use Intellectual Property that we provide to you in connection with the provision of the Services on a non-exclusive and non-transferable basis for the Term, for the purposes set out in the Agreement, in accordance with:
- (a) the terms of the Agreement; and
 - (b) in respect of any software that we provide to you in connection with the Services, any terms upon which the software is ordinarily licensed or which we notify to you.
- 17.3 **Software:** If we provide you with any software in connection with the provision of the Services, you must not copy, modify or reverse assemble the software.
- 17.4 **Warranty as to third party infringement:** Each party warrants to the other that any materials proprietary to a party, and provided to the other party for the purposes of the Agreement, will not infringe the intellectual property rights of any third party, provided that the other party:
- (a) uses such materials in accordance with the terms of the Agreement (including the licence set out in clause 17.2) and any terms notified in writing by the disclosing party; and
 - (b) does not in any way modify or alter the materials, other than as permitted under the Agreement.
- ### 18. PRODUCTS
- 18.1 **SIMcard:** Any SIMcard we issue to you remains our property.
- 18.2 **Delivery:** If you have purchased Products from us, we will deliver the Products to you as soon as reasonably practicable. However, we cannot be responsible for any



Business Terms

delays in delivery caused by the third party supplier of the Products.

18.3 **Claim of damaged Products and manufacturers' warranties:** Without limiting the terms of any manufacturers' warranty that we pass the benefit of to you, where Products you have ordered from us are delivered to you and found to be damaged other than as a result of your misuse or lack of reasonable care:

(a) you must tell us, in writing, the nature of the damage, and return the damaged Products as soon as reasonably practicable, but no later than 10 Business Days from the receipt of the Products;

(b) you must also provide us with copies of any invoice and delivery documents that accompanied the Products; and

(c) we may decline any claim which you have not reported to us in writing within 10 Business Days as set out in clause 18.2 (a) or which is not complete.

18.4 **Accepted claim:** If we accept your claim under clause 18.2, we may, at our option:

(a) replace the Products;

(b) refund the relevant Charge; or

(c) provide a credit against the relevant Charge where you are yet to pay.

18.5 **Transfer of risk and title:** Any Products you order from us are your responsibility from the time they are delivered to you. Ownership in a Product does not pass to you until you have paid all Charges for the Product and any other amounts payable in relation to the Product.

18.6 **Warranty:** When we provide Products to you, they will (unless otherwise specified) be approved for connection to our Network. We will pass on the full benefit of any manufacturer's warranty you are eligible for in respect of Products you purchase from us.

19. PORTING

19.1 If you Port all of the Phone Numbers to another Telecommunications Service Provider, this will constitute termination of your Services and should such termination take place before the end of the Initial Term, you will be liable to pay any applicable Early Termination Charges.

20. ROAMING

20.1 You may be able to use your Mobile Device in other countries, which we call "roaming". [Roaming terms and conditions apply](#), which you can find on our Website. Contact Customer Services to activate this service.

21. NO ADDITIONAL TERMS

21.1 **Exclusions:** All warranties, terms, guarantees and conditions that are not expressly set out in the Agreement are excluded to the extent permitted by law.

21.2 **Fair Trading Act 1986 (FTA) and Consumer Guarantees Act 1993 (CGA):** For the purposes of section

5D of the FTA and section 43 of the CGA, the parties acknowledge and agree that:

(a) the Services, Products and Equipment (as applicable) that we provide to you under the Agreement are being provided and acquired in trade; and

(b) to the extent permitted by law, in respect of all matters covered by the Agreement, the parties are contracting out of the CGA and sections 9, 12A and 13 of the FTA.

22. LIABILITY – EXCLUSION AND LIMITATION

22.1 **Exclusion of liability:** Subject to clause 22.3, in no event will either party be liable under or in connection with the Agreement (whether in contract, tort (including negligence) or otherwise) for any:

(a) loss of data;

(b) loss of profit, revenue, anticipated savings or goodwill; or

(c) indirect or consequential losses,

regardless of whether such losses were contemplated.

