

VOCUS RESUPPLY TERMS SCHEDULE

(STANDARD TERMS AND CONDITIONS VERSION)

1. Definitions and Interpretation

1.1 Definitions

In these terms and conditions, unless the context otherwise requires:

Agreement means these terms and conditions, and its schedules and annexures and any Service Schedules and Service Orders.

Business Day means:

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

Charges means the fees payable by the Customer to Vocus for Services or Supplied Equipment provided by Vocus under this Agreement, including any Fixed Term Charge, Equipment Fee or Equipment Rental Fees.

Customer means the Customer described in the Service Order and any of its employees, subcontractors, agents and representatives.

End User means a person who acquires a service that is a resupplied version or a derived version of the Service supplied to the Customer by Vocus.

End User Details means all information about the End Users in the Customer's possession or control including, but not limited to, full name, billing address, street address and, if applicable, details of ordered and supplied Services.

Related Bodies Corporate has the meaning given to that expression in the Corporations Act.

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

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

Service Schedule means a schedule which can be found at <http://www.vocus.com.au/legal-contracts> setting out the specifications, system requirements and performance capabilities of a Service.

Service Order means an order in Vocus' standard written format for the provision of a Service, which includes details of the Initial Term and Charges for the Services provided, which has been agreed by Vocus.

Standard Terms and Conditions mean the Standard Terms and Conditions between Vocus and the Customer governing the general terms and conditions on which Services are provided under this Service Schedule and any applicable Service Order from time to time, available on the Vocus website at <http://www.vocus.com.au/legal-contracts>.

Supplied Equipment means the equipment which Vocus will be supplying to the Customer as requested in the Service Order and otherwise in a format directed by Vocus.

Supplier means a Carrier, service, telecommunications service provider, a wholesale supplier of telecommunications services, software licensor or provider, equipment supplier, lessor or other supplier who Vocus uses from time to time in order to supply the Service to the Customer;

Third Party Software means any software that Vocus uses or makes available to the Customer in connection with the Service.

Vocus means Vocus Pty Ltd (ACN 127 842 853).

Vocus Infrastructure means any items, equipment owned or used by Vocus including computer hardware and software and any telecommunication network, equipment, facilities or cabling owned, controlled or utilised by Vocus including, without limitation, Vocus Equipment.

1.2 Interpretation

Headings are for convenience only and do not affect interpretation.

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

- (a) the singular includes the plural and conversely;
- (b) a gender includes all genders;

- (c) a reference to a person includes a body corporate, an unincorporated body, enterprise, firm, trust, joint venture, syndicate or other entity and conversely;
- (d) a reference to a clause or schedule is to a clause of or schedule to this agreement;
- (e) a reference to any party to this agreement or any other agreement or document includes the party's successors and permitted assigns;
- (f) a reference to any legislation or to any provision of any legislation includes any amendment, consolidation or replacement of it, and all regulations and statutory instruments issued under it;
- (g) a reference to conduct includes, without limitation, any omission, statement or undertaking, whether or not in writing;
- (h) a reference to a party is a party to this agreement or any person who executes a deed of accession to this agreement;
- (i) terms defined in the Corporations Act have the same meaning in this agreement, unless the context expresses otherwise;
- (j) if any payment by a party under this agreement is due on a day which is not a Business Day, the due date will be the next Business Day in the same calendar month or, if none, the preceding Business Day;
- (k) where 'include' or any form of that word is used, it must be construed as if it were followed by "(without being limited to)"; and

if an obligation must be performed by 2 or more persons it binds them jointly and individually.

RESUPPLY TERMS

2. Standard Terms And Conditions applies

- 2.1 This Vocus Resupply Terms Schedule is subject to the Standard Terms and Conditions between Vocus and the Customer.

3. Resupply

- 3.1 Customer who resupplies

In addition to the clauses above, clauses 3 to 5 apply to Customers who resupply the Services.

4. Security Deposit and Credit Checks

4.1 Payment of Deposit

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

4.2 Payment of Security Deposit

If required under clause 4.1, the Customer must pay the Security Deposit to Vocus within 5 Business Days of the date of the notice. In addition to any other rights available to it under this Agreement, Vocus may terminate or suspend a Service if the Customer fails to pay the Security Deposit within the time required under this clause.

4.3 Use of Security Deposit

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

4.4 Reinstatement of Security Deposit

If Vocus deducts any monies from the Security Deposit under clause 4.3 the Customer must pay Vocus on demand by way of additional security that amount to replace the amount of the Security Deposit used in accordance with clause 4.2.

4.5 Return of Security Deposit

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

4.6 Credit reference check

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

5. End Users

5.1 Customer obligations

- (a) The Customer warrants and represents that it has the experience, capacity and resources to carry out its obligations under

this Agreement, including providing support to End Users with a high level of professionalism and in a timely and efficient manner.

