

General Terms and Conditions

Note: For meanings of capitalised terms, see the Definitions at the end of the document.

1. Services

1.1 Formation of Agreement

The Customer may order Services from Pipe by completing a Pipe Order Form. The Agreement will comprise, in order of precedence from highest to lowest:

- (a) the Order Form;
- (b) the Service Schedule for the Services ordered;
- (c) the Service Level Schedule; and
- (d) these General Terms and Conditions.

1.2 Provisioning of Services

Upon acceptance by Pipe of the Order Form, Pipe agrees to provide and the Customer agrees to acquire the Services as is set out in the Order Form. The Services will be activated on the later of the date on which Pipe is able to provide the Services and the requested activation date nominated in the Order Form. Pipe will use best endeavours to activate the Services in accordance with the timeframes requested by the Customer.

1.3 Order withdrawal

The Customer acknowledges and agrees that if it withdraws or cancels:

- (a) one or more Services from an Order; or
- (b) an Order in its entirety,

before Pipe has completed provisioning the relevant Services or Order (as applicable), the Customer will be liable for and must pay Pipe an Order Withdrawal Charge.

1.4 Service Levels

- (a) Pipe does not warrant that the Services will be uninterrupted or fault free.
- (b) Pipe will use reasonable endeavours to meet any Service Levels applicable to the Services, provided that Pipe is not responsible for any failure to meet the Service Levels to the extent caused or contributed to by an Excluded Event.
- (c) Pipe's sole liability to the Customer in connection with any failure to meet the Service Levels is set out in clause 14.2(b).
- (d) Where Service Levels do not apply to the Services, Pipe will use reasonable efforts to restore any interruption or fault in the Services but, to the maximum extent permitted by law and subject to clause 14.5, does not accept any liability to the Customer in respect of any such interruptions or faults.

2. Period of Agreement

2.1 The Agreement commences on the acceptance by Pipe of an Order Form.

2.2 The Agreement will continue until the end of the Minimum Service Period and thereafter on a month to month basis unless it is earlier terminated in accordance with the Agreement.

2.3 After the expiry of the Minimum Service Period for all Services, either party may terminate the Agreement by providing to the other not less than 20 Business Days' written notice of termination.

3. Customer obligations

3.1 Ensure proper use of the Services

The Customer agrees that it will not knowingly, or by any negligent act or omission:

- (a) use or permit the use of the Services in any manner which constitutes a violation or an infringement of any duty or obligation in contract, tort, or otherwise to any third person;
- (b) use or permit the use of the Services in connection with the commission of an offence against the laws of the Commonwealth or the States or Territories;
- (c) use or permit the use of the Services for the transmission of any defamatory, offensive, abusive, indecent, spam or menacing material or the making of any hoax call or in any other manner in contravention of the Acceptable Use Policy or Fair Use Policy as the case may be;
- (d) use or permit the use of the Services in connection with the transmission of any computer virus that may adversely affect the Pipe Equipment, the Pipe Network, the equipment or network of any third party provider to Pipe or any network users;
- (e) use or permit the use of the Services to engage in any activities in a manner that may expose Pipe or any third party provider to the risk of any legal or administrative action including prosecution under any law; or
- (f) interfere or attempt to interfere with the operation of: the Services, Service Numbers or an IP address; any Pipe Equipment; the Pipe Network or the equipment, network or IP Addresses of any other person; or the Pipe mobile Network.

3.2 Assistance

The Customer will do everything reasonable to help, and co-operate with, Pipe and any person engaged by Pipe to provide to the Customer the Services at the Site. The kinds of assistance Pipe may require from the Customer include:

- (a) ensuring that it is possible and safe for Pipe and persons engaged by Pipe to obtain necessary access to a Site (including for any Emergency);
- (b) ensuring that relevant people are available and give to Pipe timely instructions;
- (c) ensuring that Customer Equipment is ready at the appropriate times;
- (d) at the Customer's own expense and following Pipe's reasonable instructions in connection with making any modifications to Customer Equipment reasonably necessary to enable Pipe to provide the Services;
- (e) obtaining and maintaining any authorisation, permission, licence, waiver, registration or consent from any person necessary for the Customer to secure to enable Pipe to provide the Services;
- (f) informing Pipe of the location of Pipe Equipment (if any); and
- (g) working together with Pipe to establish procedures to reduce fraud or the opportunity for fraud in relation to the Services.

