



Vocus Business Partner Agreement

References throughout this Agreement to “we”, “us”, “our” or “Vocus” means Vocus as defined below.

References throughout this Agreement to “you” or “your” means the Business Partner.

1. Definitions and interpretation

1.1 Definitions

In this Agreement:

Accreditation means the successful completion of a course conducted by Vocus in relation to any of the Services in the manner set out in the Procedures.

Agreement means these terms and conditions, and its schedules and annexures.

Application means the application form which must be completed by a person who wishes to purchase the supply of Services, and which is in the form specified by Vocus from time to time.

Business Partner means the party described in the Business Partner Application Form.

Business Partner Application Form means the application form provided by Vocus from time to time.

Business Partner Level means the level of Business Partner outlined in Item 5 of the Targets and Commission Schedule of the Business Partner Application Form.

Commission means a commission payable to you under this Agreement in respect of Sales made by us in relation to Customers.

Commission Terms and Conditions means terms and conditions attached to this Agreement in Schedule 1.

Competing Service means any telecommunications service which competes with, is similar to or is reasonably substitutable for any of the Services.

Confidential Information includes:

- (a) the terms of this Agreement and any information relating to it;
- (b) any information relating to a Supplier or the Services;
- (c) the businesses or affairs of us or our customers (including the Customers);
- (d) all records relating to names, addresses and other contact, personal details, or usage details concerning Customers or prospective Customers;

(e) price lists, commissions and commission structures, competitive analyses, strategies, promotional and marketing aids or plans and all information exchanged between us and our Suppliers; and

(f) excludes information which:

(i) is or later becomes information in the public domain (other than by breach of this Agreement); or

(ii) becomes known to, or you can prove by your written records was already known by, you independently of us, other than by breach of confidentiality owed to us.

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

Customer means a customer introduced by you to us and accepted by us and who has entered into a binding contract with Vocus to acquire Services from us or an entity that has an existing relationship with Vocus.

Encumbrance means:

- (a) an interest or power reserved in or over an interest in an asset, including any retention of title;
- (b) an interest or power created or arising in or over an interest in an asset under a bill of sale, mortgage, charge, lien, pledge, trust or other similar instrument, device or power; or
- (c) any other adverse right, title or interest of any nature, by way of security for the payment of a debt or the performance of any other obligation,

and includes any agreement or arrangement (whether legally binding or not) to grant or create any of the above.

Financial Year means the period from 1 July to 31 May occurring throughout the Term.

Government Agency means any government or any public, statutory, governmental (including a local government), semi-governmental or judicial body, entity, department or authority and includes any self-regulatory organisation established under statute.



GST Law has the meaning given in the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* and related legislation.

GST means any tax imposed by or through the GST Law on Supply (without regard to any input tax credit).

Insolvency Event means, in relation to you, any one or more of the following events or circumstances:

- (a) being in liquidation or provisional liquidation or under administration;
- (b) having a receiver, receiver and manager, administrator, liquidator or analogous person (whether provisional or otherwise) of yourself or your property appointed or any of your property;
- (c) having anyone else appointed to you or any of your property who (whether or not as your agent) is in possession, or has control, of your property to enforce an Encumbrance;
- (d) being taken under section 459F(1) of the *Corporations Act* to have failed to comply with a statutory demand;
- (e) being unable to pay your debts or being otherwise insolvent;
- (f) becoming an insolvent under administration, as defined in section 9 of the *Corporations Act*;
- (g) entering into a compromise or arrangement with, or assignment for the benefit of, any of your members or creditors;
- (h) any analogous event or circumstance under the laws of any jurisdiction; or
- (i) taking any step or being the subject of any action that is reasonably likely to result in any of the above occurring,

unless such event or circumstance occurs as part of a solvent reconstruction, amalgamation, compromise, arrangement, merger or consolidation approved by us.

Intellectual Property Rights includes both in Australia and throughout the world, any copyright, trade or service mark, design, patent, semiconductor or circuit layout right, trade, business or company name, indication of source or designation of origin or other proprietary right, or any right to registration of such rights and **Intellectual Property** has a corresponding meaning.

Procedures mean the procedures governing the manner and process by which Accreditation takes place and you must undertake your duties and functions under this Agreement as notified or provided to you by us or as amended by us from time to time.

Prohibited Marketing Campaign means an active sales, marketing or advertising programme or campaign including direct mail, direct marketing or tele-marketing and mass media campaigns aimed at inducing a migration, churn or transfer of Customers to any Competing Service by comparing the Competing Service or its provider with the Services or Vocus (whether directly or indirectly); and any direct or indirect encouragement given to Customers to migrate, churn or transfer to any Competing Service, which campaign or encouragement utilises our Confidential Information (including the material contemplated by clause 9.1) to target Customers.

Related Body Corporate or Related Bodies Corporate has the meaning given in the *Corporations Act*.

Sale means a binding contract for the supply of Services between us and a Customer.

Sales Region means the geographical region set out in Item 2 in the Targets and Commission Schedule in the Business Partner Application Form.

Sales Target means the sales target for the Business Partner Level set out in Item 4 in the Targets and Commission Schedule in the Business Partner Application Form.

Services means the services supplied by us as specified in Item 1 in the Targets and Commission Schedule in the Business Partner Application Form and for which you have been accredited.

Service Literature means any information or instructions published by us or on our behalf from time to time in connection with the Services or this Agreement including Applications, brochures, Commission Terms and Conditions and Procedures.

