

## VOCUS STANDARD TERMS AND CONDITIONS

### 1. Definitions and Interpretation

#### 1.1 Definitions

In these terms and conditions unless the context otherwise requires:

**Agreement** means these terms and conditions as varied from time to time.

**Business Day** means:

- (a) in relation to a service provided at a data centre, a day that is not a Saturday, Sunday or public holiday in the state in which that data centre is located; and in all other cases,
- (b) a day that is not a Saturday, Sunday or public holiday in New South Wales.

**Charges** means the fees payable by the Customer to Vocus for Services provided under this Agreement or any relevant Service Schedules or Service Orders, including any Fixed Term Charge.

**Corporations Act** means the *Corporations Act 2001* (Cth).

**Confidential Information** of a party means any information marked as confidential or which by its nature the other party knows or ought to know is confidential (regardless of the form of the information and when it was acquired) and includes trade secrets, technical knowledge, concepts, designs, plans, precedents, processes, methods, techniques, know-how, innovations, ideas, procedures, research data, financial data, databases, personnel data, computer software and programs, customer and supplier information, correspondence and letters and papers of every description including all copies or extracts of same relating to the affairs or business of the party.

**Control** has the meaning given in the Corporations Act.

**Customer Equipment** means any hardware, software, equipment, systems and cabling provided by the Customer or an End User used in the provision of Services.

**Dark Fibre** has the meaning given in the Dark Fibre Service Schedule.

**Dark Fibre Acceptance Date** has the meaning given in the Dark Fibre Service Schedule.

**End User** means a customer of the Customer.

**Fixed Term Service** means any Service supplied by Vocus in a fixed or minimum amount per month for a fixed Initial Term, (for example, 10Mbps of IP Transit per month for 24 months), where the number of months in the Initial Term is specified in the relevant Service Order for that Service.

**Fixed Term Charge** means the charge payable in accordance with clause 5.2 for a Fixed Term Service for the total duration of the Initial Term.

**Force Majeure Event** means any event that is beyond the reasonable control of a party and which prevents a party from performing, or delays the performance of, any of its obligations under this Agreement or any Service Schedule or Service Order including (without limitation):

- (a) forces of nature, any act of God, fire, storm or explosion;
- (b) any strike, lockout or industrial action; and
- (c) any action or inaction by any organ of government or government agency.

**GST** has the same meaning as in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**Initial Term** means, in respect of a Service, the minimum contract period specified in a Service Order applicable to that Service, the term of which shall be deemed to commence on the RFS Date.

**Insolvency Event** means in relation to a party:

- (a) a receiver, receiver and manager, trustee, administrator, other controller (as defined in the Corporations Act or similar official is appointed over any of the assets or undertaking of the party;
- (b) the party suspends payment of its debts generally;
- (c) the party is or becomes unable to pay its debts when they are due or is or becomes unable to pay its debts or is presumed to be insolvent within the meaning of the Corporations Act;

- (d) the party enters into or resolves to enter into any arrangement, composition or compromise with, or assignment for the benefit of, its creditors or any class of them;
- (e) the party ceases to carry on business or threatens to cease to carry on business;
- (f) a resolution is passed or any steps are taken to appoint, or to pass a resolution to appoint, an administrator; or
- (g) an application or order is made for the winding up or dissolution of the other party, or a resolution is passed, or any steps are taken to pass a resolution, for the winding up or dissolution of the other party, otherwise than for the purpose of an amalgamation or reconstruction that has the prior written consent of the first party;
- (h) a party threatens to do any of (a) – (g).

**Intellectual Property Rights** means all intellectual property rights, including the following rights:

- (a) patents, copyright, rights in circuit layouts, registered and unregistered designs, trade marks, domain names, business names and any right to have confidential information kept confidential; and
- (b) any application or right to apply for registration of any of the rights referred to in paragraph (a).

