

## WHOLESALE OPTUS MOBILE SERVICES SERVICE SCHEDULE

### 1. About this Document

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- 1.1 This Service Schedule forms part of the Reseller's Agreement with Vocus. In the event of any inconsistency between the terms of the documents that form this Agreement, they will be interpreted in the following order of precedence:
- (a) first the Service Order; then
  - (b) this Service Schedule; and
  - (c) lastly the Master Services Agreement.

### 2. Term

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- 2.1 This Service Schedule commences on the Service Commencement Date and will continue in full force and effect for the Service Initial Term and will continue thereafter unless this Agreement or Service Schedule is terminated earlier in accordance with its terms.
- 2.2 Either party may terminate this Service Schedule after the expiry of the Service Initial Term on at least ninety (90) days written notice to the other party, or such other notice period as may be agreed to by the parties in writing.

### 3. The Service

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- 3.1 For the Term, Vocus will supply the Optus Mobile Service to the Reseller for resupply to the Reseller's End Users, and Reseller must supply the Optus Mobile Service to the Reseller's End Users, in accordance with the terms of the Agreement.
- 3.2 Vocus may vary the Optus Mobile Service, without liability, if reasonably required for technical or operational reasons as long as the Optus Mobile Service still complies with the Agreement.
- 3.3 The Optus Mobile Service means the service that allows End Users to:
- (a) make calls and receive calls from their Mobile Device;
  - (b) send content from and receive content on their Mobile Device; and
  - (c) where available, use a range of Value Added Services on the Optus Mobile Digital Network.
- 3.4 The Optus Mobile Service is a post-paid mobile service which means the Reseller is invoiced for call usage after the Optus Mobile Service has been supplied.

### 4. Activations and Deactivations

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#### Procedure for Activation and Deactivation

- 4.1 The Reseller must (and must ensure that the Reseller Personnel must):
- (a) only request an Activation, Deactivation and Reactivation in strict accordance with the instructions of the End User, Vocus Documentation and any reasonable direction of Vocus;
  - (b) obtain authorisation from the End User for the resupply of the Optus Mobile Service to the End User, in such form and specifying such particulars as set out in the Vocus Documentation or as otherwise reasonably required by Vocus from time to time;
  - (c) ensure that all information provided to Vocus in connection with a request for an Activation, Deactivation or Reactivation (including, without limitation the information included on such application form as Vocus may require from time to time in connection with the request) is true, correct and complete; and
  - (d) promptly notify Vocus of any and all changes in the End User Details in such form and specifying such particulars as may be requested by Vocus from time to time in its sole and absolute discretion.

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### **Deactivation, Suspension and Refusal**

- 4.2 Without limiting Vocus's rights under any other clause of this Agreement to suspend the Optus Mobile Service, whether supplied to the Reseller or resupplied to an End User, the Reseller acknowledges and agrees that Vocus may:
- (a) refuse any request by the Reseller for an Activation, Deactivation or Reactivation for any reason in its sole and absolute discretion; and
  - (b) Deactivate or suspend the Optus Mobile Service:
    - (i) to perform system and network management and maintenance determined by Vocus or a Supplier to be necessary from time to time; or
    - (ii) for reasons related to credit and debt management (including for historical reasons) from time to time; or
    - (iii) if Vocus reasonably suspects that the Optus Mobile Service has been used:
      - (A) in breach of the Reseller Terms and Conditions; or
      - (B) in breach of any applicable laws; or
      - (C) unreasonably or in breach of any 'Fair Use Policy' or 'Acceptable Use Policy' of the Reseller, Vocus or a Supplier; or
      - (D) in connection with fraud (whether or not that fraud has been proven in a court of competent jurisdiction); or
    - (iv) if there has been an usually high use of the Optus Mobile Service; or
    - (v) the Reseller significantly changes any traffic profile or Forecast given to Vocus.

### **Additional costs**

- 4.3 The Reseller acknowledges and agrees that Vocus will not be liable to supply or pay the cost of any equipment or additional infrastructure or services that are required in connection with the Activation, Reactivation or use of the Optus Mobile Service by the End User (such as compatible handsets).
- 4.4 The Reseller must ensure that the End User has all necessary equipment, infrastructure and services to access and use the Optus Mobile Service to an acceptable standard and that equipment, infrastructure and services are compatible with the Optus Mobile Service resupplied to the End User by the Reseller.

### **Lead Times**

- 4.5 The Optus Mobile Service will be deemed to have been Activated, Deactivated or Reactivated (as the case may be) once Vocus provides the Reseller with notice to that effect. For the avoidance of doubt, the Reseller will be liable to pay the Rates and Service Charges to Vocus in connection with that Optus Mobile Service on and from that date.
- 4.6 The Reseller acknowledges and agrees that:
- (a) it may take up to two (2) Business Days from the date of Vocus receiving a request for the Optus Mobile Service to be Activated, Deactivated or Reactivated (as the case may be) until the date referred to in **clause 4.5**;
  - (b) provisioning is undertaken by Optus and unless otherwise expressly provided, Vocus does not make any warranties in respect of the period of time that it may take to Activate, Deactivate or Reactivate the Optus Mobile Service; and
  - (c) the standard lead time for ordering a SIM Card from Optus is eight (8) weeks and for ordering hardware from Optus is six (6) weeks.

### **Minimum End User Term**

- 4.7 The Reseller must ensure that each End User maintains their Mobile Service for at least twenty-four (24) months (or such other term applicable to the relevant Mobile Service as may be notified to the Reseller by

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Vocus) from the date that the Mobile Service was activated in respect of that End User (“**End User Minimum Term**”).

- 4.8 If a Mobile Service of an End User is not maintained for the period set out in **clause 4.7**, the Reseller acknowledges and agrees that it must pay to Vocus an Early Termination Fee, which the Reseller agrees is a genuine pre-estimate of Vocus’s loss in connection with the termination of the End User’s Mobile Service prior to the expiry of the End User Minimum Term.

## **5. Exclusivity**

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- 5.1 Subject to **clause 5.2**, the Reseller must not (and must ensure that any Associate, Related Body Corporate or Related Entity of the Reseller must not) during the Service Term, acquire any service that is the same as, or substantially similar to, the service supplied to the Reseller in connection with this Service Schedule from any person other than Vocus.
- 5.2 If, at the commencement of a Service Order, the Reseller is acquiring a Competing Service, the Reseller must within three (3) months’ transfer all customers from the Competing Service to Vocus.

## **6. Right of Pre-Emption**

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- 6.1 The Reseller acknowledges and agrees that **ANNEXURE** to this Service Schedule binds the Reseller.

## **7. Conditions of Supply**

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### **No Pro-active Marketing**

- 7.1 The Reseller must not (and must ensure that its Associates, Related Bodies Corporate and Related Entities and the Personnel thereof do not) during the Service Term, directly or indirectly, for themselves or others, engage or participate in or allow their skill, knowledge, experience or reputation to be used in any Pro-active Marketing Campaign.