Supplier means a supplier of telecommunications goods or services or other supplier who we use in the course of supplying the Services including by making the supplier's goods or services available to our Customers, Business Partners or distributors.

Supply means a taxable supply under the GST Law.



Targets and Commission Schedule means the schedule outlined in the Business Partner Application Form specifying the key variables (including your name and address and the duration of this Agreement) in relation to this Agreement.

Taxes means all taxes, charges, duties and similar imposed by a government or statutory body relating to the supply and use of goods and services or otherwise arising out of this Agreement including sales tax, fringe benefits tax, undistributed profits tax, withholding tax, financial institutions duty, stamp duties and any interest or penalty imposed in connection with any of the preceding items but excluding GST and income taxes.

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

Vocus means Vocus Pty Ltd ACN 127 842 853 and its Related Bodies Corporate.

Vocus Customer Agreement means the terms and conditions upon which we supply Services to Customers as notified by us to you and as varied by us from time to time.

1.2 Interpretation

In this Agreement, headings are used for convenience only and do not affect the interpretation of this Agreement and unless the context requires otherwise:

- (a) the singular includes the plural and vice versa;
- (b) other grammatical forms of defined words or expressions have corresponding meanings;
- (c) a reference to a document includes the document as modified from time to time and any document replacing it;
- (d) if something is to be or may be done on a day that is not a Business Day then it must be done on the next Business Day;
- (e) the word "person" includes a natural person and any body or entity whether incorporated or not;
- (f) the word "month" means calendar month and the word "year" means 12 months;
- (g) the words "in writing" include any communication sent by letter, facsimile transmission or email or any other form of communication capable of being read by the recipient;
- (h) a reference to all or any part of a statute, rule, regulation or ordinance (**statute**)

includes that statute as amended, consolidated, re-enacted or replaced from time to time;

- (i) wherever "include" or any form of that word is used, it must be construed as if it were followed by "(without being limited to)";
- (j) money amounts are stated in Australian currency unless otherwise specified; and
- (k) a reference to any agency or body, if that agency or body ceases to exist or is reconstituted, renamed or replaced or has its powers or functions removed (**defunct body**), means the agency or body which performs most closely the functions of the defunct body.

- 1.3 If we have a right to approve, consent to or otherwise exercise a discretion under or vary the terms of this Agreement or any arrangement referred to in this Agreement, we may do so as we think fit (in our absolute discretion) unless expressly otherwise required by this Agreement.

2. Appointment, duration and commission

- 2.1 (a) We hereby appoint you as our dealer to market, promote and solicit Applications for the Services (which you have received Accreditation for) in the Sales Region in accordance with this Agreement.
- (b) We are entitled to appoint other business partners in the Sales Region.
- 2.2 You agree that to maintain your appointment as our dealer you must:
 - (a) successfully complete the Accreditation course;
 - (b) successfully complete any other Accreditation course as notified by us from time to time during the Term, including the completion of updated or new Accreditation courses; and
 - (c) meet the Sales Target for your Business Partner Level in accordance with clause 3.
- 2.3 Subject to earlier termination, the term of this Agreement is as specified in Item 3 of the Targets and Commission Schedule in the Business Partner Application Form.
- 2.4 In consideration of you performing your obligations in accordance with this Agreement, we will during the term of this



Agreement:

- (a) pay to you the Commission for your Business Partner Level in accordance with the Commission Terms and Conditions;
- (b) to the extent determined by us from time to time, provide you with Service Literature and assist you in marketing the Services which you have received Accreditation for; and
- (c) to the extent determined by us from time to time, provide support and training and assist in promotional advice and concepts in relation to the Services which you have received Accreditation for.

2.5 You must pay all expenses incurred by you in performing your functions under this Agreement. The performance by you of your obligations under this Agreement is at your sole cost.

2.6 We:

- (a) are not obliged by this Agreement to enter into a contract for the supply of Services with every prospective customer proposed by you;
- (b) may reject any Application submitted by you at our sole discretion; and
- (c) may impose special restrictions on Applications from potential Customers and set limits on the number of Applications we will accept from you from time to time.

3. Sales Target and Business Partner Level

- 3.1 Subject to clauses 3.2 and 3.3, at a minimum, you must meet the Sales Target allocated to your Business Partner Level in each Financial Year.
- 3.2 If during a Financial Year you exceed the Sales Target allocated to your Business Partner Level you may qualify to move up to the next Business Partner Level. Vocus will notify you if you qualify to move up to the next Business Partner Level and the new Commission for that level. After the date of the notification from Vocus and your acceptance to move to the new Business Partner Level, the Commission for the next Business Partner Level will apply to future Sales.
- 3.3 If you move up to a new Business Partner Level in accordance with clause 3.2, at a minimum, you must meet the Sales Target for

the new Business Partner Level for the remainder of the then current Financial Year and the next Financial Year. You will then be subject to review in accordance with clause 3.4.

3.4 During the last quarter of each Financial Year, we will meet with you and discuss such matters including but not limited to your performance during the Term, your compliance with the Agreement or whether you have met and or are on track to meet the Sales Target for your Business Partner Level. You agree and accept that:

- (a) provided you have complied with your obligations under the Agreement and if you have met the Sales Target you may elect to either remain on your current Business Partner Level or move up to the next Business Partner Level. If there is no further Business Partner Levels you will remain on your current Business Partner Level; and
- (b) if you have not met the Sales Target during the applicable Financial Year or extended period as required by clause 3.3, you will be reassigned to the Business Partner Level applicable for the actual Sales Target you may have reached. If you do not wish to be reassigned to a different Business Partner Level you are able to terminate the Agreement in accordance with clause 15.2.