**Interest Rate** means the business banking rate charged from time to time by Commonwealth Bank of Australia plus 2%.

**RFS Date** in relation to a particular Service, means:

- (a) the ready for service date specified in the Service Order for that Service; or
- (b) if no date is specified in the Service Order, the date notified to the Customer as the RFS Date by email from Vocus; or
- (c) if neither (a) nor (b) applies, the date on which the Service is first made available to the Customer by Vocus; or

- (d) in the case of Dark Fibre, the Dark Fibre Acceptance Date.

**Scheduled Maintenance** means maintenance to be carried out by Vocus from time to time and notified in advance to the Customer in writing.

**Security Deposit** means an amount up to one month's Charges payable by the Customer under clause 3.1 as security for payment of all sums due under this Agreement, a Service Schedule or a Service Order.

**Service** means a product or service supplied by Vocus to the Customer under this Agreement, as more particularly specified in a Service Schedule or Service Order and includes any equipment, wires, cables, ports, switches, routers, cabinets, racks and other hardware or telecommunications equipment supplied with that product or service.

**Service Schedule** means a schedule available on the Vocus website (<http://www.vocus.com.au/>) setting out the specifications, system requirements and performance capabilities of a Service.

**Service Order** means an order in Vocus's standard written format for the provision of a Service, which includes details of the Initial Term and Charges for the Services provided, signed on behalf of both parties.

**Supplier Failure** means a failure of any equipment, product or service supplied to Vocus by a third party which is required by Vocus to enable it perform its obligations under this Agreement or a Service Schedule or Service Order.

**Telecommunications Act** means the *Telecommunications Act 1997* (Cth).

**Vocus Equipment** means any equipment owned or used by Vocus in the provision of a Service.

## 1.2 Interpretation

**Headings** are for convenience only and do not affect interpretation.

The following rules of interpretation apply unless the context requires otherwise:

- (a) the singular includes the plural and conversely;
- (b) a gender includes all genders;
- (c) a reference to a person includes a body corporate, an unincorporated

body, enterprise, firm, trust, joint venture, syndicate or other entity and conversely;

- (d) a reference to a clause or schedule is to a clause of or schedule to this agreement;
- (e) a reference to any party to this agreement or any other agreement or document includes the party's successors and permitted assigns;
- (f) a reference to any legislation or to any provision of any legislation includes any amendment, consolidation or replacement of it, and all regulations and statutory instruments issued under it;
- (g) a reference to conduct includes, without limitation, any omission, statement or undertaking, whether or not in writing;
- (h) a reference to a party is a party to this agreement or any person who executes a deed of accession to this agreement;
- (i) terms defined in the Corporations Act have the same meaning in this agreement, unless the context expresses otherwise;
- (j) if any payment by a party under this agreement is due on a day which is not a Business Day, the due date will be the next Business Day in the same calendar month or, if none, the preceding Business Day;
- (k) if an obligation must be performed by 2 or more persons it binds them jointly and individually.

## **2. Service Schedules and Service Orders**

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### **2.1 Service Schedule**

- (a) The Customer may obtain a Service Schedule in respect of each Service supplied to the Customer from the Vocus website: [www.vocus.com.au](http://www.vocus.com.au).
- (b) A Service Schedule will be binding in respect of all supplies of the Service to which it relates and will continue in force for as long as Vocus continues to supply the relevant Service.

### **2.2 Service Order**

- (a) Vocus must provide the Customer with a Service Order in respect of each individual supply of a Service. Once agreed, the Service Order will be binding in accordance with its terms in respect of the particular supply of the Service to which it relates.
- (b) A Service Order will continue in force for the specified Initial Term. After expiry of the Initial Term it will continue in force until terminated by either party giving 30 days' written notice to the other.
- (c) Termination of a Service Order does not automatically terminate this Agreement or any applicable Service Schedule, which will each continue in force until terminated in accordance with this Agreement.

### **2.3 Interaction between this Agreement, Service Schedule and Service Order**

In the event of any inconsistency between the terms of this Agreement, a Service Schedule and a Service Order in relation to a particular supply of a Service, the following order of priority applies:

- (a) first the Service Order; then
- (b) the Service Schedule; and last
- (c) this Agreement.