### **Consequences of Pro-active Marketing**

- 7.2 If the Reseller or an Associate, Related Body Corporate or Related Entity of the Reseller (or the Personnel thereof) conducts a Pro-active Marketing Campaign, then:
- (a) the Reseller must immediately cease conducting the Pro-active Marketing Campaign and if the Reseller does not entirely cease the Pro-active Marketing Campaign within five (5) Business Days, Vocus may terminate this Agreement with immediate effect;
  - (b) where the Personnel of the Reseller or of any Associate, Related Body Corporate or Related Entity of the Reseller has conducted the Pro-active Marketing Campaign the Reseller will use its best endeavours to stop the Pro-active Marketing Campaign within five (5) Business Days but if the Reseller’s attempt to stop the Pro-active Marketing Campaign within five (5) Business Days fails, the Reseller must immediately terminate the Personnel’s appointment or engagement; and
  - (c) where the Personnel of the Reseller or of any Associate, Related Body Corporate or Related Entity has previously conducted a Pro-active Marketing Campaign in contravention of this **clause 7.2**, the Reseller must immediately terminate the relevant Personnel’s appointment.

### **No on-selling of wholesale service**

- 7.3 The Reseller must ensure that:
- (a) the Optus Mobile Service is not on-sold or resupplied to any person other than an End User; and
  - (b) the End User does not on-sell the Optus Mobile Service on a wholesale basis,
- unless otherwise agreed in writing by Vocus.
- 7.4 The Reseller warrants that it does not act in the capacity of a wholesaler of mobile telecommunications services.

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### **Termination for Breach**

- 7.5 Without limiting **clause 7.2(a)**, if the Reseller breaches this **clause 7** and has not remedied the breach within five (5) Business Days of notice from Vocus, Vocus may terminate this Service Schedule and Agreement with immediate effect by giving notice to the Reseller.

### **Fourth Party Services**

- 7.6 The Reseller acknowledges and agrees that:
- (a) the Optus Mobile Service may include an international roaming facility in respect of certain countries;
  - (b) certain additional charges and terms and conditions may be imposed by Correspondents in connection with the international roaming facility;
  - (c) international roaming is subject to the terms and conditions applicable to the Correspondent's services; and
  - (d) neither Vocus nor Optus makes any representation, warranty or undertaking as to the performance of any service provided by a Correspondent.

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## **8. Service Limitations**

- 8.1 The Optus Mobile Service:
- (a) is not suitable for mission critical purposes;
  - (b) is only able to be used within the Mobile Coverage Areas, which may vary between Optus Mobile Services (3G and 4G Optus Mobile Services may have different Mobile Coverage Areas); and
  - (c) may not support any other service that Vocus has not expressly notified the Reseller that the Optus Mobile Service supports.
- 8.2 The Reseller acknowledges and agrees that:
- (a) the Optus Mobile Service may not be able to be used to an acceptable standard or at all outside of the relevant Mobile Coverage Areas;
  - (b) the Reseller has made its own independent assessment (and to the maximum extent permitted by law, solely relies on that assessment) of whether the Optus Mobile Service is suitable for the Reseller or any End User having regards to the Mobile Coverage Areas; and
  - (c) mobile coverage may vary (even within the Mobile Coverage Areas) and delays, network congestions, drop-outs, poor or no mobile coverage, reduced data speeds and the like may be experienced by an End User.

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## **9. Value Added Services**

- 9.1 Where available in connection with the Optus Mobile Service and agreed to by the parties (on such terms and conditions that are acceptable to the parties), the Optus Mobile Service may include the provision of Value Added Services.
- 9.2 The ability of an End User to access or use a given Value Added Service depends on a variety of factors, such as the details and specifications of the Optus Mobile Service and any equipment that is used in connection with the Optus Mobile Service (such as handsets).
- 9.3 Vocus may impose fees and charges in connection with the supply of a given Value Added Service. Vocus will notify the Reseller of those fees and charges from time to time and the Reseller will be liable to pay those fees and charges if the Reseller or an End User requests the supply of that Value Added Service.
- 9.4 The Reseller agrees that it has made its own independent assessment (and to the maximum extent permitted by law) solely relied on that independent assessment of:
- (a) the Value Added Services that are available in connection with the Optus Mobile Service;
  - (b) the fitness of a given Value Added Service for the purpose that the Reseller or an End User requires; and

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- (c) any minimum requirements for a given Value Added Service to be supplied to the Reseller or for a given Value Added Service to operate at all or as required,
  - (d) prior to entering into this Agreement.

9.5 The Reseller acknowledges and agrees that:

- (a) if Vocus has not notified the Reseller that a Value Added Services will be available to the Reseller in connection with the Optus Mobile Service, the Reseller must not assume that such a feature will be available to the Reseller or an End User;
- (b) the Value Added Services available in connection with the Optus Mobile Service may vary from time to time. Where the Value Added Services vary and Vocus believes that the variation is significant and materially and adversely affects the Reseller and an End User, Vocus will endeavour to notify the Reseller at the earliest practical opportunity; and
- (c) the Reseller must ensure that any Value Added Services are only used in accordance with Vocus' or Optus' directions in respect of that Value Added Service, as notified to the Reseller from time to time.

## **10. Obligations of the Reseller**

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10.1 Without limiting the obligations of the Reseller set out in any other clause of this Agreement, the Reseller must reach the Forecasts for the Optus Mobile Service as provided to Vocus from time to time.

## **11. Reseller Terms and Conditions**

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11.1 The Reseller must prepare and maintain the Reseller Terms and Conditions and procure the agreement of each End User to be bound by the Reseller Terms and Conditions.

11.2 The Reseller Terms and Conditions must include, at a minimum, the terms and conditions set out in **ANNEXURE** to this Service Schedule.

11.3 The Reseller must:

- (a) maintain all versions of the Reseller Terms and Conditions and clearly denote the period of time in which each version of the Reseller Terms and Conditions applied;
- (b) ensure that in the event of any inconsistency between the Reseller Terms and Conditions and any other deed, agreement, arrangement, contract or understanding with an End User, the Reseller Terms and Conditions prevail;
- (c) ensure that no act is done which may make void or voidable or otherwise prejudice the enforceability of, the Reseller Terms and Conditions against the End User;
- (d) ensure that the Reseller Terms and Conditions are not terminated or rescinded, except for a termination effected on the commencement of updated Reseller Terms and Conditions; and
- (e) upon request by Vocus, provide Vocus with a true and correct copy of the version of the Reseller Terms and Conditions as may be requested by Vocus. For the avoidance of doubt, Vocus may request the Reseller to provide Vocus with an earlier version of the Reseller Terms and Conditions.