3.3 Delay

- (a) The Customer acknowledges and agrees that Pipe dedicates time and resources to provision the Services and the Customer cannot unreasonably delay the provisioning or activation of the Services.
- (b) The Customer must not cause or contribute to a delay or series of delays in the provisioning of the Services which amount(s) to twenty (20) Business Days (**Maximum Delay Period**) or more by:

- (i) breaching any of its obligations under this Agreement; or
 - (ii) requesting Pipe to delay provisioning of the Services, including, without limitation, the completion of provisioning and commencement of billing for the Services.
- (c) If the Maximum Delay Period is reached or exceeded, or likely to be reached or exceeded, in respect of the provisioning of the Services, Pipe may, acting reasonably:
 - (i) deem the Services as being withdrawn by the Customer under the terms of clause 1.3; or
 - (ii) if the Services are ready to be made available for use by the Customer, commence billing the delayed Services.

Pipe must provide at least 5 Business Days written notice prior to the end of the Maximum Delay Period before taking such action.

- (d) Nothing in this clause 3.3 purports to limit Pipe's rights pursuant to clause 11.

3.4 Reporting and inspections

The Customer agrees to supply to Pipe or Pipe's nominated agent any information reasonably requested by Pipe relating to the Customer:

- (a) for credit management purposes (see also clause 9);
- (b) to enable Pipe to monitor and help reduce the incidence of fraud;
- (c) to assist Pipe in complying with its regulatory obligations and its obligations to report on compliance with those obligations;
- (d) to assess whether or not the Customer has complied, is complying and will be able to continue to comply with all obligations imposed on the Customer under the Agreement; and
- (e) for other purposes reasonably required by Pipe from time to time and agreed by the Customer.

4. Equipment

4.1 Pipe Equipment

If required for the provision of the Services, Pipe will supply to the Customer the Pipe Equipment. The Customer is responsible for the Pipe Equipment and must compensate Pipe for any loss or damage to it, (fair wear and tear excepted), unless Pipe or Pipe's agent causes such loss or damage. If the Customer becomes aware of any loss of, damage to, claim over, or malfunction of the Pipe Equipment, the Customer must promptly notify Pipe. Pipe may, at any time and at Pipe's cost, modify or replace Pipe Equipment provided there is no material adverse impact on the provision of the Services. In respect of Pipe Equipment, the Customer must:

- (a) provide an adequate power supply and a suitable physical environment in accordance with Pipe's reasonable directions;
- (b) only permit Pipe Equipment to be repaired, serviced, moved or disconnected by Pipe unless otherwise permitted by Pipe in writing;
- (c) not remove or obscure any identification marks on Pipe Equipment;
- (d) make title to Pipe Equipment clear to all persons;
- (e) comply with all reasonable instructions given by Pipe to protect Pipe's ownership of the Pipe Equipment; and
- (f) not do anything or allow anything to be done which might affect Pipe's ownership of the Pipe Equipment.

4.2 Customer Equipment

The Customer is responsible for the installation of any Customer Equipment and connections to the Pipe Network necessary for Pipe to provide the Services. The Customer must ensure that Customer Equipment does not have a detrimental effect, as determined by Pipe, on the Pipe Network and accords with all relevant laws.

4.3 Disconnection of Customer Equipment

Pipe may, without liability, immediately disconnect all or any of the Customer Equipment if Pipe reasonably considers that Customer Equipment may:

- (a) cause death or personal injury;
- (b) cause damage to the property of Pipe or another person; or
- (c) materially impair the operation of the Pipe Network,

provided that, where and to the extent that it is reasonable for Pipe to do so, Pipe will notify the Customer before disconnection. Where the Customer Equipment is located at a place under the control of the Customer, the Customer shall promptly comply with a written request from Pipe to disconnect Customer Equipment in accordance with this clause 4.3.

5. Not for resale

5.1 Unless otherwise agreed by Pipe, the Customer may not resell or re-supply the Services.

6. Charges and payment

6.1 The installation and recurring Charges for the Services are set out in the Order Form. Other ad-hoc and ancillary Charges may be incurred by the Customer. Such ad-hoc charges include remote hands fees, out-of hours or incorrect call out fees, administration charges for moves, adds or changes or other charges notified by Pipe from time to time. Such ad-hoc fees will only be charged when the Customer has been advised of the fees in advance of ordering the services that incur fees. The Customer's obligation to pay for the Services will accrue on and from the applicable Service Commencement Date.

6.2 The Customer acknowledges and agrees that Charges may be varied by Pipe upon providing notice to the Customer where the cost to Pipe of providing the Services to the Customer increases due to:

- (a) a change made by a Pipe supplier in connection with the supply of the Services, including an increase of the Pipe Supplier's fees charged to Pipe in connection with the Services;
- (b) annual CPI indexation;
- (c) currency fluctuations that result in an increase to Pipe's cost to supply the Services; or
- (d) changes to taxes imposed by applicable law, where it is fair and reasonable for Pipe pass such changes in taxes through to customers;

provided that any change to the Charges must be strictly to the extent required to pass-through such increases in cost (without any further Pipe margin or mark-up).