## **3. Security Deposit and Credit Checks**

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### **3.1 Payment of Deposit**

If the Customer fails to pay any amount due under this Agreement or a Service Schedule or Service Order by the due date for payment, Vocus may by notice in writing require the Customer to pay a Security Deposit.

### **3.2 Payment of Security Deposit**

If required under clause 3.1, the Customer must pay the Security Deposit to Vocus within 5 Business Days of the date of the notice. In addition to any other rights available to it under this Agreement, Vocus may terminate or suspend a Service if the Customer fails to pay the Security Deposit within the time required under this clause.

### 3.3 Use of Security Deposit

Vocus must hold the Security Deposit as security for the payment of any sums due under this Agreement, a Service Schedule or a Service Order. If the Customer fails to pay any amount due on the due date for payment, Vocus may immediately deduct that amount from the Security Deposit in set-off of the Customer's payment obligation.

### 3.4 Reinstatement of Security Deposit

If Vocus deducts any monies from the Security Deposit under clause 3.3 the Customer must pay Vocus on demand by way of additional security that amount to replace the amount of the Security Deposit used.

### 3.5 Return of Security Deposit

Vocus must return any part of the Security Deposit which is unused to the Customer on termination of this Agreement.

### 3.6 Credit reference check

Vocus may conduct a credit check on the Customer prior to entering into any Service Schedule or Service Order with the Customer. The Customer authorises Vocus to make all enquiries reasonably necessary to determine the Customer's creditworthiness including by conducting requests for information from banks, credit agencies and other financial institutions.

## 4. Supply of Services

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### 4.1 Supply by Vocus

Vocus must supply Services specified in a Service Order in a professional and workmanlike manner in accordance with industry standards and the applicable Service Schedule.

### 4.2 Service Levels

Vocus must provide the Services in accordance with the relevant service levels specified in the Service Schedule. The Customer's sole remedy for failure to meet a service level is the service level rebates specified in the relevant Service Schedule, and the Customer waives any right to any additional remedy.

### 4.3 Use of Services

The Customer must only use the Services in accordance with the terms specified in the Service Order and any relevant Service Schedule.

### 4.4 Additional Services

If the Customer requires any additional Services a new Service Order (and, if required, Service Schedule) must be completed and signed by the parties.

## 5. Payment terms

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### 5.1 Payment of Charges

- (a) Unless otherwise specified in a Service Schedule or Service Order, Vocus must invoice the Customer monthly in advance for the Services to be provided to the Customer for the following month.
- (b) The Customer must pay the invoiced Charges within 30 days of the invoice date.
- (d) The Customer must pay all amounts in cleared funds by direct deposit, cash or cheque and without set-off, counterclaim or deduction.
- (e) Vocus may start to invoice a Customer for a Service from the RFS Date whether or not the Customer has used the Service since that date.

### 5.2 Fixed Term Charges

- (a) Subject to clause 5.2(b) as to instalment payment terms, where the Customer purchases a Fixed Term Service, the Fixed Term Charge is payable on the RFS Date and constitutes a debt due to Vocus as from that date.
- (b) The Customer may pay the Fixed Term Charge in equal monthly instalments over the Initial Term for as long as the Customer complies with the terms of this Agreement, the Service Order and any Service Schedule.
- (c) Vocus must issue invoices to the Customer in respect of each monthly instalment of the Fixed Term Charge in advance.
- (d) If either:
  - (i) the Customer terminates one or more Services prior to expiry of their Initial Term (other than pursuant to clause 10.2); or
  - (ii) Vocus terminates one or more Services prior to the

expiry of their Initial Term as a result of any unremedied breach by the Customer, then

any unpaid part of the Fixed Term Charge outstanding in respect of those Services for the remainder of their Initial Terms becomes immediately due and payable.