3.5 On 15 June in each Financial Year, Vocus may notify you of a new Sales Target and come into effect from 1 July.

4. Our related bodies corporate

- 4.1 Invoices in respect of the Commission 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 Commission so provided.
- 4.2 You acknowledge and agree that any debt owed under this Agreement is a debt owed to Vocus and that Vocus may take any necessary action in relation to any such debt notwithstanding that the right or obligation giving rise to the debt was satisfied by Vocus' Related Bodies Corporate.

5. Your Obligations

- 5.1 You undertake and agree with us to:
 - (a) market, promote and solicit Applications for the Services which you have received



- Accreditation for subject to the limitations on your authority as set out in this Agreement;
- (b) carry out your functions, and ensure that your employees possess the necessary information, skills, experience and qualifications to perform their functions, in a diligent, ethical, efficient and professional manner consistent with industry best practice and in accordance with the Procedures and the Service Literature;
 - (c) send, at your expense such of your employees at such times as we consider necessary on reasonable grounds, to training sessions conducted by us or on our behalf from time to time and otherwise assume full responsibility for training your employees as set out in the Procedures;
 - (d) participate in events, functions and quarterly review meetings arranged by Vocus from time to time;
 - (e) in quoting for the supply of the Services (which you have Accreditation for) to a Customer:
 - (i) clearly identify all applicable charges (including with respect to installation, connection, disconnection, usage, maintenance and commissioning);
 - (ii) ensure that any charges so identified are our current charges in respect of the Services;
 - (iii) ensure that the Customer is made aware of all of the material terms of the supply of Services;
 - (iv) ensure that you provide Customers with an up to date copy of the Vocus Customer Agreement; and
 - (v) make clear to Customers that no Services will be provided unless and until we have accepted an Application by a Customer for Services;
 - (f) act in a reputable manner at all times and not misrepresent:
 - (i) the Services in any way;
 - (ii) the prices payable for the Services;
 - (iii) the meaning or effect of any document provided to a prospective Customer (including any Application); and
 - (iv) that you or we are related to or affiliated with any other entity which it is not related to or affiliated with.
 - (g) co-operate with us in all aspects of account management, including provisioning, credit checks, collections and Customer services;
 - (h) take full responsibility for the actions of your employees in marketing, promoting and soliciting Applications; and
 - (i) not act or omit to act in a way that disparages our name or reputation or which may cause a Customer to terminate the Services.
- 5.2 You agree and accept that:
- (a) notwithstanding anything else in this Agreement, you may only market, promote and solicit Applications for the Services that you have received Accreditation for; and
 - (b) without limiting clauses 5.1(b) and 5.1(c) above, you must send, at your expense, such of your employees required under the Procedures in order to receive Accreditation for any one or more of the Services.
- 5.3 You agree that:
- (a) we own the Intellectual Property Rights in the Service Literature, the Vocus Customer Agreement and the materials specified in clause 9.
 - (b) you must not vary or amend the Service Literature or the Vocus Customer Agreement.
- 6. Your relationship with us and Customers**
- 6.1 You acknowledge and agree that:
- (a) nothing in connection with this Agreement gives you a contractual relationship with any Customer;
 - (b) you have no right to (and you must not purport to) bind us in contract or otherwise in law;
 - (c) you must ensure that each Application is fully completed by potential Customers in the manner required by us from time to time;
 - (d) each completed Application must be promptly submitted to us once completed by a potential Customer;
 - (e) payment for the Services is to be made to us and not you or a Supplier;



- (f) you must not bill, or otherwise seek any payments or co-payments from any Customer for the Services provided by us to the Customer as detailed in the Sale, but if any such payments are received by you, you must account for the same immediately to us;
- (g) you must not offer support to any Customer in relation to the Services or the Customer's use of the Services after the completion of a Sale. We will provide such support to Customers in relation to the Services and the Customer's use of the Services; and
- (h) we may change, replace or remove the Service Literature in our absolute discretion.

6.2 You must not hold yourself out as having or represent, including by omission, that you have a financial or other connection with or an authority from us that you do not have. In particular, but without limitation, you must not represent or hold yourself out as being an agent, employee, or Related Body Corporate of us.

6.3 All promotional and marketing material you use to advertise the Services must be the current Service Literature or otherwise be previously approved by us in writing.

6.4 You must not remove, tamper with or obliterate any trade mark, service mark or trade name or logo on the Service Literature or on or in relation to the Services or their packaging or labelling.

6.5 You must:

- (a) perform your functions and obligations under this Agreement through your own employees; and
- (b) not appoint any other person or entity as an agent, a subagent, representative, sub-dealer or other person with similar authority to you to carry out your functions and obligations under this Agreement, including for the purposes of marketing or promotional activity relating to the Services.

7. Reporting

7.1 You must promptly inform us of any change to your ownership or control, and any change in your organisation or methods of doing business which might affect the performance of your obligations under this Agreement.

7.2 You must provide such reports as we may

reasonably require from time to time regarding the performance of your obligations under this Agreement.