11.4 The Reseller acknowledges and agrees that:

- (a) the provision of the Reseller Terms and Conditions to Vocus, the review of the Reseller Terms and Conditions by Vocus or the making of any comments, suggestions, demands or requests by Vocus in connection with the Reseller Terms and Conditions, are not to be interpreted as an endorsement or representation by Vocus or legal advice from Vocus that the Reseller Terms and Conditions are exhaustive, lawful, enforceable or appropriate, whether or not Vocus has reviewed or made any comments, suggestions, demands or requests in connection with the Reseller Terms and Conditions; and
- (b) the Reseller must not resupply the Optus Mobile Service to any person who has not agreed in writing or by an electronic voice recording to be bound by the Reseller Terms and Conditions and the

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Reseller must at all times maintain evidence of that agreement and provide that evidence to Vocus upon request.

- 11.5 The Reseller must carry on its business in the ordinary and usual course, with due care and in accordance with normal and prudent practice, which includes, without limitation and to the maximum extent permitted by law, enforcing the Reseller Terms and Conditions where a failure to do so may have a detrimental effect on Vocus, such as a reduction in the value or size of the End User Base.

## 12. Mobile Number Portability

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- 12.1 The Reseller expressly acknowledges and agrees that:

- (a) the Reseller must provide to Vocus all information that Vocus reasonably requires in connection with a request to Port a phone number and that information must be accurate and complete (which information includes, but is not limited to, a properly completed and duly signed request by the End User in such form as Vocus may require, for the Port to occur);
- (b) Porting must only be performed in accordance with the Mobile Number Portability Code and Optus' Same Carrier Porting requirements and may not be able to be performed if not permitted by the Mobile Number Portability Code or Optus' requirements;
- (c) it must comply with any reasonable procedure that Vocus may have in respect of Porting a phone number, as may be notified to the Reseller by Vocus from time to time;
- (d) the Reseller does not receive any legal interest in or any goodwill in any phone number that is provided to the Reseller or End User in connection with the Optus Mobile Service;
- (e) the Reseller must ensure that any phone number that is provided to the Reseller or End User is only used in connection with the Optus Mobile Service;
- (f) Vocus may, to the extent permitted by the *Telecommunications Numbering Plan 2015* (Cth), recover any phone number that is provided to the Reseller for use by an End User in connection with the Optus Mobile Service; and
- (g) certain types of Services and lines cannot be Ported.

- 12.2 The Reseller is responsible for payment of any fees, charges and taxes applicable to:

- (a) Service Number ranges reserved by Optus or Vocus to the Reseller for use by End Users (regardless of whether they are Activated); and
- (b) Service Numbers Ported to the Optus Mobile Digital Network in respect of which the Reseller is the gaining Carriage Service Provider,

under the *Telecommunications (Numbering Charges) Act 1997* (Cth). On Vocus's direction, the Reseller must execute any documentation necessary to record its liability for numbering charges under this **clause 12.2**.

- 12.3 Notwithstanding **clause 12.2**, Optus will remain the registered allocatee under the *Telecommunications Numbering Plan 2015* (Cth) of Service Number ranges reserved by Optus or Vocus to the Reseller for use by End Users (regardless of whether they are Activated).

- 12.4 Without limiting **clause 12.2**, any request by the Reseller to Port a phone number may include fees and charges which the Reseller acknowledges it will be liable to pay.

## 13. SIM Cards

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### Ownership of SIM Cards

- 13.1 The Reseller acknowledges and agrees that neither the Reseller nor any End User owns any SIM Card that is provided by Vocus or Optus in connection with the Optus Mobile Service. A SIM Card remains the property of Optus and the Reseller holds the SIM Card as bailee for Optus (whether or not that SIM Card is a Reseller Branded SIM Card).

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13.2 All SIM Cards that are in the Reseller's possession or control must be returned to Vocus immediately upon the termination of this Service Schedule.

**Obligations of Reseller**

13.3 The Reseller must (and must ensure that its Personnel must):

- (a) store the SIM Card separately from the Reseller's property and in a manner that clearly denotes Optus' ownership in the SIM Card;
- (b) not alter, remove or tamper with a SIM Card or make any markings or indications of the source of origin of the SIM Card;
- (c) ensure that all reasonable steps are taken to ensure that the SIM Card is maintained in a good state of repair and in working order at all time (save as to except manufacturing faults);
- (d) not make any representations or give any warranties in relation to the SIM Card other than those given by Vocus or Optus from time to time, except in respect of benefits extended to End Users by the Reseller (beyond those which the End User is entitled to by virtue of terms implied by law) in respect of which Vocus has no liability and the Reseller fully indemnifies Vocus against any damages, losses or costs suffered or incurred by Vocus in relation to or in connection with the extended consumer benefit under this clause;
- (e) only supply a SIM Card to an End User in the same condition as the SIM Card was delivered to the Reseller (save as to except a SIM Card that the Reseller knows, or ought to reasonably know, is faulty, damaged or otherwise unsuitable); and
- (f) ensure that any SIM Card that is provided to the Reseller is only used in connection with equipment that has been approved by Optus or Vocus for use with the SIM Card.

**Loss, Damage and Faults**

13.4 The risk of loss or damage in the SIM Card passes to the Reseller upon delivery to the Reseller.

13.5 The Reseller acknowledges that Vocus will provide the Reseller with an ability to 'swap out' a faulty SIM Card. To the maximum extent permitted by law, Vocus will not reimburse the Reseller the cost of a faulty SIM Card.

13.6 If the Reseller requests a replacement of a SIM Card, the Reseller:

- (a) must complete such forms and comply with such procedure as Vocus may require from time to time; and
- (b) may be liable to pay Vocus fees and charges in respect of Vocus providing the Reseller with a SIM Card or replacement SIM Card.

**Stock Level Reports**

13.7 If Vocus suspects that the Reseller has SIM Card stocks in excess of that which is required having regards to the Reseller's actual or expected Forecasts of Activations, Vocus may provide the Reseller with a stock level report advising the Reseller of the number of SIM Cards that have not been activated within the SIM Card Activation Period ("**Stock Level Report**").

**Activations and Expiry of SIM Cards**

13.8 A SIM Card that is provided to the Reseller must be activated within the SIM Card Activation Period.

13.9 A SIM Card may be permanently removed from the billing and provisioning systems of Vocus and Optus if the SIM Card, without limitation:

- (a) has not been activated within 120 days of the issue of that SIM Card by Optus or the date of the relevant Stock Level Report (whichever is the earlier); or
- (b) has not tolled for ninety (90) consecutive days,

upon the occurrence of which the relevant SIM Card must be returned to Vocus within seven (7) days of a request by Vocus.

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13.10 For the avoidance of doubt, the Reseller is not entitled to any refund and shall not make any claim, demand or request in connection with a SIM Card that is returned to Vocus.

#### **Reseller Branded SIM Cards**

13.11 The Reseller may request Vocus to provide the Reseller with Reseller Branded SIM Cards. The Reseller is solely responsible for determining the design layout of the Reseller Branded SIM Cards, including the colours and artwork and must ensure that it complies with all applicable laws.

13.12 A Reseller Branded SIM Card must not refer to Vocus or Optus or imply any relationship or connection with Optus or Vocus, unless it would be misleading to do not do so. Notwithstanding this clause, a Reseller Branded SIM Card must be, and must only be, used in connection with an Optus Mobile Service.