22.2 **Limitation on liability:** Subject to clause 22.3, in no event will either party's liability under or in connection with the Agreement (whether in contract, tort (including negligence) or otherwise) in any one year of the Term exceed:

(a) the total Charges paid by you in the 12 calendar months immediately prior to the occurrence of the event(s) giving rise to the claim; or

(b) if the Agreement has not been in effect for 12 months prior to the occurrence of the event(s) giving rise to the claim, the average monthly Charges paid by you for the months from the date of the Agreement until the occurrence of the event(s) giving rise to the claim, multiplied by 12.

22.3 **Exceptions:** Nothing in this Agreement shall limit either party's liability (as applicable):

(a) to pay the Charges or any Early Termination Charges which are payable in accordance with this Agreement;

(b) for a breach of clause 16.4 (confidentiality);

(c) for a breach of clause 17.4 (warranty);

(d) for any loss or damage which is finally judicially determined to have resulted from that party's fraud; or

(e) for death or personal injury which is finally judicially determined to have resulted from an act or omission of that party.

22.4 **Network Operators and other suppliers not liable:** None of our officers, employees, contractors or agents, nor any other Network Operator and/or third party supplier (including their officers, employees, contractors and agents) will be liable to you or anyone else for any claims, costs, damages, losses or other liabilities of any kind arising in any way from the Services we provide or



Business Terms

from your use of those Services and our Network, including (without limitation) your access to and use of any service provider's site or Network Operator's networks. The benefits of this clause are intended to extend to Network Operators, agents and suppliers and to be enforced by them under the Contract and Commercial Law Act 2017 Part 2, Subpart 1.

23. DISPUTES

23.1 **Dispute procedure:** If you have a dispute in connection with the Services, please refer that dispute to Customer Services or your Account Manager. Neither you nor we will commence court proceedings (except where urgent interlocutory relief is required) until this clause 23 has been complied with.

24. ENTIRE AGREEMENT AND VARIATIONS

24.1 **Entire agreement:** The Agreement supersedes all prior discussions and agreements that you may have had with us regarding the subject matter of the Agreement and represents the entire agreement between the parties regarding such subject matter.

24.2 **No variation:** We may vary the Agreement as set out in clauses 7-10. Subject to this right to vary, and except as otherwise expressly provided in the Agreement, no variation or waiver of any provision of the Agreement will be recognised or binding unless it is in writing and signed by both parties.

25. FORCE MAJEURE

25.1 **Liability:** Neither party will be liable to the other party for any failure to perform its obligations under the Agreement during the time and to the extent that such performance is prevented by reason of a Force Majeure Event.

25.2 **Notice:** The party seeking to rely on this clause will notify the other party as soon as practicable after the Force Majeure Event occurs and use its best endeavours to provide the other party with information regarding the extent of the affected party's inability to perform and an estimate of the time likely to be required to overcome the Force Majeure Event.

25.3 **Mitigation:** The affected party will use its best endeavours to remedy or mitigate the effect of the Force Majeure Event and to complete its obligations under the Agreement as far as reasonably practicable.

25.4 **Charges:** You will not be required to pay any Charges for any Services to the extent that such Services are not provided by us due to a Force Majeure Event.

25.5 **Termination:** Either party may terminate the Agreement by notice in writing to the other party, with immediate effect on the date specified in that notice, if a party has been unable to perform its obligations under the Agreement as a result of a Force Majeure Event for a continuous period of 60 Business Days.

26. GENERAL

26.1 **Assignment:** You may not assign any of your rights

and/or obligations under the Agreement to any other person without first obtaining our prior written consent (which we may withhold at our sole discretion). From time to time we may assign any of our rights and obligations under this Agreement without your consent.

26.2 **No contra proferentem:** The rule of construction known as the contra proferentem rule does not apply to the Agreement.

26.3 **Vodafone Group Company assignment:** We may assign our rights and obligations under the Agreement to another Vodafone Group Company without your consent.