8. Compliance with regulatory requirements

8.1 You must, in performing your obligations and exercising your rights under this Agreement, comply, and ensure that your employees comply, with all applicable legislation, statutory instruments and regulatory obligations, including:

- (a) the *Telecommunications Act* including any codes or standards in force under Part 6 of that Act;
- (b) the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (Cth);
- (c) the *Telecommunications (Interception and Access) Act 1979* (Cth);
- (d) the *Competition and Consumer Act 2010* (Cth) and state and territory fair trading legislation;
- (e) the *Privacy Act 1988* (Cth);
- (f) the *Do Not Call Register Act 2006* (Cth);
- (g) the *Spam Act 2003* (Cth);
- (h) legislation relating to health and safety; and
- (i) any relevant legislation, regulation, guidelines, codes, rules, determination, decision or any other instrument passed or made by any Government Agency or relevant regulatory body.

8.2 You must ensure that all persons used by you in connection with the sale of the Services are provided with appropriate and regular training on the regulatory requirements specified in clause 8.1 as relevant to their role and responsibilities, including in particular:

- (a) privacy obligations;
- (b) obligations relating to compliance with the *Spam Act 2003* (Cth);
- (c) obligations relating to compliance with the *Do Not Call Register Act 2006* (Cth);
- (d) door to door selling laws and regulations; and
- (e) general obligations not to engage in misleading and deceptive conduct when marketing and promoting the Services (including, in particular, correctly describing the Services, the prices



charged for the Services and your identity).

8.3 If you cause a person to make telemarketing calls in connection with the sale of the Services, you will take all reasonable steps to ensure that person complies with the *Do Not Call Register Act 2006 (Cth)*, including:

- (a) maintaining a comprehensive record of all telemarketing activity performed under this Agreement;
- (b) supplying you with regular compliance reports throughout the term of the Agreement to enable you to assess your compliance with the *Do Not Call Register Act 2006 (Cth)*; and
- (c) only making telemarketing calls to numbers that have been verified as numbers that are not listed on the Do Not Call Register (as defined in the *Do Not Call Register Act 2006 (Cth)*).

8.4 You must, and must procure that all persons you use in connection with the sale of Services, comply with the *Spam Act 2003 (Cth)*, including ensuring that:

- (a) all your relevant personnel have been adequately trained in order to understand and comply with the *Spam Act 2003 (Cth)*; and
- (b) any electronic message that is sent by you to Customers or potential Customers:
 - (i) identifies the sender and authoriser of the message;
 - (ii) includes accurate information about how the customer may contact the sender or authoriser;
 - (iii) contains a functional unsubscribe mechanism; and
 - (iv) is sent only to Customers or potential Customers who have consented to receive the relevant electronic message.

8.5 Each party must provide such assistance as the other party reasonably requires to comply with applicable legislation and statutory instruments, including assistance required in relation to the obligations relating to or arising under:

- (a) the Integrated Public Number Database (as defined in the *Telecommunications Act*);

(b) Emergency Call Services (as defined in the *Telecommunications Act*); and

(c) Parts 13 and 14 of the *Telecommunications Act*.

9. Customers

9.1 To the extent they relate to the Services, all Customer lists and Customer records shall be and remain the absolute property of ours and shall be our Confidential Information for the purposes of this Agreement.

9.2 The Customers, and rights, information and things in relation to Customers, are and will remain our property to the extent they relate to the Services and you have no right or title in relation to them.

9.3 Without limiting clause 9.1, you acknowledge and agree that any product, works, materials or information of whatsoever nature produced or developed by you in relation to the Services or this Agreement which contain Confidential Information are and remain our property.

10. Equipment

10.1 You undertake and agree, and must ensure, that all equipment used with the Services are certified by us.

10.2 You agree to indemnify and will keep us indemnified from and against any losses, damages, costs (including reasonable legal costs), expenses, demands and proceedings sustained, incurred or suffered by us as a result of usage of equipment that is not certified by us with the Services.

11. Trade marks

11.1 We grant to you, on terms set out in this Agreement, a non-exclusive licence to use such trade names, trademarks or service marks as may be necessarily required by you for the purpose of your functions in respect of the Services in accordance with this Agreement, such non-exclusive licence to terminate immediately on the termination of this Agreement.

11.2 You must use trade names, trademarks, or service marks as we may require for the purpose of your functions under this Agreement in a manner we stipulate in the Procedures or Service Literature or otherwise approved by us in writing.

11.3 If you wish to use your own trade names, trademarks or service marks for the purpose of your functions under this Agreement, you must ensure any such trade name, trade mark or service mark is kept entirely separate from



our trade names, trademarks and service marks and no composite mark is permitted.

- 11.4 Subject to clause 11.3, you undertake that you will not use trade names, trademarks or service marks of ours other than those trade names, trademarks and service marks which we may require you to use.
- 11.5 You acknowledge our proprietary rights in our trade names, trademarks or service marks and undertake not to do any act either alone or jointly with others which may jeopardise or in any way infringe our rights in respect of any trade names, trademarks or service marks or which might invalidate any registration of such marks.
- 11.6 Upon termination of this Agreement for any reason whatsoever, you must cease to make use of our trade names, trademarks, or service marks and must do and execute all such acts, deeds and things that we require for the purpose of giving effect to the termination or cancellation of the non-exclusive licence granted under this clause 11.
- 11.7 You acknowledge that your use of our trade names, trademarks or service marks has not created for yourself any rights in respect of such marks and if any such rights have been created, you undertake to assign such rights to us at our request.