13.13 Vocus may be unable to provide Reseller Branded SIM Cards to the Reseller if Optus refuses or is unable, for any reason, to provide Reseller Branded SIM Cards. If Optus agrees to provide Reseller Branded SIM Cards, the review of the Reseller Branded SIM Card design is not an acknowledgement by Optus or Vocus that the design is legal or appropriate.

13.14 The Reseller must pay, in addition to paying the SIM Card charges, pay all costs for:

- (a) the design and art work of the Reseller Branded SIM Cards;
- (b) Optus' and Vocus's reasonable costs of reviewing and approving the design if agreed by the parties prior to the costs being incurred; and
- (c) Optus' and Vocus's reasonable costs of arranging and implementing any changes in producing the Reseller Branded SIM Cards where the Reseller has instructed Vocus or Optus to proceed with the production of the Reseller Branded SIM Cards.

13.15 The Reseller acknowledges and agrees that if Vocus is unable to fulfil an order by the Reseller for Reseller Branded SIM Cards, Vocus may, in its absolute discretion, make up the shortfall with a SIM Card that is Optus branded.

13.16 On the termination of this Service Schedule, the Reseller may only cancel all orders outstanding for Reseller Branded SIM Cards if a matching order has not already been placed by Vocus and Vocus is unable to cancel such order.

#### **14. Limitation of Liability**

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14.1 Without limiting **clause 18 (Limitation of Liability)** of the Master Services Agreement and except where to do so would contravene any statute or cause any part of the Agreement to be void or unenforceable, Vocus excludes liability for any and all loss, expense, damage, liability and cost (including Consequential Loss) incurred by the Reseller, any Reseller Personnel, an End User or any potential End User in connection with:

- (a) any SIM Card or failure or delay in supplying a SIM Card; or
- (b) a failure for any reason to Activate, Reactivate or to Deactivate the Optus Mobile Service or a Service Number; or
- (c) a Deactivation or suspension of the Optus Mobile Service (whether or not requested); or
- (d) any failure to provide all or part of any of the Optus Mobile Service, including due to any network failure, any network congestion, lack of mobile coverage or any call drop out, or any delay in providing the Service.

#### **15. Further Acknowledgements**

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15.1 Without limiting the acknowledgements provided by the Reseller in any other clause, the Reseller acknowledges and agrees that:

- (a) Vocus does not warrant that Vocus or Optus will be able to supply the Optus Mobile Service (to any extent or at all) or to supply a SIM Card;
- (b) if the actual volume of Activations, Deactivations or Reactivations in connection with the Optus Mobile Service exceeds the volume set out in the volume Forecasts provided by the Reseller, then Vocus or



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Optus may not be able to Activate, Deactivate or Reactivate the Optus Mobile Service for the requested Service Numbers or supply the Optus Mobile Service to Activated Service Numbers and Vocus and Optus will have no liability to the Reseller, any End User, any potential End User or any other person for any resulting degradation in the quality in the or level of the Optus Mobile Service, including unsuccessful calls;

- (c) the Reseller must manage the relationship with its End Users which includes, but is not limited to, providing technical support to the End Users. To the maximum extent permitted by law, Vocus or Optus is not required to provide any technical support to any End User; and
- (d) the Reseller must ensure that an End User does not contact Vocus or the Supplier in connection with technical support or any other issues in connection with the Optus Mobile Service.

## **16. Termination**

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- 16.1 Without limiting any of Vocus's termination rights set out in any other clause of this Agreement, Vocus may terminate an Optus Mobile Service resupplied to an End User with immediate effect if the End User's Optus Mobile Service does not toll for a period of seventy-five (75) consecutive days.

## **17. Charges**

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- 17.1 The Charges that apply in connection with the Optus Mobile Service as set out in Wholesale Mobile Rate Card applicable as at the date of this Service Order. Vocus may vary the Wholesale Mobile Rate Card at any time on thirty (30) days' notice.
- 17.2 Without limiting **clause 17.1**, the Reseller agrees that the Reseller will be liable to pay to Vocus any Charges which are imposed on Vocus by Optus as a direct result of the Reseller's conduct or Vocus complying with a Reseller's request (for example, any Charge imposed on Vocus by Optus in relation to a request by the Reseller for a rate plan change).
- 17.3 For the avoidance of doubt, the Reseller must pay the Rates and Service Charges to Vocus in accordance with **clause 4 (Payment)** of the Master Services Agreement.
- 17.4 The Reseller agrees to be bound by the minimum spend obligations for the Optus Mobile Service during the Service Term as set out in the Service Order ("**Minimum Commitment**").
- 17.5 The Reseller must achieve the 'Minimum Spend' per mobile service number (as set out in a rates sheet that may be provided to the Reseller by Vocus from time to time) ("**Minimum Spend**").
- 17.6 The Reseller agrees and understands that it must achieve the Minimum Commitment in addition to achieving the Minimum Spend.
- 17.7 For the avoidance of doubt:
- (a) the Reseller will not be taken to have met the Minimum Commitment by reason only of the Reseller having met the Minimum Spend; and
  - (b) the Reseller will not be taken to have met the Minimum Spend by reason only of the Reseller having met the Minimum Commitment.
- 17.8 If the aggregate of the Charges for a given month does not equate to or exceed the aggregate of the Minimum Commitment and the total Minimum Spend for that month, the Reseller must pay to Vocus, in addition to the Charges for that month, the shortfall between the said aggregate of the Charges and the Minimum Commitment and total Minimum Spend ("**Shortfall**"). The Reseller acknowledges and agrees that the Shortfall represents a genuine pre-estimate of Vocus's loss.

## **18. Service Outages**

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- 18.1 From time to time, Vocus or Optus may perform maintenance or upgrade work that may affect the Optus Mobile Service.

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- 18.2 Any disruption caused to the Optus Mobile Service will not constitute a breach of Vocus's obligations under this Agreement.
- 18.3 Where possible and within the direct control of Vocus, Vocus will exercise reasonable endeavours to:
- (a) perform maintenance or upgrade work at such time to minimise any disruption to the Optus Mobile Service; and
  - (b) provide the Reseller with fifteen (15) days notice of such work by Vocus or by Optus.

## 19. Indemnity

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- 19.1 Without limiting the indemnities granted in any other clause of this Agreement, the indemnity in **clause 19 (Indemnity)** of the Master Services Agreement applies in connection with:
- (a) any act or omission of the Reseller or Reseller Personnel in connection with the Operational Middleware; or
  - (b) the termination of any Reseller Personnel in connection with **clause 7.2(c)** of this Service Schedule; or
  - (c) a breach by the Reseller of **clause 7 (Conditions of Supply)** of this Service Schedule.

## 20. Definitions

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- 20.1 Capitalised terms which appear in this Service Schedule but are not defined in **clause 20 (Definitions)** may be defined in the Master Services Agreement, in the Service Order or in an Annexure to this Service Schedule. For the avoidance of doubt, the 'Interpretation' section of the Master Services Agreement applies to this Service Schedule.