26.4 **Subcontracting:** We may subcontract any or all of our obligations under the Agreement without your consent, but we will remain ultimately responsible to you for carrying out those obligations.

26.5 **Compliance with policies:**

(a) Each party will comply with the other's pre-notified and reasonable health and safety policies, as amended from time to time, when on the other party's premises. In addition, each party will also comply with the Health and Safety in Employment Act 1992, including all regulations and codes of practices made thereunder.

(b) We hold ourselves to the standards set out in our global Vodafone Code of Conduct which includes commitments regarding health and safety, managing our impact on the environment and investing in society. We also expect our employees, contractors and suppliers to meet these commitments. The Vodafone Code of Conduct (as amended from time to time) can be found at <http://www.vodafone.com/content/index/about/about-us/code-of-conduct.html>.

(c) Each party will comply with the Sanctions and Trade Laws relevant to this Agreement. Each party has an obligation to notify the other in respect of a breach of such laws or a change of status in respect of sanctions and trade controls. In such circumstances, each party shall have the right to suspend services or terminate the agreement with immediate effect and without liability.

26.6 **No waiver or delay:** Subject to clause 18.3, if either party delays or fails to enforce any of its rights or remedies under the Agreement, this will not constitute a waiver by that party of that or any other right or remedy available to it.

26.7 **Severability:** If the Agreement or any provision of the Agreement is held to be illegal, invalid, unenforceable or of no effect, then, to the extent permitted by law, the provision or provisions giving rise to such illegality, invalidity, unenforceability or lack of effect will be severed from the Agreement and the remaining provisions of the Agreement will remain in full force and effect.

26.8 **Governing law:** The laws of New Zealand govern the Agreement. The parties agree to submit to the exclusive jurisdiction of the courts of New Zealand.

26.9 **Notice:** Any notice you give us under this Agreement



Business Terms

must be delivered, posted or emailed to:

- (a) Vodafone Limited, 20 Viaduct Harbour Ave, Auckland 1010; or
- (b) legal.notices@vodafone.com

or any address we advise you in writing.

26.10 Any notice we give to you under our Agreement will be delivered, posted or emailed to the address you provided us in your Sign-up Agreement or any other address you advise us in writing. We may also post notices on our Website.

27. INTERPRETATION

27.1 **Plurals:** References to the singular include the plural and vice versa.

27.2 **Definition:** In the Agreement, unless the context indicates otherwise:

Agreement means these Business Terms, together with the applicable Service Descriptions, Pricing Plans, Change Fees, and any terms included in our Sign-up Agreement;

Business Day means any day other than a Saturday, Sunday or public holiday in Auckland or Wellington;

Change Fees means Early Termination Charges, Early Resign Charges and/or Plan Transfer Charges, as set out in our Website;

Charges means:

- (a) the charges for the Services as set out or referred to, in the applicable Pricing Plan;
- (b) the charges for the Products (if applicable), plus any freight and delivery costs not included in the listed price, as set out or referred to in the applicable Pricing Plan or otherwise advised to you;
- (c) any taxes, levies, fees or other government charges relating to our Services; and
- (d) any additional charges payable by you under the Agreement,

in each case as amended in accordance with the Agreement from time to time;

Connection means a voice and/or data mobile connection (as applicable) to the Network by an appropriately configured SIMcard;

Due Date means the payment due date set out on the invoice;

Early Resign Charges means any early resign charges set out on our Website at the effective date of resign, and Early Resign Fees will have the same meaning;

Early Termination Charges means any early termination charges set out on our Website at the effective date of termination, and Early Termination Fees will have the

same meaning;

Equipment means any equipment (including software), owned by us or our suppliers, that we provide to you in connection with the provision of Services;

Extended Term has the meaning set out in clause 2.2(b);