12. Confidentiality

12.1 You agree that you will:

- (a) keep the Confidential Information confidential and not disclose it to anyone without our written consent;
- (b) only use the Confidential Information for the fulfilment of your obligations under this Agreement and for no other purpose; and
- (c) not use Confidential Information, including any material provided by us to you or Customer information collected by you under this agreement, to carry on or be associated with, or interested or engaged in any business or part of any which provides a Competing Service.

12.2 You must return to us all copies of any Confidential Information immediately on our request, and if required by us, you must also confirm the return of the Confidential Information by providing us with a statutory declaration to that effect executed by your officer.

12.3 Clause 12.1 does not apply to Confidential Information which you are required to disclose

by law. Before such disclosure, you must use your best endeavours to give us details of the information to be disclosed and seek protective arrangements to restrict the disclosure of the information.

13. Warranties

13.1 You warrant and represent to us, and it is a condition of this Agreement, that:

- (a) you are not bound by any agreement or understanding existing at the date of this Agreement which would restrict or prevent you from soliciting or signing up any person as a Customer or otherwise fully performing your obligations under this Agreement;
- (b) you have made your own enquiries as to the viability and profitability of your activities under this Agreement and have not relied on any warranties or representations from us in this regard;
- (c) you have and agree to maintain the experience, capacity and resources to carry out your obligations under this Agreement, including the following:
 - (i) proper financial management of your business;
 - (ii) marketing and promoting the Services;
 - (iii) installation and support of the Services prior to the completion of the Sale;
 - (iv) complying with all applicable laws, regulations, codes and industry standards (including those issued by the Australian Communications and Media Authority, the Telecommunications Industry Ombudsman or the Australian Competition and Consumer Commission); and
 - (v) conducting corporate compliance and educational programs for all staff to ensure their compliance with all applicable laws, regulations, codes and industry standards; and
- (d) the information given by you to us prior to the date on which this Agreement becomes binding on the parties about your business, your business plans, your experience and resources and your capacity to act as a Business Partner of ours was accurate, current, complete and not misleading and you will notify us immediately if you become aware of any



material change in your business, your business plans, your experience and resources or your capacity to act as a Business Partner of ours under this Agreement.

14. Exclusions and limitations of liability

14.1 Except as otherwise expressly provided in this Agreement or prohibited by law, we exclude all:

- (a) statutory liability;
- (b) liability for:
 - (i) indirect or consequential loss;
 - (ii) economic loss, loss of business, loss of revenue, loss of profits, loss of data, loss of goodwill and loss of opportunity claimed by you whether direct, consequential or indirect and any associated expenses or costs, arising out of or in connection with this Agreement, negligence or any termination or breach of this Agreement; and
- (c) representations, conditions and warranties implied by custom, the general law or statute.

14.2 To the extent permitted by law, our maximum liability to you for all loss and damage suffered or incurred by you in connection with this Agreement, whether arising from or in connection with any breach of contract, tort (including negligence) or any other cause of action is limited in aggregate to the Commission paid under this Agreement in the 12 month period preceding the claim.

14.3 If the *Competition and Consumer Act 2010* (Cth) or any other legislation states that there is a guarantee in relation to any good or service we supply to you under this agreement and our liability in relation to that good or service cannot be excluded but may be limited, then sections 14.1 and 14.2 do not apply to that liability and instead our liability is limited at our election and to the extent it is fair and reasonable to do so to:

- (a) in the case of goods, replacing the goods or supplying equivalent goods, repairing the goods or paying the cost of any of those things; and
- (b) in the case of services, supplying the services again or paying the cost of having the services supplied again.

15. Indemnities

15.1 You agree to indemnify us against all losses, expenses, damages and legal costs (on a solicitor and own client basis) incurred by or awarded against us arising directly or indirectly from:

- (a) any unlawful, negligent or wilful act or omission of yours or your Related Bodies Corporate or an officer, employee or contractor of yours;
- (b) any breach by you of this Agreement including any breach caused by a negligent act or omission;
- (c) any incorrect or incomplete Customer details supplied by you or your Related Bodies Corporate to us;
- (d) any claim made against us by a Supplier to us of any part of the Services which arises from a negligent act or omission of yours or your Related Bodies Corporate or any breach of any instruction given by us or this Agreement by you or your Related Bodies Corporate; and
- (e) any claim made against, or any regulatory proceedings or investigation commenced against us arising from any breach of law, regulatory requirement or industry code by you.

15.2 Without limiting clause 15, you acknowledge and agree that the indemnity in clause 15 requires you to indemnify us for all settlements, fines, costs and charges in connection with Telecommunications Industry Ombudsman disputes arising directly or indirectly from the matters set out in clause 15.

15.3 You must not make any claim against a Supplier in connection with this Agreement or the Services which would result in us becoming liable to that Supplier. You indemnify us for all loss incurred by us arising from any breach of this clause.

15.4 We may (with or without first making any demand) set-off against any payments due to you, any amounts due from or payable by you under or in relation to:

- (a) this Agreement (including any clawbacks or any over-payments made by us to you); or
- (b) any other agreement or arrangement between you and us.