- 20.2 In this Service Schedule:

**Activate** means in respect of a Service for a Service Number, the assignment of that Service Number as a Service Number to which Vocus will resupply a Service and **Activated** and **Activation** have a corresponding meaning.

**Activated Service Number** means a Service Number that has been Activated.

**Associate** has the meaning given to that term in the *Corporations Act 2001* (Cth).

**Board** means the Board of Directors of Vocus.

**Carriage Service Provider** has the meaning given to that term in the *Telecommunications Act 1997* (Cth).

**Carrier** has the meaning given to that term in the *Telecommunications Act 1997* (Cth).

**Change of Supplier or Services** occurs if Vocus changes the Supplier which supplies Vocus with the Services that Vocus resupplies to the Reseller pursuant to this Service Schedule.

**Competing Service** means any service that is the same as, or substantially similar to, the service supplied to the Reseller in connection with this Service Schedule from any person other than Vocus.

**Correspondents** includes an administration or recognised private operating agency as prescribed in the Regulations of the International Telecommunications Union as amended from time to time or other entity that operates a telecommunications installation outside Australia which provides services incidental to the provision of the Optus Mobile Service.

**Deactivate** a Optus Mobile Service for an Activated Service Number means the removal of the assignment of that Service Number as an Activated Service Number for that Optus Mobile Service and **Deactivated** and **Deactivation** have a corresponding meaning.

**Early Termination Fee** means the fee imposed on the Reseller by Vocus that becomes payable to Vocus by the Reseller in circumstances where a Mobile Service of an End User is terminated prior to the expiry of the End User Minimum Term.

**End User Base** means, in respect of an End User of the Optus Mobile Service:

- (a) each End User Contract for the resupply of the Optus Mobile Service;

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- (b) the End User Details, and the right to use the End User Details for any purpose and free of any obligations of confidentiality on or to Vocus;
  - (c) the account history of each End User; and
  - (d) a transfer of any assignment by an End User of Activated Service Numbers to Vocus and any appointment of Vocus as agent for that End User.

**End User Contract** means a contract between the Reseller and an End User for the resupply by the Reseller to the End User of the Optus Mobile Service (or services derived from, or incorporating, the Optus Mobile Service).

**End User Minimum Term** has the meaning given to that term in **clause 4.7** of this Service Schedule.

**Forecast** means any forecast of connections of services specified in the Service Order or provided by the Reseller to Vocus from time to time.

**Master Services Agreement** means the Master Services Agreement between Vocus and the Reseller governing the general terms and conditions of the service under this Service Schedule and any applicable Service Order, as amended from time to time.

**Minimum Commitment** has the meaning given to that term in **clause 17.4** of this Service Schedule.

**Minimum Spend** has the meaning given to that term in **clause 17.5** of this Service Schedule.

**Mobile Coverage Area** means the geographical areas within which Optus has mobile network coverage, as varied from time to time.

**Mobile Number Portability Code** means the industry code known as *Mobile Number Portability C570:2009 (Incorporating Amendment No. 1/2015)* as varied from time to time.

**Operational Middleware** means Vocus's existing proprietary web-based interface Software or online portal for direct communication to Optus as a wholesale service provider for the purpose of controlling End Users' mobile service activations, porting, barring and other service attributes, together with all future modifications and updates (including relating to any agreed alternative wholesale service provider), for use by the Reseller's End User service representatives.

**Optus** means Optus Mobile Pty Limited (ACN 054 365 696) or its Related Bodies Corporate, as the context may require.

**Optus Mobile Digital Network** means the digital mobile network operated by Optus.

**Optus Mobile Service** means the Optus mobile service provided to the Reseller in accordance with this Service Schedule.

**Personnel** includes the agents, employees, contractors, subcontractors, trustees, representatives and officers of a party.

**Porting** has the meaning given to that term in the Mobile Number Portability Code and **Port** and **Ported** have a corresponding meaning.

**Pro-active Marketing Campaign** means:

- (a) a sales, marketing or advertising program or campaign that targets End Users (including direct mail, direct marketing or telemarketing and mass media campaigns that refer to End Users) aimed at inducing a migration, churn or transfer of such End Users to a telecommunications network other than the Optus Mobile Digital Network; or
- (b) any encouragement by any of the Reseller Personnel given to End Users to migrate, churn or transfer to a telecommunications network other than the Optus Mobile Digital Network,

but does not include a general public sales, marketing and advertising campaign not targeting End Users or reactive responses to direct questions from End Users.

**Reactivation** means in relation to an Activated Service Number that has been Deactivated, the re-activation of that Service Number.

**Related Entity** has the meaning given to that term in the *Corporations Act 2001* (Cth).

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**Reseller Branded SIM Card** means a SIM Card that is branded with a design proposed by a Reseller for supply to the Reseller's End Users for use in connection with an Optus Mobile Service.

**Reseller Intellectual Property** means proprietary information and property owned by the Reseller, including, copyright, trademarks, patents and other intellectual property rights, including copyright in any software and any publications and literature.

**Reseller Terms and Conditions** means the terms and conditions on which the Reseller resupplies the Optus Mobile Service to End Users, including, amongst other terms and conditions, the terms and conditions set out in **ANNEXURE** to this Service Schedule.

**Same Carrier Porting** means the Porting of a Service Number within the Optus Mobile Digital Network between service providers, for example to the Reseller from Optus or Vocus or another service provider.

**Service Commencement Date** means the date set out in **Item 1** of the Service Key Details in the Service Order.

**Service Key Details** means the details listed in the table headed 'Service Key Details' on page 1 of the Service Order.

**Service Initial Term** means the term set out in **Item 2** of the Service Key Details in the Service Order.

**Service Number** means the number of an Optus Mobile Service.

**Service Order** means an order in Vocus' standard written format for the provision of a Service, which has been agreed by Vocus.

**Service Term** means the Service Initial Term and any further term of this Service Schedule.

**Shortfall** has the meaning given to that term in **clause 17.8** of this Service Schedule.

**SIM Card** means a card of the type provided by Vocus to the Reseller which contains End User and associated information and which when activated and used with a digital mobile handset enables access by the End User to the Optus Mobile Digital Network.

**SIM Card Activation Period** means 120 days from the date of receipt of the SIM Card by the Reseller or such other period advised by Vocus from time to time.

**Stock Level Report** has the meaning given to that term in **clause 13.7** of this Service Schedule.

**Value Added Services** any Service (or part of a Service) that is designated by Vocus from time to time and in Vocus's sole and absolute discretion, as being a 'Value Added Service' (whether designated by that title or any other similar title). The particulars of the Value Added Service, and the applicable terms and conditions, may be notified to the Reseller by Vocus from time to time.

**Vocus Documentation** means any Documentation provided by Vocus to the Reseller from time to time.

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## ANNEXURE A

### 1. Right of Pre-emption

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#### SALE OF BUSINESS – OTHER THAN MATERIAL SHAREHOLDING

##### Reseller not to dispose of Assets

1.1 The Reseller must not Dispose of:

- (a) the End User Base; or
- (b) any other assets of the Reseller that are incidental to servicing or maintaining the End User Base ("**Other Assets**"),

(together "**Reseller Assets**") without first complying with this **ANNEXURE** .