6.3 Pipe will periodically issue to the Customer an invoice for the Services and the Customer must pay each Invoice in Australian dollars within 30 days of the Invoice Date (**Due Date**). The Customer agrees that Pipe may use a Related Body Corporate of Pipe to perform billing and collection services for Pipe in relation to Invoices and that amounts invoiced by and paid to that Related Body Corporate shall be treated as payments under the Agreement.

6.4 To the extent that it is not precluded by regulation from doing so, if Pipe has omitted Charges from an Invoice for any reason, Pipe may include such Charges in a later Invoice.

- 6.5** There is a presumption that records held and logging procedures adopted by Pipe or any other third party provider with which the Pipe Network is interconnected are correct and that the Charges have been incurred and are payable by the Customer in the absence of manifest error.
- 6.6** If the Customer disputes the validity of any Charges in an Invoice:
- (a) The Customer must notify Pipe in writing of the reasons for the dispute within 30 Business Days of the date of that Invoice;
 - (b) The Customer must pay the full amount of the Charges in the disputed Invoice unless the Customer has notified Pipe in writing of the reasons for the dispute by the Due Date of that Invoice and will pay the undisputed portion of the Charges in the Invoice by the Due Date of that Invoice;
 - (c) Pipe will endeavour to give the Customer a determination on the dispute within a reasonable time of receiving the Customer's notice of dispute and Pipe shall keep the Customer informed as to the expected timeframe for finalisation;
 - (d) where the determination is that a disputed amount is payable to Pipe, the Customer shall pay such amounts within 5 Business Days of receiving notice of the determination; and
 - (e) if the Customer disagrees with the determination, the Customer will be entitled to engage the dispute resolution mechanisms set out in clause 18 below.
- 6.7** If the Customer fails to pay when due any amount, Pipe will be entitled to:
- (a) charge interest on the overdue amount (both before and after judgment), at the cash rate set by the Reserve Bank of Australia. This interest will be calculated daily and compounded every 30 days;
 - (b) impose a charge to cover its reasonable expenses and costs incurred in enforcing any failure or delay in the payment (including the cost of engaging a debt recovery agent); and
 - (c) suspend provision of the Services in accordance with clause 1010 below.

7. GST and other taxes

- 7.1** Unless otherwise stipulated in the Order Form, the Charges do not include any GST. Pipe will include on each invoice a separate amount for the GST payable in respect of the Charges in the invoice and the Customer must pay the GST to Pipe.
- 7.2** The Customer must pay all taxes (including any goods or services tax or any equivalent thereof), duties, stamp duties, impost, levies or government charges relating to the Agreement, the supplied Services, provision of the Pipe Equipment and, where relevant, the sale of any Pipe Equipment from Pipe to the Customer. Should there be an introduction of any new tax, duty, levy or government charge relating to any charges (including Charges) under the Agreement, the Customer must pay Pipe for such taxes, duty, levy or government charges imposed under such relevant legislation.

8. Variation of Agreement

- 8.1** Except as set out in this Agreement, the Agreement may not be varied except in writing signed by the parties.
- 8.2** Pipe may at any time vary the Agreement by giving to the Customer written notice of the variation (a **Variation Notice**). If Pipe gives a Variation Notice and the Customer does not accept the variation, the Customer must notify Pipe in writing within 20 Business Days from the date of the Variation Notice. If the Customer fails to do so, the Customer will be deemed to have accepted the variation and the new terms and conditions will take effect from the next billing period after the Variation Notice was given or at the time specified in the Variation Notice.
- 8.3** If the Customer notifies Pipe that it does not agree to the variation, the Customer and Pipe must discuss the proposed variation in good faith. If no agreement on a variation arises within a further 10

Business Days, either party may terminate the Services upon the giving of a further 20 Business Days' notice. For the duration of the further notice period, the terms and conditions applicable immediately preceding the delivery of a Variation Notice will continue to apply.

- 8.4** The Customer may request a change to the Services from time to time by contacting Pipe customer care or the Customer's account manager. If Pipe accepts the request, the Customer may be required to enter into a new Order to effect the change in accordance with the process specified in this Agreement or notified by Pipe. Downgrades to the Services are not permitted during the Minimum Service Period unless otherwise agreed by Pipe in its sole discretion.