### 5.3 Disputed invoices

- (a) If the Customer disputes any part of an invoice submitted by Vocus, the Customer must:
  - (i) notify Vocus in writing within 14 days of receipt of the invoice of the reasons for disputing the invoice; and
  - (ii) pay the undisputed amount on or before the due date for payment.
- (b) Any invoice not disputed under clause 5.3(a) is deemed accepted by the Customer and is final and binding.
- (c) The parties must endeavour to resolve the disputed amount between themselves within 21 days of the notification being given by the Customer. If the parties do not agree the disputed amounts within 21 days of notification in writing by the Customer, the dispute resolution procedure set out in clause 15 applies.

### 5.4 Additional charges for regulatory changes

Vocus reserves the right to vary any Charges where Vocus's cost of supply increases as a result of any additional regulatory costs, imposts, penalties or taxes imposed by any governmental or regulatory body, including without limitation any costs, imposts, penalties or taxes arising as a result of any carbon tax or power levy.

### 5.5 Vocus Group invoicing

Invoices in respect of services provided under this agreement by any member of the Vocus group of companies may be rendered by any other member of the Vocus group, and will be deemed issued in respect of the services so provided.

## 6. Customer's Obligations

### 6.1 General obligations

The Customer must:

- (a) if relevant, provide and maintain its own network and network security;
- (b) comply with any operational procedures and technical specifications specified in any Service Schedule or other reasonable directions given by Vocus in relation to the Customer's obligations under this Agreement or a Service Schedule or Service Order;
- (c) provide Vocus with all information, assistance and co-operation reasonably requested by Vocus in order to enable Vocus to meet its obligations under this Agreement, a Service Schedule or Service Order;
- (d) ensure that any equipment it connects to the Vocus network is adequately maintained and meets minimum technical standards necessary for its usual operation;
- (e) not do, or omit to do, anything which could have a material adverse effect on the operation or maintenance of Vocus Equipment or Vocus's network.

### 6.2 Unauthorised representations or warranties

The Customer must not make any representation or give any warranty in relation to any Service that is inconsistent with written materials supplied by Vocus for that purpose other than as expressly authorised in writing by Vocus.

### 6.3 End Users

The Customer is solely liable for any dispute raised by any End Users in relation to the provision of any Services by the Customer to those End Users. Other than as expressly provided in this Agreement, Vocus disclaims any liability which may arise either on the part of the Customer or an End User as a result of the use of a Service by an End User or any related or ancillary claim, and the Customer indemnifies Vocus in respect of any liability so incurred.

### 6.4 Access

- (a) The Customer must provide Vocus and its suppliers, contractors, agents and employees with such reasonable

access to the Customer's premises as is required for the purpose of delivering the Services.

- (b) Where Vocus employees are given access to the Customer's premises in order to provide a Service:
  - (i) the Customer must ensure that the Customer's premises are safe and comply with all occupational health and safety laws; and
  - (ii) Vocus must ensure that its employees comply with any reasonable direction given by the Customer or its employees in relation to maintenance of health and safety at the Customer's premises.

## **7. Fault reporting and recovery**

### **7.1 Fault reporting and restoration**

- (a) The Customer must report any faults in relation to the Services to the Vocus network operations centre (**NOC**) as soon as reasonably practicable after it becomes aware of them.
- (b) Service level outages are calculated from the time the Vocus NOC receives notification of the fault from the Customer and issues a trouble ticket.
- (c) Vocus must use its reasonable endeavours to rectify any fault as soon as reasonably practicable after it has been reported.

### **7.2 Charges for restoration**

The Customer is liable for all costs incurred by Vocus in restoring a service where the fault arises as a result of:

- (a) any fault in any equipment, software or any network unit which does not form part of the Vocus Equipment;
- (b) defects in Customer Equipment or its installation;
- (c) any act or omission of the Customer or any of its employees, consultants, contractors, agents or representatives.

## **8. Confidentiality**

### **8.1 Confidentiality Obligation**

Each party (**Recipient**) which receives Confidential Information of the other party (**Disclosing Party**) under this Agreement acknowledges that all Confidential Information provided to it or to which it is exposed is confidential to the Disclosing Party.