16. Termination

16.1 Without prejudice to our other rights, we may



terminate this Agreement immediately by written notice to you if:

- (a) you breach any other of your obligations under this Agreement and (in the case of a breach able to be remedied) fail to remedy the breach within 14 days of being requested by written notice so to do; or
- (b) you promote Services which you have not received Accreditation for;
- (c) you, or your employees engage in conduct which involves falsification of documents, dishonesty, serious misconduct or conduct amounting to fraud, or act in a manner which adversely affects our reputation, our trade marks or the Services;
- (d) our competitor or its Related Bodies Corporate acquires control of you; or
- (e) without our prior written consent, a person who is not entitled (as defined in the *Corporations Act*) to:
 - (i) in excess of 25% of the voting shares units, or other interest in you; or
 - (ii) control you,
 as at the date of this Agreement, becomes so entitled or there is otherwise a change in the control of you since the date of this Agreement; or
- (f) you, being a natural person, dies or an order is applied for or made, or a voluntary arrangement approved or if a petition for a bankruptcy order is presented or a bankruptcy order is made against you or if a receiver or trustee in bankruptcy is appointed over your estate; or
- (g) you, being a company, is the subject of an Insolvency Event.

16.2 Either party may terminate this Agreement by giving:

- (a) in the case of Vocus, at least 90 days written notice of termination to you;
- (b) in your case, at least 30 days written notice of termination to Vocus.

17. Effects of termination

17.1 On termination or expiration of this Agreement, you must immediately:

- (a) stop promoting the Services;
- (b) return to us:

- (i) all our property;
- (ii) the original and all copies of the Procedures and the Service Literature;
- (iii) all Confidential Information and all copies of Confidential Information that is in your possession or control; and
- (iv) any Customer list and all copies of it.

17.2 If you have not complied with clause 17.1(b) within 2 business days of termination or expiration, we and our authorised representatives may enter any premises owned or occupied by you to remove that material.

17.3 On termination or expiration of this Agreement, your rights and our obligations under this Agreement shall on and thereafter be terminated unless expressed otherwise in this Agreement.

17.4 On termination or expiration of this Agreement, we will continue to pay to you the Commission in accordance with the Commission Terms and Conditions except where this Agreement is terminated by us under clause 16.1 or by you in accordance with clause 15.2.

17.5 Clauses 8, 10, 12, 14, 15, 17 and 21 survive the termination of the other provisions of this Agreement.

18. Marketing restrictions

18.1 You will not, and will procure that your related entities (as defined in the *Corporations Act*) do not, during the term of this Agreement and for 12 months after the date on which this Agreement terminates or expires:

- (a) directly or indirectly conduct any Prohibited Marketing Campaign;
- (b) directly or indirectly assist anyone else to conduct a Prohibited Marketing Campaign; or
- (c) counsel, assist or procure any other person to do any of the acts in paragraphs (a) to (d).

18.2 You must procure that your members or directors and any entity controlled by those members or directors do not during the term of this Agreement and for 12 months after the date on which this Agreement terminates directly or indirectly conduct any Prohibited Marketing Campaign.

18.3 You acknowledge and agree that the



requirements of this clause are reasonable and necessary to protect the investment made by us in securing the Customers and to protect the confidentiality of our Confidential Information. This does not prohibit competition that does not rely on our Confidential Information.

19. Notices

19.1 Any notice or demand given pursuant to this Agreement must be in writing and delivered, posted or transmitted by facsimile to us as follows:

Vocus Pty Limited

Level 12, 60 Miller Street

North Sydney NSW 2060

Facsimile: (02) 9959 4348

Attention: General Counsel

And to you at the address specified in the Business Partner Application Form.

19.2 Any such notice is deemed to be received:

- (a) in the case of delivery, at the time of delivery;
- (b) if served by post, at the expiration of 48 hours from the time of posting notwithstanding that it may subsequently be returned through the post office unclaimed; or
- (c) in the case of a facsimile transmission, on production of a transmission control report indicating transmission without error.

19.3 Any party may at any time designate a substitute address or facsimile number in Australia by 10 days notice in writing to the other party.

20. Assignment

20.1 We have the right to assign or otherwise delegate all or any of our rights and obligations under this Agreement to a Related Body Corporate of Vocus, or to any other person upon notification to you.

20.2 Except as expressly provided in clause 20.3, your rights under this Agreement are personal and you are not capable of assigning, transferring, disposing of or otherwise granting of any third party right or interest in all or any of your rights and obligations under the Agreement.

20.3 You may assign your rights under this

Agreement to another person if:

- (a) We have given our written consent to such assignment (which consent must not be unreasonably withheld in the case of an assignee who meets our current financial criteria);
- (b) as part of the request to us for consent, the assignee (under seal) acknowledges to us that it assumes all of your obligations under this Agreement, whenever arising; and
- (c) you have not breached any of your obligations under this Agreement.

21. No waiver

A failure, delay, relaxation or indulgence by a party in exercising any power or right conferred on the party by this Agreement does not operate as a waiver of the power or right. A single or partial exercise of the power or right does not preclude a further exercise of it or the exercise of any other power or right under this Agreement. A waiver of a breach does not operate as a waiver of any other breach.

22. Amendments

This Agreement may only be amended by instrument in writing signed by the duly authorised officer of each party to this Agreement except that the Commission Terms and Conditions, Procedures, Service Literature and Vocus Customer Agreement may be amended on notice by us.

23. Force majeure

Neither party is liable to the other for any loss or damage which may be suffered by the other party due to any causes beyond the other party's reasonable control including any act of God, inclement weather, failure or shortage of power supplies, shortages of goods or services, flood, drought, lightning, fire, strike, lock-out, trade dispute or labour disturbance, war, terrorism, quarantine, any act or omission of Government, highway authorities, other public telecommunications operators or other competent authority, production, or supply or non-supply of services by third parties.