##### Exclusion

1.2 **Clause 1.1** of this **ANNEXURE** does not apply to, and Reseller Assets do not include, the Disposal of an Other Asset to the extent that Other Asset is being Disposed of because it is no longer required, or is being updated or replaced.

1.3 To avoid doubt:

- (a) an Other Asset is no longer required if, and only if, the Disposal of the Other Asset will not materially diminish the value of the End User Base; and
- (b) any update to or replacement of an Other Asset will be considered a Reseller Asset within the meaning of **clause 1.1** of this **ANNEXURE** .

##### Sale Notice

1.4 If the Reseller proposes to Dispose of any Reseller Assets, it must notify Vocus in writing and to the extent that it is reasonably capable of doing so, ("**Sale Notice**") also advise Vocus as to:

- (a) the Reseller Assets that it wishes to Dispose of ("**Relevant Assets**");
- (b) the consideration desired; and
- (c) any other material terms, ("**Proposed Terms**").

##### Right of First Refusal

1.5 Following the provision of the Sale Notice, the Reseller must, for a period of at least thirty (30) days ("**Minimum Negotiating Period**"), exclusively negotiate with Vocus in respect of the proposed Disposal ("**Initial Negotiations**").

1.6 Without limiting the possible outcomes of the Initial Negotiations, the Reseller and Vocus may:

- (a) enter into a binding term sheet;
- (b) enter into a binding contract of sale;
- (c) agree to extend negotiations for a further period of time; or
- (d) agree on some other course or process.

1.7 Unless the Reseller and Vocus agree otherwise, the Right of First Refusal lapses at the conclusion of the Minimum Negotiating Period.

##### Due Diligence

1.8 Within two (2) Business Days of receiving the Sale Notice, Vocus must provide the Reseller with a list of all Vocus information that Vocus requires in order to conduct a due diligence into the Reseller Assets. The parties acknowledge and agree that this will typically take the form of a 'due diligence' checklist ("**Requested DD Information**").

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- 1.9 Within seven (7) Business Days of receipt of the list of Requested DD Information, the Reseller must provide to Vocus the Requested DD Information. If the Reseller delays in providing the Requested DD Information, for each day of such delay, the Minimum Negotiating Period will be extended correspondingly.

#### **Right of Last Refusal**

- 1.10 Following the expiry of the Minimum Negotiating Period, the Reseller may enter into negotiations or discussions with any other person ("**Interested Third Party**") with respect to the sale of the Relevant Assets unless otherwise agreed by the Reseller and Vocus (for example, in a binding terms sheet that may have been concluded between the Reseller and Vocus).
- 1.11 If the negotiations or discussions with an Interested Third Party concludes or results in an agreement document that is in Executable Form (whether or not executed) ("**Sale Agreement**"), the Reseller must provide a copy of the Sale Agreement to Vocus (provided always that the Reseller will be at liberty to suppress the identity of the Interested Third Party).
- 1.12 Within twenty-one (21) days of receipt by Vocus of the Sale Agreement, Vocus may notify the Reseller that it accepts the Sale Agreement. If Vocus does so, the Sale Agreement binds Reseller (as vendor) and Vocus or its nominee (as purchaser) ("**Right of Last Refusal**").
- 1.13 If Vocus does not accept the Sale Agreement within the time limited by **clause 1.12**, the Reseller will be at liberty to enter into the Sale Agreement with the Interested Third Party. To avoid doubt, no variation to the Sale Agreement is permitted where the effect of the variation is more favourable to the Interested Third Party.
- 1.14 To avoid doubt:
- (a) prior to the expiration of the time limited by **clause 1.12** for Vocus to exercise its Right of Last Refusal - the Reseller may enter into the Sale Agreement with an Interested Third Party provided that the Sale Agreement transparently provides that completion or settlement is conditional upon Vocus not exercising its Right of Last Refusal, but not otherwise; and
  - (b) if Vocus does not accept the Sale Agreement within the time limited by **clause 1.12** for Vocus to exercise its Right of Last Refusal - the Reseller may enter into the Sale Agreement with an Interested Third Party on a basis where completion or settlement is not conditional upon Vocus not exercising its Right of Last Refusal.

#### **Exceptions**

- 1.15 If the Reseller has given Vocus a Right of First Refusal in respect of the same Relevant Assets within the preceding twelve (12) months, the Minimum Negotiating Period will be abridged to fifteen (15) days.

#### **Confidential Information**

- 1.16 The Reseller acknowledges that if Vocus acquires the Relevant Assets that include the Reseller Intellectual Property and/or Confidential Information of the Reseller, that Reseller Intellectual Property and Confidential Information will become the property of Vocus.

#### **Publicly Listed Shares**

- 1.17 This **ANNEXURE** does not apply in relation to a public offering of shares in the Reseller or to any subsequent sale of any shares in the Reseller that are listed on the Australian Securities Exchange or any other recognised stock exchange.

### **SALE OF BUSINESS – MATERIAL SHAREHOLDING**

#### **Disposal of Shares**

- 1.18 If a holder of securities in the Reseller intends to Dispose of some or all of its securities (whether by single transaction or by cumulative effect of a series of transactions) where the effect of the proposed Disposal will result in the persons who at the Commencement Date had a Material Shareholding in the Reseller (when taken together) no longer having such Material Shareholding, the Reseller must ensure that the holder complies with **ANNEXURE** as if:

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- (a) the holder was a party to this Agreement;
  - (b) a reference to the Reseller Assets refers to the holder's securities; and
  - (c) a reference to an obligation on the Reseller is taken to refer to an obligation of the holder.

**Damages Inadequate**

- 1.19 The Reseller acknowledges that an actual, anticipated or threatened breach of **ANNEXURE** may result in irreparable injury to the business and goodwill of Vocus (or of an Associate, Related Body Corporate or Related Entity of Vocus) in respect of which monetary damages alone may not be an adequate remedy and the Reseller expressly acknowledges that Vocus will be entitled to seek specific performance or injunctive relief in respect of the actual, anticipated or threatened breach (in addition to any other remedies available at law).

**Survival**

- 1.20 **ANNEXURE** is intended to survive the termination, expiry or completion of performance of this Agreement.

Definitions for **ANNEXURE**

- 1.21 In this **ANNEXURE** :

**Control** has the meaning given to that term in the *Corporations Act 2001* (Cth).

**Dispose** means to dispose of in any way and includes assign, assume, declare a trust, mortgage, encumber, transfer, surrender or allow to be cancelled and sell and also includes an agreement to do those things.

**Executable Form**, an agreement is in **Executable Form** if:

- (a) Reseller is agreeable to Dispose of the Relevant Assets; and
- (b) Reseller has reasonable grounds to believe that a genuine proposed purchaser is agreeable to acquire the Relevant Assets,

on all the terms and conditions contained therein.

