

Failover

Vodafone Failover Terms & Conditions

Definitions

- **Charges** – The monthly or other periodic fee and all other fees payable by Customer to Vodafone for the Service.
- **Force Majeure** – Any cause beyond a party's reasonable control including without limitation, acts of God, war, fire, flood or other accident, strike, lockouts, delays in transport, material shortages, failures or fluctuations in electric power or telecommunications services or equipment, restrictions or prohibitions of any government or semi-government authority.
- **Insolvency Event** – An event where a Party either ceases or threatens to cease conducting its business in the normal manner; or is treated as being insolvent, or threatens or is in jeopardy of becoming insolvent because it: (a) is unable to pay its debts (within the meaning of Section 214 of the Companies Act 1963; or (b) makes or offers to make any arrangement or composition with any one or more of its creditors; or (c) commits any act of bankruptcy or if any petition or receiving order in bankruptcy is presented or made against it; or (d) any resolution or petition to wind up it up (being a limited company) is issued or passed or presented otherwise than for reconstruction or amalgamation; or (e) has had a receiver, administrator or liquidator appointed to it.
- **Service** – The Vodafone Failover Service that Vodafone makes

available to Customer under this Agreement.

- **Vodafone's Group** – Vodafone Group Plc and any company in which Vodafone Group Plc holds, directly or indirectly, 50% or more of its issued share capital or has the right to exercise, directly or indirectly 50% or more of the voting rights.
- **Working Day** – The time between 09:00 – 17:00 on any day other than Saturdays, Sundays or Public Holidays as defined in the Second Schedule to the Organisation of Working Time Act, 1997.

1. Agreement structure

1.1 This agreement between Customer and Vodafone incorporates the Order Form and these General Terms and Conditions (together, the 'Agreement').

1.2 If there is any inconsistency between the various provisions of the Agreement, the following order of precedence will apply, where 1 has a higher precedence than 2 and so on: (1) Order Form; (2) General Terms and Conditions.

2. Availability of the Services

2.1 Vodafone shall use reasonable endeavours to provide Customer with the Service; however Vodafone cannot guarantee that the service will be fault-free.

2.2 Vodafone may suspend the Services: (i) in order to carry out maintenance or testing; (ii) when it is necessary to safeguard the security and integrity of the Services or to reduce the incidence of fraud.

3. Charges and Payment

3.1 Vodafone states all Charges exclusive of VAT, unless specified otherwise. All Charges will be specified on an Order Form.

3.2 Charges shall be invoiced by Vodafone [monthly in advance/monthly in arrears]. Invoices shall be paid by Customer in cleared funds no later than 30 calendar days from the date of the invoice ("Due Date"), by direct debit.

3.3 If Customer reasonably and in good faith disputes an invoice or part of it, Customer shall notify Vodafone within 14 days of receipt of the invoice, providing details of why the invoiced amount is incorrect and, if possible, how much Customer believes is due. All undisputed Charges shall be paid by the Due Date.

3.4 Where Vodafone has not received payment for undisputed Charges by the Due Date, Vodafone shall: (i) contact Customer's Accounts Payable Department to request payment; and (ii) be entitled to charge interest on the overdue Charges at the highest rates permitted by applicable law. Where Vodafone has not received payment within 30 calendar days of the Due Date, Vodafone shall be entitled to terminate this Agreement.

3.5 Customer shall not be entitled to offset any sums that Vodafone owes to Customer under this Agreement or any other agreement or dispute between the Parties against any sums that Customer owes to Vodafone under this Agreement.

3.6 Vodafone may credit assess Customer from time to time as reasonably required to assess Vodafone's risk. Each credit

assessment shall entitle Customer to have a credit limit on its Vodafone account (details of which are available on request).

4. Termination

4.1 This Agreement

4.2 Notwithstanding clause 4.1 above, the Parties shall each have the right to terminate this Agreement with immediate effect (by serving written notice of termination to the other Party):

4.3 if the other Party becomes subject to an Insolvency Event; or

4.4 if the other Party is in material breach of any of its obligations under this Agreement (provided that where such breach is capable of remedy, the breaching Party is given 30 days to rectify such breach from the date that notice of any breach is received from the non-infringing Party);

4.5 Vodafone shall have no liability to Customer for any termination of the agreement in accordance with this clause 7.

4.6 The Parties shall acknowledge, as soon as reasonably possible, the receipt of any notice of termination of this Agreement (in whole or in part) received in writing from the other Party.

4.7 Where this Agreement has been terminated as permitted in this Agreement prior to expiry of the Term, Vodafone shall be entitled to charge, and Customer shall pay, a lump sum termination payment equal to the Charges for each month remaining in the minimum term at the point of termination.

5. Liability

5.1 Nothing in this Agreement shall

operate to restrict either Party's liability to the other from: death or personal injury resulting from negligent acts or omissions; claims for non-payment; the non-excludable statutory rights of consumers (for example, under laws providing for strict product liability); and breach of any obligation of confidence.