Force Majeure Event means any event or circumstances beyond our reasonable control, including any act of God, fire, flood, storm, earthquake or any natural disaster, any act of a public enemy, terrorism, sabotage, embargo, malicious damage, riot or war, any Government intervention and any defect in or failure of any third party electricity network or infrastructure, but does not include lack of funds for any reason;

GST means goods and services tax chargeable in accordance with the Goods and Services Tax Act 1985, as amended from time to time;

Late Payment Fee means the fee for late payment published on our Website from time to time. Details of the Late Payment Fee can be found here: <http://www.vodafone.co.nz/help/bill-payment/late-payment-fee/>;

Network means our telecommunications networks;

Network Operator means (a) any entity with whom we have an interconnection agreement or arrangement (directly or indirectly) to provide for the transfer of your generated or destined data or voice communications between the Network and any telecommunications network operated by or on behalf of that entity or (b) an arrangement to resell wholesale services;

Personal Information means personal information (as that term is defined in the Privacy Act 1993) and Telecommunications Information;

Phone Number means a phone number which is either allocated to you by us or which you have Ported to us or seek to Port;

Plan Transfer Charges means any Pricing Plan transfer charges set out on our Website at the effective date of transfer, and Plan Transfer Fees will have the same meaning;

Port means to transfer a Phone Number from one Telecommunications Service Provider to another according to the approved industry process (and words such as Porting, Ported and Porting Process will be construed accordingly);

Pricing Plan means the entitlements; such as data, minutes and other benefits included as part of the Service, as set out on our Website

Privacy Policy means our Privacy Policy as amended from time to time, available on our Website at vodafone.co.nz/legal/policy/privacy;

Products mean devices, hardware and/or accessories approved and stocked by us unless we expressly say



Business Terms

otherwise;

Regulatory Event means any legislative or regulatory change (including, any determination, direction or decision by a regulatory authority, or the introduction of or change to any regulations, reference offer or undertaking) that directly or indirectly has the effect of: altering the terms of the Agreement; making the operation of the Agreement impracticable; materially altering the burden (financial or otherwise) of us providing Services under the Agreement; making us incapable of performing the Agreement; or causing us (voluntarily or otherwise) to materially alter our operations or structure;

Sanctions and Trade Law means law, regulation, binding code of practice, rule or requirement of any relevant government or governmental agency, professional or regulatory authority, in relation to sanctions and export control restrictive measures, each as relevant to (i) us in the provision of Services and/or (ii) you in the receipt of Services or the carrying out of your business;

Services mean the services which we provide to you from time to time as described in the relevant Service Descriptions;

Service Descriptions mean the service descriptions relating to the Services, which can be found on our Website;

Sign-up Agreement means the signup form issued by us, or the voice verification agreement conducted by us, through which you order Products or Services;

Telecommunications Information means information about an identifiable individual which is subscriber information, traffic information or the content of a telecommunication (as those terms are defined in the Telecommunications Information Privacy Code 2003);

Telecommunications Service Provider means a provider of telecommunications services to the public in New Zealand;

Term means the Initial Term and the Extended Term;

User means an individual end user of a Product and/or the Services;

Vodafone Group means us and the Vodafone Group Companies;

Vodafone Group Company means any entity directly or indirectly controlled by Vodafone Group Plc or Vodacom Group Limited, where “control” means (a) the ownership of not less than 30% of the voting rights, (b) the ability to appoint or remove a majority of the board of directors (or equivalent body) or (c) the ability to exercise dominant influence over, or to direct the affairs of, an entity through an agreement or a provision in its articles of association or other constitutional document and any partner market listed on the investor relations page at www.vodafone.com;

We or **us** means Vodafone New Zealand Limited, 20

Viaduct Harbour Avenue, Auckland and **our** has a corresponding meaning;

Website means our website at www.vodafone.co.nz; and

you means the Vodafone customer responsible for paying the Charges for the Services, as set out in the Sign-up Agreement and **your** has a corresponding meaning.

- 27.3 In interpreting the Agreement, references to either party include its respective successors in title and permitted assigns and references to “includes” or “including” do not imply any limitation.