

## **VOIPEX ADSL TERMS & CONDITIONS**

**It is recommended to you read these terms carefully to ensure that you understand them.**

**These terms can be changed at any time. However, we endeavour to issue at least 14 days notice where possible if we consider that the changes will adversely affect you.**

### **1 Obligations**

1.1 We will provide you with the Service and will use reasonable care in doing so. To assist us in providing you with the Service, there are certain undertakings that we need to ask you to do. They are that you:

- (a) comply with the Acceptable Use Policy. You should read the Acceptable Use Policy and should only accept this Agreement if you agree to be bound by it;
- (b) not use, attempt to use or allow others to use the Service in a way that, in VoIPex's reasonable opinion, significantly interferes with other customers' use or enjoyment of the Service or interferes with our efficient or proper operation of the Service (to avoid doubt, a high level of usage on an unlimited downloads plan will not, by itself, be a breach of this clause);
- (c) pay all fees and charges associated with your use of the Service, in accordance with clause 2;
- (d) make sure you keep your account information, password, data and Equipment secure;
- (e) regularly check the default email address that we have allocated to you for messages about your Service;
- (f) ensure that any Additional Users comply with the Acceptable Use Policy; and

1.2 There are certain undertakings that, despite our best efforts, we cannot guarantee or provide in relation to the Service. This means you acknowledge each of the following:

- (a) We will use reasonable care and skill in providing the Service and will provide the Service in accordance with this Agreement. However, given the nature of telecommunications systems (including the Service's reliance on systems and services not owned or controlled by us), we cannot promise that the Service will be continuous, accessible at all times or fault-free.
- (b) We do not provide detailed information about your usage of your Service (for example, information about what sites you visited and when).
- (c) We do not have to monitor use of the Service, whether by you or anyone else. If we do so, we can stop the monitoring at any time. We may monitor use of the Service to see whether you are complying with the Acceptable Use Policy or to investigate a breach (or suspected breach) of that policy. However, we are not under any obligation to enforce the Acceptable Use Policy or any other policy that applies to anyone using services that we provide to them.
- (d) Where you provide your own wireless PC connection device, you are responsible for any loss caused by an unauthorised interception of your Service..
- (e) We are not responsible for any loss caused by equipment provided by someone other than us.

1.3 The ADSL Service connects via a fixed telephone line and it is important for you to understand that an ADSL Service can sometimes affect the fixed telephone line. If your Service is an ADSL Service, we ask that you:

- (a) warrant that:
  - (i) you are the legal lessee of the standard fixed telephone service connected to VoIPex's network to which your Service will be connected (the "relevant telephone service"); or
  - (ii) if you are not the legal lessee of the relevant telephone service, you have obtained the legal lessee's permission to connect the Service;
- (b) acknowledge that:
  - (i) if the relevant telephone service is disconnected, your Service will be disconnected (and this Agreement will be terminated), in which case you may have to pay us the Cancellation Fee;
  - (ii) the installation of your Service may cause minor disruptions to the relevant telephone service;
  - (iii) you may experience minor disruptions to your Service if the relevant telephone service is transferred to another carriage service provider; and
  - (iv) you may not be able to access some other products and services that are incompatible with your Service.

### **2 Charges**

2.1 With this Service, you are responsible for paying the charges set out in the Order Form (as amended from time to time in accordance with clause 4.2) for your selected pricing plan, starting from your Service Commencement Date and by the date specified on the invoice - even if the charges have been incurred by a person using your Service

without your authorisation.

2.2 All monthly charges are payable in advance. Other charges that are payable by you as set out in the Order Form are payable by the due date specified on the invoice. We process and issue invoices for the Service at the beginning of each month.

2.3 If you choose to provide us with your credit card details for the purposes of paying for your Service, we may:

- (a) charge all charges to your credit card on a monthly basis at the beginning of each month;
- (b) disclose your credit card details to, and obtain information from, any financial institution or credit card issuer to verify the credit card details;
- (c) take steps to verify that there is sufficient credit on your credit card account to meet likely charges; and
- (d) charge any Cancellation Fee payable under clauses 1.3(b), 3, 4 or 7 to your credit card immediately on notice of termination.