### **8.2 Loss suffered**

The Recipient acknowledges and agrees that the Confidential Information is by virtue of its special nature valuable property of the Disclosing Party and that the Disclosing Party may suffer damage or loss by any disclosure by the Recipient of the Confidential Information.

### **8.3 Non-Disclosure**

The Recipient must:

- (a) treat all Confidential Information as confidential and not make public or disclose to any other person that Confidential Information unless it has first obtained the written consent of Disclosing Party to do so;
- (b) prevent third parties from gaining access to the Confidential Information; and
- (c) deliver and surrender to Disclosing Party upon request all records of Confidential Information held by it.

### **8.4 Disclosure Required**

The Recipient may disclose Confidential Information if required to do so by a government agency or any law or court order, or the rules of any applicable securities exchange after first giving notice to Disclosing Party and after taking all practicable steps to cooperate with Disclosing Party to prevent the disclosure to the maximum extent permitted by law.

### **8.5 Reference to Customer**

Vocus may acknowledge that the Customer is a customer of Vocus and use the Customer's logo in any press release, marketing, sales, or stock exchange reporting materials. The Customer must provide its prior written consent to any other reference to it by Vocus.

## **9. Intellectual Property Rights**

### **9.1 Ownership of Intellectual Property Rights**

- (a) All Intellectual Property Rights which are owned by either party as at the date of this Agreement will at all times remain owned by that party exclusively.
- (b) Except as expressly provided, nothing in this Agreement or any Service Schedule or Service Order confers on the Customer any right or interest in, or licence to use, any of Vocus' or any third party's Intellectual Property Rights.

### **9.2 Domain Names and Internet Protocols**

- (a) The Vocus network space assigned by Vocus to the Customer is not portable and must be returned to Vocus immediately if Vocus suspends or discontinues supply of data Services.
- (b) Where Vocus allots any internet protocol numbers to the Customer in connection with a Service, the Customer may only use such internet protocol numbers in connection with that Service. If the Customer or Vocus suspends or discontinues the use or supply of a Service for whatever reason, the Customer's right to use such internet protocol numbers will cease and Vocus may reallocate such numbers as it see fit.

## **10. Term and Termination**

### **10.1 Term**

- (a) This Agreement, a Service Schedule or Service Order continues until terminated in accordance with this clause 10.
- (b) Other than where terminated by the Customer under clause 10.2 or by Vocus under clause 10.3, a Service Order remains in force for the specified Initial Term.
- (c) After the Initial Term expires, the Service Order remains in force on a month to month basis until terminated by either party giving the other not less than 30 days written notice of termination.

- (d) This Agreement and any relevant Service Schedule or Service Order remains in force in respect of any Service supplied to a Customer for as long as Vocus continues to supply that Service to the Customer.

### **10.2 Customer termination**

The Customer may terminate this Agreement, or an individual Service Schedule or Service Order (as the case may be) by notice in writing to Vocus, if:

- (a) Vocus has committed a material breach of this Agreement, the Service Schedule or Service Order (as the case may be) and either:
  - (i) the breach is not remedied within 14 days of the date written notice of the breach is given to Vocus; or
  - (ii) the breach is not capable of remedy; or
- (b) Vocus suffers an Insolvency Event; or
- (c) Vocus is unable to provide the Services due to a Force Majeure Event, which continues for a period of more than 10 Business Days.

### **10.3 Vocus termination**

Vocus may terminate this Agreement, or an individual Service Schedule or Service Order (as the case may be) by notice in writing to the Customer if:

- (a) the Customer has committed a material breach of this Agreement, the Service Schedule or Service Order (as the case may be), and:
  - (i) the breach is not remedied within 14 days of the date written notice of the breach is given to the party; or
  - (ii) the breach is not capable of remedy; or
- (b) the Customer fails to pay any amount due under this Agreement within two Business Days of written notice from Vocus requiring payment;
- (c) the Customer suffers an Insolvency Event; or
- (d) a Supplier Failure occurs which impairs or prevents Vocus from delivering the Services in accordance

with this Agreement, a Service Schedule or a Service Order; or

- (e) any permit, licence or consent required for the provision of the Services cannot reasonably be obtained or retained by Vocus; or
- (f) Vocus is unable to provide the Services due to a Force Majeure Event, which event continues for a period of more than 10 Business Days.