9. Creditworthiness

- 9.1** Pipe's obligations to supply the Services, and to continue supplying the Services, are subject to Pipe being satisfied as to the creditworthiness of the Customer.
- 9.2** Pipe may, from time to time, review the Customer's creditworthiness. In doing so, Pipe may seek from the Customer or an independent person such as a credit reporting agency or credit provider information or advice to assist in the creditworthiness review.
- 9.3** The Customer agrees promptly to cooperate with a review by:
- (a) providing to Pipe any information (including a completed Pipe credit application form) Pipe reasonably requires to conduct any such review; and
 - (b) giving to Pipe permission (which permission is by the signing of the Order Form granted) to communicate with credit reference associations about the Customer's creditworthiness.

The information sought in this clause 9.3 can include any information reasonably required by Pipe about the Customer's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to give or receive under law.

- 9.4** The Customer warrants that all material information that it provides to Pipe in any creditworthiness review will provide a true and fair view of the Customer's financial position at the time it is provided, and that all other information is accurate and complete.
- 9.5** The Customer is entitled to see and to correct any credit information that Pipe holds about the Customer.
- 9.6** Following a creditworthiness review of the Customer which may occur at any time before or during the supply of the Services, Pipe may give to the Customer a written notice specifying a credit limit and/or the security that the Customer is required to give to Pipe, which shall be in a form and amount that is no more than reasonably required.
- 9.7** If the Customer fails to provide the security required by Pipe within a reasonable time or exceeds the nominated credit limit, Pipe may suspend the supply of the Services.

10. Service suspension

- 10.1** In addition to any other rights of suspension contained in the Agreement, Pipe may suspend the provision of the Services to the Customer:
- (a) subject clause 10.2, immediately where:
 - (i) Pipe is required to undertake the repair, maintenance or service of any part of the Pipe Network (or an interconnected third party provider is required to undertake such work on its network) to attend to any Emergency;
 - (ii) it is reasonably required to reduce or prevent fraud or interference within the Pipe Network in connection with the Services, including where Pipe has reasonable grounds to suspect fraud in respect of, or misuse of, the Services by the Customer;

- (iii) Pipe believes it is necessary to do so to comply with any law or an order, instruction or request of government, the ACMA, emergency services or other competent authority;
- (iv) a Force Majeure Event occurs which materially affects Pipe's ability to provide the Services; or

(b) upon giving 5 Business Days' notice where the Customer is in breach of the Agreement, provided that such suspension will continue only for so long as the breach or other matter giving rise to the right to suspend subsists or until termination of the Agreement.

10.2 Pipe will give the Customer as much prior notice of any suspension of the Services under clause 10.1(a) as is reasonably practicable, provided that, if:

- (a) suspension is required in Emergency circumstances;
- (b) providing such notice would contravene Law or the direction of a Government Agency; or
- (c) it is otherwise not reasonably practicable to provide such notice in light of the circumstances,

then Pipe is not required to provide prior notice of the suspension, but must provide the Customer with notice of the suspension as soon as practicable after the suspension comes into effect unless providing such notice would contravene Law or the direction of a Government Agency.

11. Termination

11.1 A party may, at its election, terminate the Agreement:

- (a) immediately by written notice to the other party if a receiver, liquidator, provisional liquidator or administrator is appointed over any of that other party's undertakings or assets and that appointment continues for a period of 5 Business Days, or if that other party enters into any arrangement with any of its creditors or any class of such creditors or if that other party ceases to carry on business;
- (b) immediately by written notice to the other party if that other party breaches any other provision of the Agreement which is capable of remedy and does not rectify that breach within 30 days of receiving written notice from the other party requesting it to do so; and
- (c) immediately by written notice to the other party if that other party breaches any provision of the Agreement which is incapable of remedy.

11.2 Pipe may immediately, by giving notice to the Customer, terminate the Agreement if:

- (a) following a suspension of the Services under clause 10.1(b) or 9.7 the Customer fails within 14 days of the commencement of the suspension to rectify the breach giving rise to the suspension; or
- (b) the Customer commits persistent breaches of the Agreement, including in respect of the Acceptable Use Policy or Fair Use Policy;
- (c) the Customer is in breach of a licence, permit or authorisation relating to the use of or connection of equipment to the relevant access line, or the use of Services;
- (d) the Customer commits fraud in respect of the Services; or
- (e) a Force Majeure Event continues for more than 20 Business Days.

11.3 Each party must notify the other party immediately if any event referred to in clause 11.1(a) occurs or any step towards the occurrence of such event occurs.