(b) The Customer must:

- (i) only use the Services for its own internal business use or to supply services to End Users using in whole or in part, the Services;
- (ii) ensure that it has obtained consent from the End User:
 - (A) to disclose the End User Details to Vocus and the relevant Supplier; and
 - (B) for Vocus and the relevant Supplier to use the End User Details to the extent necessary or desirable in connection with the supply of the Services;
- (iii) provide and manage all services provided to an End User including billing and collection of payments;
- (iv) manage the relationship between the Customer and its End Users including (without limitation) providing technical support to the End Users and ensure that End Users do not contact Vocus;
- (v) use its best endeavours to:
 - (A) maintain facilities and staff sufficient to provide the support services to the End Users; and
 - (B) immediately notify Vocus of any defect in any of the Services of which it become aware;
- (vi) comply and take reasonable steps to ensure that all of its personnel comply at all times with any current operations manual issued by Vocus and any other reasonable directions given by Vocus from time to time in relation to the promotion, sale and use of the Services;
- (vii) not:
 - (A) bring Vocus' reputation or brand into disrepute; or
 - (B) compromise the integrity

or security of the Vocus Infrastructure or any of Vocus' customers; and

- (viii) cease using any of Vocus' branding including its name and logo on termination of these Standard Terms and Conditions, a Service Schedule or Service Order whichever is applicable.

5.2 Customer Acknowledgment

The Customer acknowledges that:

- (a) it must not make any representation or give any warranty in relation to any Service that is inconsistent with written materials supplied by Vocus for that purpose other than as expressly authorised in writing by Vocus.
- (b) the supply of Services to the Customer pursuant to the terms of this Agreement is non-exclusive. Vocus is free to supply the Services or procure the supply of the Services to other parties on terms and conditions as Vocus sees fit; and Vocus may promote and sell, or appoint other resellers to promote and sell, the Services from time to time.

5.3 End User liability

- (a) The Customer is solely liable for any dispute raised by any End Users in relation to the provision of any Services by the Customer to those End Users. Other than as expressly provided in this Agreement, Vocus disclaims any liability which may arise either on the part of the Customer or an End User as a result of the use of a Service by an End User or any related or ancillary claim, and the Customer indemnifies Vocus in respect of any liability so incurred.
- (b) The Customer also indemnifies Vocus in respect of all losses, damages, liability, claims and expenses incurred (including but not limited to reasonable legal costs and defence or settlement costs) arising as a result of any claim or demand by any persons relating to the resupply of the Services to End Users, including a claim or demand by an End User.

5.4 Branding and use of Name

The Customer must not use Vocus' logo or refer to Vocus except:

- (a) with Vocus' prior written consent; and

- (b) in accordance with any directions or guidelines provided by Vocus.

5.5 Third Party Software

The Customer acknowledges and agrees on its own behalf and on behalf of its End Users that it will comply with clause **Error! Reference source not found.** except that the Customer may rent the Third Party Software to its End Users.

6. Insurance

- 6.1 Customer to obtain and maintain insurance
- (a) The Customer must take out and maintain valid and enforceable insurance policies with reputable insurers relating to:
- (i) Public liability insurance for not less than \$20 million per event and unlimited in aggregate; and
 - (ii) Professional indemnity insurance for not less than \$20 million per event and in aggregate.
- (b) The Customer must provide to Vocus upon Vocus' request, certificates of currency from its insurers certifying that the Customer complies with the requirements of clause 6.1(a).
- (c) If the Customer fails to effect or maintain the insurances specified in clause 6.1(a), Vocus may effect and keep in force the insurance policies and the cost of the insurance will be immediately due and payable by the Customer to Vocus.

7. Declared services

- (a) Where this Agreement specifies terms of supply (including charges) for a declared service (as given meaning by section 152AL of the *Competition and Consumer Act 2010* (Cth) (**Declared Service**) then, unless expressly stated:
- (i) those specified terms of supply are all of the terms on which Vocus will supply that Declared Service for the purposes of Part XIC of the *Competition and Consumer Act 2010* (Cth); and
 - (ii) the provisions of any access determination or binding rules of conduct made or issued by the ACCC under Part XIC of the *Competition and Consumer Act*

2010 (Cth) relating to that Declared Service are to be taken as inconsistent with this Agreement.

ADDITIONAL TERMS TO APPLY WHERE SERVICES ARE PROVIDED IN INDONESIA

8. Customer representation and warranty

- 8.1 The Customer represents and warrants that it:
- (a) is a non-resident for Indonesian tax purposes; and
 - (b) does not operate as a PMA ("Penanaman Modal Asing") company, PMDN ("Penanaman Modal Dalam Negeri") company, branch or representative office in Indonesia.
- 8.2 The Customer must immediately notify Vocus if the Customer becomes a resident for Indonesian tax purposes at any time and Vocus has the right to terminate this Agreement in accordance with clause 37 of the Vocus Standard Terms and Conditions with immediate effect, and may advise the Customer of an alternative arrangement for the Service. Where the Customer does not enter into an alternative arrangement as advised by Vocus, in addition to the other consequences of termination set out in the Agreement, the Customer is liable to pay an early termination fee as set out in clause 36 of the Vocus Standard Terms and Conditions.
- 8.3 The Customer acknowledges that Vocus and its Related Bodies Corporate have relied upon such representations and warranties in entering into this Agreement.

9. Customer's Related Bodies Corporate

- 9.1 The Customer acknowledges and agrees that where Vocus supplies Services to the Customer in Indonesia, the Customer must purchase those Services directly from Vocus pursuant to a Service Order and the

Customer will be invoiced in respect of those Services.

10. The Customer agrees that it must not use a Related Bodies Corporate to contract with Vocus for Services supplied in Indonesia.

11. Equipment rental

- 11.1 The Customer acknowledges and agrees that Vocus does not supply the Supplied

Equipment (if any) to the Customer in Indonesia on a rental basis. The parties agree that clauses 17,18 and 39(b) of the Vocus Standard Terms and Conditions will be deemed to read as if all references to rental of Supplied Equipment are deleted, in respect only of Services supplied in Indonesia.