#### 10.4 Failure to pay

In addition to the right to terminate this Agreement under clause 10.3(b), if the Customer fails to make a payment due under this Agreement when called upon to do so, Vocus may do any one or more of the following:

- (a) suspend the provision of the Services upon giving the Customer 2 Business Days written notice;
- (b) invoice the Customer for any Fixed Term Charge due in respect of the Service for the remainder of the Initial Term;
- (c) charge the Customer interest on the overdue amount from the due date for payment up to the date of actual payment at the Interest Rate;
- (d) where services include rack rentals in a data centre, suspend all Customer access to the data centre.

#### 10.5 Suspended Services

If Vocus suspends the provision of any Services under clause 10.4, Vocus may reinstate those Services if all amounts due (including interest) are subsequently paid. In that event, Vocus may charge a reconnection fee equal to Vocus's reasonable costs incurred in suspending and reconnecting the Services and reconnection will not occur until those costs have been paid.

#### 10.6 Actions on termination

On termination of this Agreement, a Service Schedule or Service Order:

- (a) all unpaid sums owing by each party will immediately become due and payable to the other party;
- (b) in addition to any other rights it may have, Vocus may:

- (i) retain any moneys paid to it in respect of services provided;

- (ii) invoice the Customer in respect of any Services provided prior to the date of termination which have not been invoiced;

(c) the Customer must:

- (i) immediately return to Vocus all Confidential Information of Vocus, all access codes and keys of any type and any other materials in the Customer's possession relating to Vocus;

- (ii) where the Customer has equipment in a Vocus data centre, at Vocus' request remove all such equipment. If the Customer fails to remove the equipment within 2 Business Days of written request from Vocus to do so, the Customer waives any proprietary rights it may have in that equipment, and Vocus may remove that equipment and do anything (including sell, dispose of or dump) that equipment at its absolute discretion.

### 11. Limitation of liability

#### 11.1 No indirect loss

Unless expressly stated to the contrary in this Agreement or a Service Schedule or Service Order, neither party is liable to the other for any indirect, special or consequential loss (including but not limited to loss of profits or loss of revenue, loss of data, loss of business or opportunity) however caused in connection with or related to this Agreement, a Service Schedule or a Service Order.

#### 11.2 No implied terms

All terms, conditions or warranties which may be implied into this Agreement, a Service Schedule or Service Order are excluded to the fullest extent permitted by law.

#### 11.3 Resupply of Services

Where legislation implies in this Agreement or any Service Schedule or Service Order any condition or warranty, and that legislation avoids or prohibits provisions in a contract excluding or modifying the application of or



exercise of or liability under such condition or warranty, the condition or warranty is deemed to be included. The liability of Vocus for any breach of such condition or warranty is limited, at the option of Vocus, to one or more of the following:

- (a) if the breach relates to goods:
  - (i) the replacement of the goods or the supply of equivalent goods;
  - (ii) the repair of such goods;
  - (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
  - (iv) the payment of the cost of having the products repaired; and
- (b) if the breach relates to services:
  - (i) the supplying of the services again; or
  - (ii) the payment of the cost of having the services supplied again.

#### 11.4 Limitation of liability

The total aggregate liability of each party in respect of all claims made under this Agreement (including under any Service Schedule or Service Order) or otherwise in respect of the provision of Services (including in respect of any claims in tort or negligence) is limited as follows:

- (a) for Vocus, where the breach occurs as a result of a failure to meet any service level specified in a Service Schedule, the service level rebate specified in that Service Schedule;
- (b) in every other case, an amount equal to:
  - (i) where this Agreement has been in force for more than 24 months, the total Charges paid by the Customer in the 24 month period prior to the date of the relevant claim; or
  - (ii) where this Agreement has not been in force for 24 months or more, the amount calculated by multiplying the monthly recurring revenue payable in respect of all

services the Customer has with Vocus at the date of the breach by 24.