12. Effects of termination

12.1 On expiry or termination of the Agreement:

- (a) the Customer's right to use the Services, Pipe IP and Confidential Information of Pipe ceases;
- (b) the Customer must promptly return, or at Pipe's written instruction, permanently delete or destroy any Pipe IP or Confidential Information of Pipe within its possession or control;
- (c) if Pipe requests, the Customer must immediately inform Pipe of the specific location of any Pipe Equipment;
- (d) the Customer must immediately cease using and return to Pipe the Pipe Equipment used in relation to the Services and, if the Customer does not comply, it must, subject to any usual security arrangements, permit, or procure permission for, Pipe to access the location at which that Pipe Equipment is situated at any time or times for the purpose of removing that Pipe Equipment;
- (e) the Customer must immediately pay to Pipe, without deduction or set off, all outstanding Charges and any other amounts payable to Pipe under the Agreement at the date of termination; and
- (f) Pipe will refund to the Customer the balance (if any) of any Charges or other money paid in advance to Pipe under the Agreement after deducting all amounts payable to Pipe under clause 12.1(e) above.

12.2 If:

- (a) the Services are terminated by the Customer or by Pipe due to Customer's breach of the Agreement; or
- (b) Pipe accepts a request by the Customer to downgrade the Services,

before the expiry of the applicable Minimum Service Period, then unless otherwise specified in this Agreement, the Customer must pay the Early Termination Charge for those Services in addition to any accrued charges. If an Order Form identifies any free service period, discount or other price break, the Early Termination Charge specified in the applicable Service Schedule will be increased by the amount the Customer saved from the usual Charges by reason of the free service period, discount, or other price break.

12.3 If the Customer requests an upgrade or downgrade to the Services, or to relocate the Services, and such request requires the termination and recontracting of the Services, then the Customer may qualify for a waiver or reduction of the Early Termination Charges. The Customer may contact its account manager for further information on whether any such waiver or reduction in Early Termination Charges applies.

12.4 The Customer will not be liable to make payment of an amount in whole or part satisfaction of the Early Termination Charge if the Customer was entitled to terminate the Agreement under clauses 8.3 or 11.1.

12.5 Termination of the Agreement does not affect the accrued rights or liabilities of either party nor does it affect the provisions which expressly or by implication are intended to operate after termination, including, without limitation clause 4.1; clause 14; and clause 16.

13. Force Majeure Event

13.1 Neither party will be liable to the other party for any failure to perform or delay in performance of any obligation under the Agreement caused by a Force Majeure Event (other than an obligation to pay money). Each party will provide notice of the date of commencement of a Force Majeure Event and the date of cessation of a Force Majeure Event.

14. Liability and indemnity

14.1 The Customer must take out and maintain during the term of the Agreement a valid and enforceable public liability insurance policy that provides coverage of at least \$20 million per occurrence and on

request by Pipe from time to time, promptly provide Pipe with a certificate of currency in respect of that policy.

14.2 To the maximum extent permitted by law, and subject to clauses 14.3 to 14.5:

- (a) each party excludes any liability to the other party for any indirect, special or consequential loss, costs, or damage (including, but not limited to, loss of profits, loss of revenue, loss of data, loss of bargain, damage to reputation and expectation loss) arising out of the Agreement, whether arising as a result of any act, omission or negligence or otherwise;
- (b) Pipe's sole liability to the Customer in respect of any failure to meet a Service Level is limited to the credit (if any) that the Customer is entitled to claim as a result of the Service Level failure, as specified in this Agreement;
- (c) unless otherwise specified in this Agreement or required under applicable law, Pipe is not liable to the Customer for any failure or delay in performing its obligations (including its Service Level obligations) to the extent such performance is prevented or delayed by an Excluded Event; and
- (d) each party's aggregate liability to the other party arising out of or in connection with this Agreement, whether based in contract, tort (including negligence) statutory duty or otherwise, is limited to the amount of Charges received by Pipe under the Agreement in the 12 month period immediately prior to the event or series of events giving rise to the liability.

14.3 Each party's liability under the Agreement is diminished to the extent that the other party's acts or omissions contribute to or cause the loss or liability.

14.4 Nothing in this clause 14 limits:

- (a) either party's liability to the other party for:
 - (i) claims relating to personal injury (including sickness, death or disability) directly resulting from its negligent acts or omissions under the Agreement; or
 - (ii) its wilful wrongdoing, or fraudulent acts or omissions; or
- (b) the Customer's liability to pay the Charges (including any Early Termination Charges).