24. Tax

24.1 To the extent that a Supply is made under this Agreement, the party making that Supply must pay the GST applicable to that Supply.

24.2 The amounts set out in this Agreement and any related schedule or annexure are stated



exclusive of GST unless expressly stated otherwise.

- 24.3 To the extent that a Supply is made under this Agreement, the party making the Supply agrees to issue a tax invoice (including any document or record treated by the Commissioner of Taxation as a tax invoice or as a document entitling a recipient to an input tax credit) to the recipient of the Supply at the time it seeks payment for the Supply or otherwise when requested by the recipient.
- 24.4 You must do all things reasonably necessary to assist us to claim any input tax credit or refund available in relation to any GST paid or payable by us.
- 24.5 Except where we are liable in respect of a Supply to pay the GST in accordance with this clause 24, you must pay all Taxes which are payable in connection with this Agreement and the performance of it.

RCTI

- 24.6 Pursuant to section 29-70(3) of the A New Tax System (Goods and Services Tax) Act 1999 (Cth) the recipient of a taxable supply may issue a Recipient Created Tax Invoice ("RCTI") to the Business Partner. The parties wish to establish an RCTI arrangement in respect of the Commission payable on a Sale.
- 24.7 The parties agree that Vocus can issue tax invoices in respect of the Commission and the Business Partner will not issue tax invoices in respect of the Commission payable on a Sale.
- 24.8 The Business Partner acknowledges that it is registered for GST when it enters into this Agreement and that it will notify Vocus if it ceases to be registered.
- 24.9 Vocus acknowledges that it is registered for GST when it enters into this Agreement and that it will notify the Business Partner if it ceases to be registered for GST or if it ceases to satisfy any of the requirements of the legislation, rulings or determinations enabling Vocus to issue RCTIs.

25. Privacy

- 25.1 A reference in this clause to personal information includes the personal information of a Customer or any other person.
- 25.2 You warrant to us that your provision of personal information to us does not contravene any individual's privacy rights under any privacy laws and that your use and disclosure of that personal information in accordance with this Agreement will also not

contravene those laws.

- 25.3 If we need to do any act in respect of personal information provided by you and that act is or may be restricted by law, you will:
- (a) provide us with all assistance requested by us for that purpose; and
 - (b) reimburse us for all reasonable costs incurred by us in doing that act.
- 25.4 Without limiting clause 25.3, you must provide all assistance requested by us from time to time in relation to compliance by us with the *Privacy Act 1988* (Cth), or any investigation, request or enquiry (formal or otherwise) from the Office of the Australian Information Commissioner regarding the personal information disclosed to us under this agreement.

25.5 You warrant at all times that you have obtained all necessary consents from, and made all necessary disclosures to, all relevant individuals for the purpose of disclosing their personal information to us which is necessary in order for us to perform this Agreement. All necessary consents and disclosures will be at your sole cost and expense.

25.6 You indemnify us against all costs, expenses, losses, proceedings and claims of whatsoever nature suffered, brought or incurred directly or indirectly as a result of a breach by you of your obligations under this clause.

26. Law and jurisdiction

This Agreement shall be governed and construed and interpreted in accordance with the laws applicable in the state of Western Australia and the parties hereby submit to the non-exclusive jurisdiction of the courts of Western Australia.

27. Relationship of parties

27.1 You are an independent contractor and nothing in this Agreement renders you an employee, partner or joint venturer of ours. Unless this Agreement expressly provides otherwise, nothing in this Agreement may be construed as creating a relationship of partnership, of principal and agent, or of trustee and beneficiary.

27.2 You warrant and agree that you are responsible for any employment related liability arising under legislation in respect of the persons you use to carry out your obligations under this Agreement, including under the following legislation:

- (a) *Income Tax Assessment Act 1936* (Cth);



- (b) *Fringe Benefits Tax Assessment Act 1986* (Cth);
- (c) *Superannuation Guarantee (Administration) Act 1992* (Cth);
- (d) *Workers Compensation and Injury Management Act 1981* (WA) and similar legislation in each state and territory; and
- (e) *Pay-roll Tax Act 2002* (WA) and similar legislation in each state and territory.

27.3 You agree to indemnify us against any liability or expense incurred by us as a result of the Commissioner of Taxation (or any other responsible authority) asserting that we are responsible for any liability specified in clause 27.2 in respect of people engaged by you.

28. Entire Agreement

28.1 This Agreement is the entire agreement and understanding between the parties on everything connected with the subject matter of this Agreement and supersedes any prior agreement or understanding on anything connected with that subject matter.

28.2 Each party has entered into this Agreement without relying on any representation by any other party or any person purporting to represent that party.

29. Counterparts and facsimile signatures

29.1 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.

29.2 The transmission by a party by email, fax or other electronic means of an executed copy of this Agreement 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.



Schedule 1 – Commission Terms and Conditions

Introduction

These Commission Terms and Conditions deals with the following important matters:

- what Commissions are payable;
- the revenue upon which the Commissions are calculated; and
- the time when the Commissions will be paid.

1. Definitions

In these Commission Terms and Conditions, words defined in the Agreement will have the meaning provided in these Commission Terms and Conditions and:

Activate means, in relation to a Customer, Vocus enabling the Customer to use the Services supplied by us.

Agreement means the agreement to which these Commission Terms and Conditions are attached.

Clawback means an amount which is payable by you to us in respect of a Customer.