## 12. Indemnity

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### 12.1 Mutual Indemnity

Subject to the limitations on liability set out in clause 11, each party (the **Indemnifying Party**) indemnifies the other and its Related Bodies Corporate, directors, officers, employees and agents from and against all losses, damages, liabilities, claims and expenses incurred (including but not limited to reasonable legal costs and defence or settlement costs) arising as a result of:

- (a) any breach by the Indemnifying Party of this Agreement or any Service Schedule or Service Order;
- (b) any negligent act or omission of the Indemnifying Party or any of its employees, consultants, contractors, agents or representatives relating to this Agreement or any Services provided under this Agreement.

### 12.2 Customer indemnities in respect of End Users

The Customer indemnifies Vocus (and its Related Bodies Corporate, directors, officers, employees and agents) on a full indemnity basis in respect of any losses, damages, costs, penalties, awards, interest or other liabilities incurred as a result of:

- (a) any claim made by an End User relating to or in connection with Services or their use by the Customer or the End User; and
- (b) any fraudulent, criminal or other illegal or wrongful use by the Customer or any End User of any Service supplied under this Agreement.

## 13. Force Majeure

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### 13.1 No liability

Vocus is not liable for any delay or failure to perform its obligations under this Agreement or any Service Schedule or Service Order to the extent that the delay or failure is due to a Force Majeure Event.

## 14. GST

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### 14.1 GST

- (a) All prices quoted for supplies made and/or to be made under this Agreement or any Service Schedule or Service Order are in Australian dollars and are exclusive of GST, unless expressed to the contrary in writing.
- (b) If GST is applicable to any supply made by Vocus under this Agreement, a Service Schedule or Service Order, Vocus is entitled to add to the amount otherwise payable an additional amount for the applicable GST.
- (c) The Customer agrees to pay Vocus such GST charge in the same manner and at the same time as the payment for the relevant supply.
- (d) Vocus will issue tax invoices to the Customer for the purposes of GST.
- (e) If required by applicable law, Vocus will give the Customer an adjustment note arising from the adjustment event relating to a taxable supply made under, or in connection with, this Service Schedule within 30 days after the date Vocus becomes aware of the adjustment event.
- (f) For the purposes of this clause 14.1, "GST" has the meaning given in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

## 15. Disputes

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### 15.1 Dispute resolution prior to litigation

The parties must exhaust the provisions of this clause 15 before initiating any legal proceedings in court.

### 15.2 Senior representative resolution

The parties must use their best endeavours and act in good faith to resolve any dispute arising in connection with this Agreement, a Service Schedule or Service Order by negotiation between a senior manager of each of them.

### 15.3 CEO Resolution

If senior managers of the parties have not resolved any dispute within 20 Business Days of notification of the dispute, the dispute must

be escalated to the CEO of each party for resolution.

### 15.4 Litigation

If the CEOs of the parties fail to resolve the dispute within 20 Business Days of notification of the dispute, either party may take such additional action as it deems necessary to resolve the dispute, including initiating legal proceedings.

### 15.5 Interlocutory relief

Nothing in this clause 15 prevents any party from seeking urgent interlocutory relief from a court at any time.

## 16. Assignment

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### 16.1 No assignment by Customer without consent

The Customer may not assign, charge or deal with any its rights and obligations under this Agreement or any Service Schedule or Service Order, or attempt or purport to do so, without the prior written consent of Vocus.

### 16.2 Assignment by Vocus

Vocus may assign, novate or subcontract any of its rights or obligations under this Agreement or any Service Schedule or Service Order to any person without the Customer's consent.