14.5 Nothing in this Agreement limits, excludes or modifies any non-excludable guarantees the Customer may be entitled to under the ACL. If the goods or services Pipe supplies to the Customer under this Agreement are subject to a non-excludable guarantee under the ACL or any other applicable law, and the goods or services are not ordinarily acquired for personal, domestic or household use or consumption but have a price less than \$100,000, then pursuant to section 64A of the ACL, Pipe limits its liability for breach of any such non-excludable guarantee in respect of each of the goods and services to one or more of the following:

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

but only to the extent that the Customer is entitled to such remedies under the ACL. Other than the non-excludable guarantees noted above and any warranties expressly set out in this Agreement, Pipe

excludes all warranties, whether express or implied, statutory or otherwise, to the maximum extent permitted by Law.

15. Intellectual Property Rights

- 15.1** All Intellectual Property Rights in and to the Services, Pipe Equipment, Pipe Marks and any associated documentation or materials, including those in any copy, modification, enhancement, configuration, derivative work or other development of the Services, Pipe Equipment, Pipe Marks or any associated documentation or materials (**Pipe IP**), vests or remains vested (as applicable) in Pipe or its licensors.
- 15.2** Other than as expressly provided for in this Agreement, neither party receives any right, title or interest in or to any Intellectual Property Rights owned by the other party or its licensors.
- 15.3** If Pipe permits the Customer to access or use Pipe IP in connection with the Services, then such permission:
- (a) is strictly limited to the purpose of the Customer receiving and using the Services in accordance with this Agreement; and
 - (b) provided subject to the Customer's compliance with the licence terms (including third party licence terms) specified in the relevant Order Form or Service Schedule, and any further conditions notified by Pipe to the Customer from time to time in respect of the relevant Pipe IP.

16. Confidentiality

- 16.1** Each party acknowledges that the Confidential Information of the other party is confidential and secret and each party must preserve the confidential and secret nature of the other party's Confidential Information.
- 16.2** A party must not:
- (a) disclose or copy the other party's Confidential Information (including the terms and conditions of the Agreement) for any purpose other than as contemplated by the Agreement;
 - (b) make the other party's Confidential Information available to any third party, other than to its employees with a need to know the information to enable the Services to be used in the manner contemplated by the Agreement (but only to the extent that the employee needs to know), or
 - (c) use the other party's Confidential Information for any purpose other than as contemplated by the Agreement.
- 16.3** Neither party will:
- (a) use the name, logo, trade or service mark of the other party; or
 - (b) issue a press release, or make any public announcement, concerning the existence of, or any fact arising out of, or connected to, the Agreement or the other party,

without first having obtained the prior written consent of the other party. The Customer may not unreasonably withhold or delay its consent in response to any Pipe request to use the Customer's name, logo, trade or service mark in any press release, marketing activity or promotion to identify the Customer as having purchased Services.

17. Privacy

- 17.1** The Customer agrees that Pipe will Process Personal Information of the Customer, its personnel and end users, in accordance with the Pipe Privacy Policy, and that the Customer consents, and has given all notifications and obtained all consents from its personnel and end users, necessary for Pipe to Process such Personal Information in accordance with Privacy Law.

18. Disputes

- 18.1** Before resorting to external dispute resolution mechanisms, the parties must seek to resolve any dispute in relation to the Agreement by referring the matter to the respective chief executive officers of the parties or their nominees.
- 18.2** If the parties cannot resolve the dispute in accordance with clause 18.1 within 40 Business Days, either party may refer the dispute to mediation by the Australian Disputes Centre (ADC) for resolution in accordance with the Guidelines for Commercial Mediation of the ADC.
- 18.3** Nothing in this clause prevents a party from seeking interlocutory relief.

19. Modern Slavery

- 19.1** Pipe must take reasonable steps to:
- (a) establish appropriate systems and processes to ensure any risks or occurrences of Modern Slavery in its supply chains or any part of its business are identified, assessed and addressed; and
 - (b) notify the Customer as soon as reasonably practicable after it becomes aware of, or has a reasonable basis for suspecting, instances of Modern Slavery in its supply chains or any part of its business.
- 19.2** Pipe must provide reasonable assistance (including the provision of information and access to documents) that the Customer reasonably requires to enable the Customer to comply with its obligations under the *Modern Slavery Act 2018* (Cth).

20. Notices

- 20.1** For a notice under the Agreement to be effective, it must be:
- (a) in writing;
 - (b) addressed to the contact person of the other party; and
 - (c) personally delivered, or sent by prepaid post, to the address, or by email, to the address or email address stipulated for each party in the Order Form or last notified by each party to the other in writing.
- 20.2** A notice given in accordance with clause 20.1 is received:
- (a) if left at the recipient's address, on the date of delivery;
 - (b) if sent by prepaid post, five Business Days after the date of posting; and
 - (c) if sent by email, when the sender's email system generates an electronic delivery receipt confirming the successful transmission from the sender's mail server unless the sender receives an electronic notification that the transmission was unsuccessful.