5.2 Except for clause 5.1 above and to the extent not prohibited by law: 5.2.1 each Party's maximum aggregate liability for all claims relating to Equipment or a Service provided pursuant to this Agreement, whether for breach of contract (including repudiatory breach), breach of warranty or in tort, including negligence, will be limited to 100% of the value of the Charges paid or payable under this Agreement, up to a maximum of €5,000 (five thousand euro); and 5.2.2 neither Party will be liable for any indirect, punitive, special, incidental or consequential damages in connection with or arising out of the terms of this Agreement nor any loss of business, revenue, profits, goodwill, use, data, or other economic advantage, however they arise, whether in breach of contract (including repudiatory breach), breach of warranty or in tort, including negligence, and even if that Party has previously been advised of the possibility of such damages. Vodafone shall not be liable to Customer if it is unable to provide any of the Services contemplated by this Agreement due to circumstance outside its reasonable control.

5.3 Except for the payment obligations of the Customer, neither Party will be

responsible or liable in any way for the failure or delay in the performance of its obligations due to Force Majeure. If a cause relied on by a Party hereunder ceases to exist, the Party will perform or resume performance of its obligations and the time for performance will be extended by a period equal to the duration of the Force Majeure. If Force Majeure persists for a period of more than 30 days, the other Party will be entitled to terminate this Agreement on written notice.

5.4 The warranties specified in this Agreement are the only warranties provided with respect to Services provided to Customer by Vodafone. To the extent permissible at law, all other warranties (whether express or implied and including any implied warranties of fitness for a particular purpose or merchantability) are excluded provided that where legislation implies warranties or conditions or imposes obligations (statutory provisions) which cannot be excluded, restricted or modified except to a limited extent, this Agreement must be read subject to those implied statutory provisions.

6. General Provisions

6.1 Vodafone shall be entitled to transfer in whole or in part any of its rights and obligations to any company within Vodafone's Group at any time. Vodafone may use sub-contractors to perform any of its obligations under this Agreement but remains responsible for their performance.

6.2 All notices served by Customer under this Agreement shall be in writing and sent to the Head of Enterprise Contracts at Vodafone

Ireland Limited, MountainView, Leopardstown, Dublin 18, or any other address Vodafone directs Customer to use from time to time. Vodafone shall send all notices to Customer at Customer's registered office. Notices will be deemed given: where they are hand delivered, when a duly authorised employee or representative of the recipient gives written acknowledgement of receipt; for e-mail communication, at the time the communication enters into the information system of the recipient; for posting, three days after dispatch; and for fax on receipted transmission of the fax.

6.3 Neither Party shall lose any right under this Agreement if it fails to use that right, or delays in using it. For a waiver of a right to be valid, it must be written and will not give rise to an ongoing waiver of that right unless it is expressly stated to do so.

6.4 Termination of this Agreement or any part thereof, shall be without prejudice to any other rights or remedies a Party may be entitled to at law or under the Agreement and shall not affect any accrued rights or liabilities of either Party nor the coming into force or the continuance in force of any provision of the Agreement which is expressly or by implication intended to come into or continue in force on or after such termination.

6.5 Only provisions set out in this Agreement shall apply to Vodafone's supply of Services to Customer. All other provisions are expressly excluded to the maximum extent permitted by law. The Parties acknowledge that, in entering into this

Agreement, neither Party has relied upon any statement or warranty made, or agreed to, by any person, except those expressly set out within this Agreement. However, this shall not be taken to exclude either Party's liability for fraud.

6.6 If a misrepresentation or untrue statement has been made, the only remedy available to the Parties shall be a claim for damages for breach of this Agreement, unless such misrepresentation or untrue statement was made fraudulently, or a provision of the Agreement was induced by fraud, in which case all remedies under Irish Law shall be available.

6.7 All headings in this Agreement are there for convenience, and do not have any legal effect. Use of the singular includes the plural and vice versa.

6.8 Every provision in this Agreement is independent from the others to the extent that, if a provision, or any part of it, is ruled to be illegal or unenforceable by the Irish Courts, that provision or the relevant part of it shall be treated as having been deleted from this Agreement, without affecting the remainder of that provision or the other provisions of this Agreement, which shall still have full effect.

6.9 This Agreement is governed by Irish Law and is subject to the exclusive jurisdiction of the Irish Courts.

6.10 If there is a dispute under this Agreement, and Customer's account manager has been unable to resolve the issue to Customer's satisfaction, Customer may escalate the issue to a more senior representative within Vodafone. The Parties shall use the escalation process to its full before

taking legal action against the other Party. Escalation routes within Vodafone shall be as follows, Customer shall provide escalation contacts at equivalent levels:

- First: Head of Channel, Enterprise Sales
- Second: Sales Director, Enterprise Sales
- Third: Director of Enterprise, Vodafone Limited