## 17. General

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### 17.1 Notices

- (a) A notice or other communication required or permitted to be given by one party to another must be in writing and:
  - (i) delivered personally;
  - (ii) sent by pre-paid mail to the address of the addressee specified in this Agreement; or
  - (iii) sent by facsimile transmission to the facsimile number of the addressee with acknowledgment of receipt from the facsimile machine of the addressee; or
  - (iv) sent by email to an email address previously used or advised by the other party.
- (b) A notice or other communication is taken to have been given:

- (i) If delivered personally, immediately upon delivery;
  - (ii) if mailed, on the second Business Day after posting;
  - (iii) if sent by facsimile before 4pm on a Business Day at the place of receipt, on the day it is sent and otherwise on the next Business Day at the place of receipt; or
  - (iv) if emailed, on the date sent, unless the recipient is able to demonstrate that the email failed to be delivered.
- (c) A party may change its address for service by giving notice of that change in writing to the other parties.
- (d) The parties' respective contact details for notification under this Agreement are as set out in the Parties section above.

#### **17.2 Governing law and jurisdiction**

This Agreement is governed by the laws of New South Wales. Each party irrevocably submits to the non-exclusive jurisdiction of the courts of New South Wales.

#### **17.3 Further assurance**

Each party will from time to time do all things (including executing all documents) necessary or desirable to give full effect to this Agreement. Each party acknowledges that it has obtained legal advice, or had the opportunity to obtain legal advice, in connection with this Agreement.

#### **17.4 Counterparts and facsimile signatures**

- (a) This Agreement may be executed in one or more counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.
- (b) The transmission by a party by email, fax or other electronic means of an executed copy of this Agreement (or any Service Schedule or Service Order) will be deemed proof of signature of the original for the purposes of constituting a binding agreement between the parties, and the signed copy so transmitted will be deemed the original for the purposes of this Agreement.

#### **17.5 Whole agreement**

In relation to the subject matter of this Agreement:

- (a) this Agreement, and any relevant Service Schedule and Service Order, is taken to be the whole agreement between the parties; and
- (b) supersedes all oral and written communications by or on behalf of any of the parties in relation to the subject matter of the Agreement, Service Schedule or Service Order, as the case may be.

#### **17.6 No reliance on warranties and representations**

In entering into this Agreement, each party:

- (a) has not relied on any warranty or representation (whether oral or written) in relation to the subject matter of this Agreement made by any person other than as expressly stated in this Agreement; and
- (b) has relied entirely on its own enquiries in relation to the subject matter of this Agreement.

#### **17.7 Survivability**

- (a) Subject to any provision to the contrary, this Agreement will enure to the benefit of and be binding upon the Parties and their successors, trustees, permitted assigns or receivers but will not enure to the benefit of any other persons.
- (b) The covenants, conditions and provisions of this Agreement which are capable of having effect after the expiration of this Agreement will remain in full force and effect following the expiration of this Agreement.
- (c) Each indemnity in this Agreement survives the expiry or termination of this document.

#### **17.8 Severance**

If any part of this Agreement is legally unenforceable, this Agreement does not include it. The remainder of this Agreement continues in full force.

#### **17.9 No merger**

Nothing in this Agreement merges, extinguishes, postpones, lessens or otherwise

prejudicially affects any right, power or remedy that Vocus may have against the Customer or any other person at any time.

#### **17.10 Consents and approvals**

(a) Where this Agreement gives Vocus a right or power to consent or approve in relation to a matter under this Agreement, Vocus may withhold any consent or approval or give consent or approval conditionally or unconditionally and in its absolute discretion. The party seeking consent or approval must comply with any conditions Vocus imposes on its consent or approval.

(b) The Customer warrants it has and will maintain the power and authority and has obtained and will comply with all necessary licenses and consents, necessary for it to enter into this Agreement and obtain and utilise the Services.

#### **17.11 Relationship**

The parties agree that this Agreement does not create any relationship of partnership or employment, franchise, joint venture or agency and that Vocus is an independent contractor.

----- END -----