**Initial Negotiations** has the meaning given to that term in **clause 1.5** of this **ANNEXURE** .

**Interested Third Party** has the meaning given to that term in **clause 1.10** of this **ANNEXURE** .

**Material Shareholding** means a holding that, if Disposed of, is capable of causing a change of Control.

**Minimum Negotiating Period** has the meaning given to that term in **clause 1.5** of this **ANNEXURE** .

**Other Assets** has the meaning given to that term in **clause 1.1(b)** of this **ANNEXURE** .

**Proposed Terms** has the meaning given to that term in **clause 1.4** of this **ANNEXURE** .

**Relevant Assets** has the meaning given to that term in **clause 1.4** of this **ANNEXURE** .

**Requested DD Information** has the meaning given to that term in **clause 1.8** of this **ANNEXURE** .

**Reseller Assets** has the meaning given to that term in **clause 1.1** of this **ANNEXURE** .

**Right of First Refusal** means the process and procedure required by **clauses 1.5** to **1.7** of this **ANNEXURE** .

**Right of Last Refusal** has the meaning given to that term in **clause 1.12** of **ANNEXURE** .

**Sale Notice** has the meaning given to that term in **clause 1.4** of this **ANNEXURE** .

**Sale Agreement** has the meaning given to that term in **clause 1.11** of this **ANNEXURE** .

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## ANNEXURE B

### 1. Reseller Terms and Conditions

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- 1.1 In accordance with **clause 11** of this Service Schedule, an End User Contract must include clauses with the following effect.

#### Rate Plan

- 1.2 If arrangements between Vocus and the Reseller are terminated, Vocus may arrange to supply the End User directly. The End User acknowledges that the rate plan applicable to the provision of Optus Mobile Service to the End User may be altered to the nearest applicable Optus rate plan in the event that the rights and obligations of the Reseller under the End User Contract are assigned or novated to Vocus so that Vocus provides the Optus Mobile Service directly to End Users.

#### Resale

- 1.3 The End User may not resell or resupply the Optus Mobile Service provided by the Reseller.

#### Use of the Optus Mobile Service

- 1.4 The End User must comply with the obligations under the Optus' Fair Go Policy and must not:
- (a) make or receive calls or send or receive content on the Optus Mobile Digital Network other than for their own personal or business use;
  - (b) wholesale any service (including transit, refile or aggregate domestic or international traffic) on the Optus Mobile Digital Network; or
  - (c) use the Optus Mobile Service (Including any SIM card) in connection with a device that switches or reroutes calls to or from the Optus Mobile Digital Network or the network of any supplier.
- 1.5 The Reseller must ensure that the End User Contract contains provisions entitling:
- (a) the End User's Optus Mobile Service to be immediately suspended or cancelled; and
  - (b) the termination of the End User Contract without liability,
- in the event that an End User engages in conduct prohibited under **clause 1.4** above or the Optus Fair Go Policy, and the Reseller agrees to immediately invoke these provisions at Vocus or Optus' request unless the Reseller is not permitted by a law, regulation, standard or industry code to do so.

#### Assignment

- 1.4 The Reseller shall have the right to assign or novate all or part of its rights and obligations under the End User Contract to Vocus without the consent of the End User. The End User cannot assign or novate all or part of its rights and obligations under the End User Contract without the express written consent of the Reseller (which may be withheld by the Reseller in its sole and absolute discretion).
- 1.5 For the purposes of novation, the End User agrees to novate the End User Contract to Vocus on receipt of a notice from either the Reseller or Vocus, such novation to be on terms no less favourable than the terms of the End User Contract in existence immediately prior to the novation.

#### Privacy & Marketing Consents

- 1.6 End User consent to allow the Reseller to disclose to Vocus or Optus (or its Associates, Related Entities and Related Bodies Corporate) the End User Details including information relating to the affairs or personal particulars (including any listed or unlisted telephone number, address and account history) or carriage services supplied to the End User.
- 1.7 End User consents to allow Vocus or Optus (or its Related Bodies Corporate) to use that information in order to facilitate the supply of carriage services to the End User by the Reseller, Vocus or by Optus. Without the express permission of the Reseller, Vocus or Optus (or its Related Bodies Corporate) may not directly contact the End User with offers and information via electronic messaging (such as SMS) for marketing purposes.



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### **Supplier and Optus Liability**

- 1.8 A statement that Vocus and Optus are not liable to the End User (in contract, tort (including negligence) or otherwise) in relation to the Optus Mobile Service resupplied to the End User by the Reseller, any delay or any failure to provide the Optus Mobile Service.

### **Carriers and Carriage Service Providers**

- 1.9 A statement indicating that the End User is not a Carrier or Carriage Service Provider (as those terms are defined in the *Telecommunications Act 1997* (Cth)).
- 1.10 A statement saying that if the End User becomes a Carrier or Carriage Service Provider, then the Reseller, Vocus or Optus may immediately cancel the Optus Mobile Service by notice to the End User. If the Reseller, Vocus or Optus does so, that party will negotiate in good faith with the End User to enter into an agreement governing supply of the Optus Mobile Service, on terms to be agreed.

### **Indemnity for Claim against the Reseller**

- 1.11 To the extent allowed under any law, statute, regulation or code, Vocus suggests that the Reseller includes in its End User Contracts a clause in which the End User indemnifies the Reseller in relation to any claims by persons that suffer loss as a result of a defect in the Optus Mobile Service. If the Reseller does not include such a clause in its End User Contracts this will not be a breach of this Agreement.

### **Other Clauses**

- 1.12 The Reseller must include terms and conditions which:
- (a) identify with sufficient detail the nature of the Optus Mobile Service and any exclusions, restrictions, limitations or other adverse material facts, matters or circumstances in connection with the Optus Mobile Service (including those exclusions, restrictions, limitations, facts, matters and circumstances notified to the Reseller in this Agreement or as otherwise notified to the Reseller by Vocus from time to time);
  - (b) entitle Vocus to make a claim, demand or request for any payment from the End User in connection with the Optus Mobile Service supplied by the Reseller if:
    - (i) the End User has not paid the Reseller for any Optus Mobile Service supplied or to be supplied to the End User by the Reseller (whether or not the Reseller has made a claim, demand or request for payment from the End User); and
    - (ii) the Reseller has not paid Vocus for any Optus Mobile Service supplied to the Reseller by Vocus (whether or not Vocus has made a claim, demand or request for payment from the Reseller);
  - (c) require the End User to acknowledge and consent to:
    - (i) the provision of the End User Details to Vocus or to a Supplier of Vocus; and
    - (ii) the provision of Personal Information and other information of the End User to Vocus or to a Supplier of Vocus in connection with the supply of the Optus Mobile Service to the End User by the Reseller (including, without limitation, information in connection with the credit worthiness and commercial activities of the End User);
  - (d) require the End User to acknowledge and agree that a Change of Supplier or Services may occur and that Vocus or a Supplier of Vocus will not be liable to the End User or any other person in connection with a Change of Supplier or Services;
  - (e) require the End User to comply with (and ensure that any person who uses the End User's Optus Mobile Service complies with) all applicable laws and any reasonable direction of Vocus or a Supplier of Vocus as a condition to the End User's ongoing access to, and use of, the Optus Mobile Service;
  - (f) provide the disclosures required by the *Telecommunications (Consumer Protection and Service Standards) Act 1999*, the *Telecommunications Service Provider (Mobile Premium Service) Determination 2010 (No 1 and 2)*, the *Telecommunications (Service Provider - Identity Checks for Prepaid Mobile Carriage Services) Determination 2017*, the *Telecommunications Service Provider*