21. General

- 21.1** Headings are for ease of reference only and not as an aid to interpretation.
- 21.2** The Customer may not assign or attempt to assign or otherwise transfer any right or obligation arising out of the Agreement without the written consent of Pipe (such consent not to be unreasonably withheld).
- 21.3** Pipe may assign its rights or, provided it is reasonably satisfied that the novatee has the ability to perform Pipe's obligations under the Agreement, novate its rights and obligations under the Agreement to a Related Body Corporate or to any purchaser of all or a substantial part of its business. The Customer consents to any assignment or novation by Pipe in accordance with this clause and, if

required by Pipe, the Customer agrees to enter into a novation deed in the form specified by Pipe to enable Pipe to formalise a novation of its rights and obligations under the Agreement.

- 21.4** Nothing in the Agreement or any circumstances associated with it or its performance give rise to any relationship of partnership, employer and employee or principal and agent between Pipe and the Customer.
- 21.5** Failure by either party to exercise or enforce any right conferred by the Agreement will not be deemed to be a waiver of any such right nor operate so as to bar the exercise or enforcement of the right or of any other right on any later occasion.
- 21.6** If part or all of any clause of the Agreement is illegal, invalid or unenforceable it will be read down to the extent necessary to ensure that it is not illegal, invalid or unenforceable or if this is not possible, the affected clause or part will be severed from the Agreement, the remaining provisions of the Agreement will continue to have full force and effect and the parties will attempt to replace that severed part with a legally acceptable alternative clause that meets the parties' original intention in relation to the subject matter severed.
- 21.7** The Agreement constitutes the entire agreement between the parties as to its subject matter and supersedes any prior understanding or agreement between the parties and any prior condition, warranty, indemnity or representation imposed, given or made by Pipe.
- 21.8** The Agreement is governed by the laws applicable in the State of New South Wales in the Commonwealth of Australia and each party irrevocably submits to the non-exclusive jurisdiction of the courts of that State.

DEFINITIONS

ACL means the Australian Consumer Law under Schedule 2 of the *Competition and Consumer Act 2010* (Cth).

ACMA means the Australian Communications & Media Authority.

Acceptable Use Policy means the acceptable use policy published on the Vocus website which may be modified from time to time provided that such modifications are reasonable.

Agreement means this agreement for the provision of the Services between Pipe and the Customer as described in clause 1.1.

Business Day means a day on which banks (as defined in the *Banking Act 1959* (Cth)) are open for general banking business in the location in which the Services are being provided, excluding Saturdays, Sundays and Public Holidays.

Business Hours means the hours between 9.00am and 7.00pm in Sydney on any Business Day.

Charges means the charges for the Services which are payable by the Customer in accordance with clause 6.

Confidential Information of a party means information (including the Agreement), know-how, ideas, concepts, and industrial knowledge, in whatever format, of that party, other than information which:

- (a) is generally available in the public domain without a breach of confidence or unauthorised disclosure by either party.
- (b) is lawfully disclosed by a third party without restriction on disclosure; or
- (c) is required by law or the Australian Stock Exchange to be disclosed.

Customer means the customer identified in the Order Form.

Customer Equipment means all equipment and facilities located on the Customer side of the Network Boundary Point other than Pipe Equipment used in connection with the Services.

Early Termination Charge means, in respect of the Services:

- (a) the amount payable by the Customer upon termination of the Services prior to the expiry of the applicable Minimum Service Period, as set out in the relevant Service Schedule; and
- (b) any amount that the Customer saved by reason of any free service period, discount or other price break, in respect of the Services.

Emergency means any event or circumstance which endangers or threatens to endanger the safety or health of any person, destroys or damages or threatens to destroy or damage the Pipe Network or any other personal or real property, or gives rise to or threatens to give rise to a cyber security incident in the Pipe Network.

Emergency Maintenance means maintenance required due to an Emergency and that requires prompt or immediate action to respond to the Emergency.

Excluded Event means one or more of the following circumstances that causes or prolongs an outage or degradation of the Services:

- (a) a Force Majeure Event;
- (b) Planned Outages and Emergency Maintenance;
- (c) an act or omission by the Customer or any user of the Services, including any failure of the Customer to provide Pipe with cooperation, assistance or information required under this Agreement;
- (d) Customer Equipment (other than as a result of Pipe's act or omission in respect of that Customer Equipment) or any power outage at the relevant Site;
- (e) Pipe's suspension of the Services under this Agreement due to the Customer's breach of this Agreement or actual or reasonably suspected fraud; or
- (f) in respect of the particular Services, any event or cause specified to be an "Excluded Event" in the Service Level Schedule or applicable Service Schedule.