Excluded Revenue means:

- (a) the amount of GST paid by Customer to us in respect of any supply made by us to a Customer;
- (b) all equipment related charges; and
- (c) establishment fees and installation fees issued to you by us unless otherwise agreed by us.

Commission means an amount payable to you pursuant to clause 2.2 of these Commission Terms and Conditions in respect of a Sale for a new Service that is not provided by us (as at the date of receipt by us of the relevant Application for the new Service) to that Customer.

2. Commissions

2.1 When claimable

- (a) You acknowledge and agree that apart from the Commission, you are not entitled to any other fees, payments or entitlements from us.
- (b) We will pay you the Commission for each Customer who has entered into or renewed a binding service agreement with us the manner set out in clause 2.4.
- (c) If there is a dispute between 2 or more Business Partners as to which Business Partner introduced a Customer to us, our

decision will be final and binding on the parties.

- (d) We must pay you Commission in respect of a Service supplied upon issuance of a monthly invoice to the Customer for that Service.
- (e) For clarity, no Commission will be paid to you for Customers which Vocus elects not to Activate.

2.2 Calculation of Commission

(a) Commission for Platinum, Gold or Silver Business Partner Levels

(i) For each Sale of a new Service signed by a Customer, the Commission will be calculated as described at section Item 6 of the Targets and Commission Schedule in the Business Partner Application Form based on the then-current list price (unless otherwise agreed between you and Vocus) multiplied by the number of months in the minimum committed term of that contract.

(ii) For each Service that an existing Customer of ours (as at the date of our receipt of the Application) renews for a period equal to or greater than 12 months, you are entitled to a further Commission subject to the terms of this Agreement. The Commission will be calculated in accordance with the then-current rates notified by Vocus (as updated in accordance with clause 4 of these Commission Terms and Conditions) and the then-current list price (unless otherwise agreed between you and Vocus).

- (b) When you engage with Customers, you must quote them the relevant price from our then current list price, as this is the price at which we will sell the Service to the Customer under our contract with them.



- (c) Commissions paid by Vocus or its Related Bodies Corporate to you for Sales existing prior date you complete the Business Partner Application Form will continue to be paid at the existing rates until the minimum committed term of the contract expires or is terminated. For the avoidance of doubt, any new Sale (e.g renewal or upgrade of a Service) will be deemed a termination for the purposes of payment of existing Commission.

2.3 Date when Commission will be paid

- (a) We will use reasonable endeavours to pay you the Commission on or about the last Friday of the calendar month in the month in which we invoice the Customer for the Service.
- (b) Should the Customer default on their payment, you agree that no Commission is payable.

2.4 Manner of payment of Commission

Commission will be paid to you by us by way of electronic funds transfer using the account information you provided in the Business Partner Application Form.

2.5 No commission payable during rollover period

You agree and acknowledge that Commissions are only paid for the initial term or a committed renewal term of at least 12 months, of a binding contract between a customer and Vocus. Payment of Commissions cease after the expiry of the initial term or committed renewal term of the contract. For the avoidance of doubt, Commissions are not payable to you in the event that contract expires and rolls over on a monthly basis (as opposed to a renewal for a committed term of at least 12 months).

3. Clawbacks

3.1 Rights to recover or decline payment of Commissions

- (a) We will not be liable to pay:
- (i) any Commissions with respect to a Customer, and may recover all Commissions already paid in respect of that Customer as a Clawback:
- (A) where a Customer was improperly or incorrectly signed up by you;

- (B) if in respect of a Service, after issuing a Customer with the monthly invoice for that Service, the Customer fails to pay the monthly fee in accordance with Vocus' payment terms; or

- (C) where a Customer was induced to apply for the Services as a result of misleading or deceptive conduct or negligence by you or any of your employees or agents; and

- (ii) Commission on any Excluded Revenue.

- (b) We may recover from you any overpayments to you in respect of a Customer as a result of an error by Vocus in invoicing.

3.2 Recovery of expenses by us where you wrongly submit Customer Applications

We may also recover the following amounts from you as Clawback:

- (a) If a Customer denies that it gave its informed written consent to being supplied with Services by us and we then agree or are required to retransfer the Customer to another service provider, we may recover the following amounts from you:

- (i) \$500.00 in respect of the wasted internal costs plus any other external administration costs incurred in establishing, Activating and then retransferring the Customer; and

- (ii) \$1000.00 to the extent that the Customer's complaint results in a formal complaint investigation being commenced by the Telecommunications Industry Ombudsman or the ACCC. (This amount is payable in addition to the amount specified in paragraph (i) above).

- (b) The amounts referred to in clause 3.2(a) above are payable in addition to any amounts which may also be payable under clause 3.1 of these Commission Terms and Conditions.

- (c) You agree that the amounts specified in clause 3.2(a) of these Commission Terms and Conditions are reasonable pre-estimates of the loss and damage



which we will suffer in the circumstances described.

- (d) The provisions of this paragraph 3 will apply to any future amended commission rates or commission structures unless specifically and expressly agreed in writing by us.

4. Right to vary Commission Terms and Conditions

The Commission rates will be reviewed annually on 15 June by Vocus and if there are any changes to the Commission rates payable to you, Vocus will notify you within 10 days of date of the changes and those changes will come into effect 10 days after the notification from Vocus.

5. Vocus Business Partner Agreement

These Commission Terms and Conditions are subject to the terms of the Agreement.