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(*International Mobile Roaming*) *Determination 2019*, the *Telecommunications (Mobile Number Pre-Porting Additional Identity Verification) Industry Standard 2020* and any other relevant law;

- (g) advise the End User that the End User is entitled to request that Premium SMS and/or Premium MMS (as those terms are defined in the *Telecommunications Service Provider (Mobile Premium Service) Determination 2010 (No 1)*) services be barred;
- (h) require the End User to acknowledge and agree that:
  - (i) due to technical, operational or commercial reasons, the Optus Mobile Service (or any part thereof) may not be able to be supplied error free or at all or without delay or interruption (whether such delay or interruption occurs in connection with the provisioning of the Optus Mobile Service or at a later time);
  - (ii) the End User does not receive any legal interest or any goodwill in any phone number that may be provided to them by the Reseller in connection with the Optus Mobile Service;
  - (iii) the End User must use any phone number provided to them by the Reseller only in connection with the Optus Mobile Service;
  - (iv) Vocus may, to the extent permitted by the *Telecommunications Numbering Plan 2015 (Cth)*, recover any phone number provided to the End User in connection with the Optus Mobile Service from the End User; and
  - (v) any request to Port a number may result in that End User's service with its then current supplier to be disconnected or terminated and the End User may be liable to, amongst other things:
    - (A) pay fees and charges (including early termination fees) to that supplier; and
    - (B) perform all its obligations that arise upon or survive the disconnection or termination of the End User's service with that supplier; and
- (i) provide that in the event of any inconsistency between the Reseller Terms and Conditions (as set out in this **ANNEXURE** ) and any other term or condition of any agreement, arrangement, deed, contract or understanding between the Reseller and the End User (including the End User Contract), the terms set out in this **ANNEXURE B** prevail; and
- (j) are terms and conditions that may be requested by Vocus to be included in the Reseller Terms and Conditions from time to time, provided that it is reasonable for those terms and conditions to be included.

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## ANNEXURE C

### 4G Optus Mobile Services

#### Definitions

1.1 In this **ANNEXURE C**:

**4G Optus Mobile Service** means an Optus Mobile Service which operates over the Optus 4G Network.

**Optus 4G Network** means the layer of the Optus Mobile Digital Network which utilises 'Long Term Evolution' (LTE) mobile technology operating at 1800MHz, and when available, the 700MHz frequency and used to supply data and other Services, as amended and notified from time to time

#### Scope

1.2 This **ANNEXURE** specifies additional terms which apply to the supply of 4G Optus Mobile Services to the Reseller. Except to the extent expressly provided, the terms in this **ANNEXURE** apply in addition to the other terms of this Agreement, including the terms which apply to the supply of Optus Mobile Services.

#### Additional Condition of Supply - Exclusivity

1.3 Vocus agrees to supply 4G Optus Mobile Services to the Reseller on the condition that:

- (a) the Reseller is subject to obligations to comply with **clause 5 (Exclusivity)**; and
- (b) subject to **clause 1.4** of this **ANNEXURE**, the Reseller complies with **clause 5 (Exclusivity)**, ("**Condition of 4G Mobile Supply**").

1.4 For the purposes of **clause 1.3(b)** of this **ANNEXURE** and without limiting **clause 5 (Exclusivity)**, the following services are considered to be the same as, or substantially similar to, the service supplied to the Reseller in connection with this Service Schedule:

- (a) a mobile telecommunications service;
- (b) a mobile or wireless broadband service; and
- (c) any other service which allows the Reseller or End User to make or receive calls, send or receive content or transmit or download data, from or to the Reseller's or End User's mobile device).

#### Failure to Satisfy Conditions of Supply

1.5 If, for any reason, the Conditions of 4G Mobile Supply are not, or cease to be, satisfied, Vocus may do any or all of the following:

- (a) Vocus may refuse to accept, progress or provision any order from the Reseller for the supply of a 4G Optus Mobile Service (including to refuse to Activate a 4G Optus Mobile Service); and
- (b) if Vocus supplies a 4G Optus Mobile Service to the Reseller, Vocus may immediately on notice to the Reseller:
  - (i) suspend some or all of the 4G Optus Mobile Services; and
  - (ii) Deactivate or otherwise terminate some or all of the 4G Optus Mobile Services.

#### Subsequent Satisfaction of Conditions of Supply

1.6 If the Conditions of 4G Mobile Supply are not, or cease to be, satisfied, but subsequently become satisfied, the Reseller acknowledges and agrees that Vocus may, but is not obligated to:

- (a) accept, progress or provision any order from the Reseller for the supply of a 4G Optus Mobile Service (or Activate a 4G Optus Mobile Service); or
- (b) remove the suspension of a 4G Optus Mobile Service which was suspended pursuant to **clause 1.5(b)(i)** of this **ANNEXURE**; or
- (c) Reactivate or reinstate a 4G Optus Mobile Service which has been Deactivated or terminated pursuant to **clause 1.5(b)(ii)** of this **ANNEXURE**.

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### **Dispute Resolution**

- 1.7 Notwithstanding any other clause of this Agreement to the contrary, any action, decisions or determinations made by Vocus pursuant to, or in connection with, this **ANNEXURE**, will stand and be accepted by the Reseller until determination of the dispute in accordance with this Agreement.

### **700MHz limitation**

- 1.8 The availability of the 700MHz frequency, or any other frequency required in connection with 4G Optus Mobile Services, will be dependent upon the capability of Vocus's Supplier to deliver 4G Optus Mobile Services over that frequency, which may vary from time to time.
- 1.9 The Reseller acknowledges that the Reseller may be required, at its sole cost and expense, to upgrade existing hardware and systems or acquire new hardware and develop new systems, to be able to resupply 4G Optus Mobile Services over the 700MHz frequency.

### **Switching**

- 1.10 The Reseller acknowledges and agrees that the End User's 4G Optus Mobile Service may be automatically switched between the Optus 4G Network and the Optus 3G Network. During the period in which the Service is switched, data may not transfer.

### **Remedies Cumulative**

- 1.11 To avoid doubt:
- (a) the Condition of 4G Mobile Supply; and
  - (b) Vocus's rights under **clause 1.5** of this **ANNEXURE**,
  - (c) are in addition to, and do not derogate from, the rights of Vocus or obligations of the Reseller under any other clause of this Agreement.

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