Fair Use Policy means the fair use policy set out on the Vocus website, as modified from time to time.

Force Majeure Event means:

- (a) fire, flood, earthquake, elements of nature or act of God;
- (b) riot, civil disorder, rebellion or revolution; or
- (c) other matter outside of the reasonable control of the non-performing party,

but in each case only if, and to the extent that, the non-performing party is without fault in respect of the default or delay and the default or delay could not have been prevented by taking steps specifically required under the Agreement.

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

Intellectual Property Rights means all copyright, registered and unregistered trade marks, designs, all rights in relation to inventions or discoveries (including patent rights), semiconductor and circuit layout rights, trade names, confidential and other proprietary rights, and any other rights to registration of such rights whether created before or after the date of this Agreement, including all applications to register, renewals and extensions of these rights, both in Australia and throughout the world.

Invoice means an invoice rendered by Pipe to the Customer which records the Charges payable for the relevant Services.

Invoice Date means the date that an Invoice for the Charges is:

- (a) in the case of paper Invoices, printed by Pipe;
- (b) in the case of electronic Invoices, sent or made available by Pipe to the Customer by electronic means including by email or through an online portal.

IP Address means an internet protocol address.

Minimum Service Period of the Services means the minimum supply period or contract term (if any) specified in the Order Form from the Service Commencement Date.

Modern Slavery has the definition given to it in the *Modern Slavery Act 2018* (Cth).

Network Boundary Point means the point at which the Pipe Network which supplies the Services connects to:

- (a) equipment or cabling of the Customer; or
- (b) cabling of a third party where it is being used to convey the Services to Customer Equipment,

or, if Pipe fails to designate that point, the Network Boundary Point ascertained in accordance with or as defined in the Telecommunications Act.

Order Form or **Order** means a physical or online application for Services submitted by the Customer to Pipe whether described as an Order or an Order Form.

Order Withdrawal Charge means a charge that is the sum of:

- (a) all costs incurred by Pipe (or a Related Body Corporate) in respect of the Services being withdrawn by the Customer; and
- (b) all costs committed to by Pipe (or a Related Body Corporate) in respect of the Services being withdrawn by the Customer,

up to and including the date on which the Customer withdraws or cancels the order for the relevant Services or the Order in its entirety (as applicable), including any deemed withdrawal pursuant to clause 3.3.

Personal Information means information about an identified individual or an individual who is reasonably identifiable, including 'personal information' and 'personal data' as defined in applicable Privacy Law.

Pipe means Pipe Networks Pty Ltd (ABN 21 099 104 122) of Level 10, 452 Flinders Street, Melbourne, VIC 3000.

Pipe Equipment means equipment (if any) of Pipe, its Related Bodies Corporate and/or a supplier to Pipe located on the Site or other Customer premises (including premises leased by the Customer or co-location spaces licensed by the Customer) for the provision of the Service.

Pipe Marks means all trade marks, names, service marks, logos and other distinctive brand features owned or used by Pipe or its Related Bodies Corporate whether or not registered.

Pipe Network means a telecommunications network of Pipe and its Related Bodies Corporate.

Planned Outage means a period of time that Pipe may interrupt the supply of Services to the Customer for routine maintenance or up-grading or other similar processes, after giving the Customer 5 Business Days prior notice, which outage does not exceed the period of time specified in that notice.

Privacy Law means the *Privacy Act 1988* (Cth), and any other applicable law governing the Processing of Personal Information.

Process means to collect, store, use, copy, disclose or perform any other set of operations on Personal Information.

Related Body Corporate has the meaning given to it by sections 9 and 50 of the *Corporations Act 2001*.

Services means a service identified in, and to be delivered pursuant to, an Order Form and described in a Service Schedule.

Service Commencement Date of the Services means the date on which the Services are available for use by the Customer.



Service Level means the performance standards that applies to Services, as set out in the Service Level Schedule or applicable Service Schedule.

Service Level Schedule means the Pipe Service Level Schedule set out at <https://www.vocus.com.au/help-and-support/legal-contracts/pipe> or as otherwise agreed by the parties in writing.

Service Schedule is a Schedule that describes the Services that is supplied to the Customer pursuant to an Order Form, as set out or referenced in the relevant Order, or otherwise signed by the parties.

Site means the location at which the Services are to be supplied by Pipe.

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

Term or **Contract Term** means in respect of the Services, the period between the Service Commencement Date and the termination of the Services pursuant to the Agreement.