### 3 Agreement

#### Commencement

3.1 We ask you to note that this Agreement commences on the following dates:

- (a) If you complete an online Application Form, on the date you submit the Application Form; or
- (b) If you sign an Application Form, on the date you sign the Application Form; or
- (c) If you apply in circumstances other than those set out in (a) or (b) above and:
  - (i) the Material Terms are read to you, the Material Terms commence on the date you accept them and the remainder of this Agreement commences:
    - (A) if you request professional installation, on the date a VoIPex technician gives you a copy of this Agreement and asks you to sign it (this will usually happen when the technician installs your Service); or
    - (B) if you elect to self-install, on the date you install the Service; or
  - (ii) if the Material Terms are not read to you, this Agreement commences:
    - (A) if you request professional installation, on the date a VoIPex technician gives you a copy of this Agreement and asks you to sign it (this will usually happen when the technician installs your Service); or
    - (B) if you elect to self-install, on the date you install the Service.

#### Your right to terminate this Agreement

3.2 We understand that, at some stage, you may no longer wish to continue with your Service for a number of reasons. You may terminate this Agreement at any time by notifying VoIPex in writing 30 days prior to the date of termination. However, subject to clause 3.4, if you terminate this Agreement before the end of your Contract Term, you must pay us the Cancellation Fee.

#### Our right to terminate or suspend this Agreement

3.3 We may terminate your Service if:

- (a) you are in breach of this Agreement (you will be in serious breach if you breach your obligation to pay our charges for the Service, breach the Acceptable Use Policy or breach clauses 1.1 (c), 1.1(e), 1.1(h), 1.1(i), of this Agreement); and
- (b) we have notified you in writing of your breach and you have failed to remedy the breach within 14 days of our notice (if the breach can be remedied). If the breach is something which cannot be remedied, we may immediately terminate your Service with notice to you. Engaging in conduct that breaches the Acceptable Use Policy or breaching clauses 1.1(e), 1.1(h), 1.1(i), of this Agreement are breaches that are not capable of remedy.

3.4 If we cancel your Service under clause 3.5 during your Contract Term, you must pay us the Cancellation Fee.

3.5 We may suspend the Service to you during the 14 day period before we terminate your Service under clause 3.3. If we do suspend your Service, we will reimburse any monthly fees (pro-rated if necessary) that you paid during the suspension.

3.6 If we terminate the Service for any reason, you must still pay us for any charges incurred before the cancellation.

3.7 We may also terminate the Service at any time after the expiry of your Contract Term by giving you 14 days prior

written notice.

Your rights to terminate or suspend

3.8 You may terminate the Service if:

(a) we are in breach of this Agreement (we will be in serious breach if we breach our obligation to use reasonable care and skill in providing the Service and our obligations under clause 4.2); and  
(b) you have notified us in writing of our breach and we have failed to remedy the breach within 30 days of your notice (if the breach can be remedied). If the breach is something which cannot be remedied, you may immediately terminate your Service with notice to us.

3.9 At certain times, we need to perform maintenance on our networks to keep providing a high performing service to you. This means that we may sometimes need to suspend your Service if it is necessary for the purpose of maintenance, integrity or restoration of VolPex's networks. If we need to suspend your Service under this clause, we will give you as much notice as we reasonably can in the circumstances and we will endeavour to ensure that the suspension is for as short a period as is reasonably possible.

3.12 Unfortunately, we cannot control some external events that may affect our provision of the Service to you. If a Regulatory Event occurs, we may not be able to continue providing the Service to you at all or may not be able to provide it on the same terms as set out in this Agreement. If this happens, we will give you as much notice as we reasonably can and we may need to terminate this Agreement. You will not pay any Cancellation Fee if your Service is terminated under this clause.

3.13 Exercise of our rights under clauses 3.12 and 3.13 does not affect your Contract Term.

The effect of termination

3.15 If we terminate this Agreement under clause 3.3 and, at your request, we later agree to provide you with the Service again, you may need to pay us a reconnection fee set out in the Order Form.

3.16 From time to time, we need to be able to change these terms to reflect our changing business. We can change this Agreement (including the Order Form and any prices or the Acceptable Use Policy) in accordance with this clause.

3.17 We must give you at least 30 days' prior notice of the change, unless:

(a) we need to make the change immediately in order to act legally or the change results from changes in the law. If this is the case, we will give you as much notice as we reasonably can; or  
(b) the change will benefit you. If this is the case, we can make the change and without giving you notice.

3.18 If we make a change to this Agreement during your Contract Term and the change means that you are materially worse off (and does not fall within clause 3.17(a)), you may terminate this Agreement by giving us notice within 30 days of the date we notify you of the change. If you terminate your Agreement, you will not have to pay us the Cancellation Fee and the Agreement will be terminated from the date the change takes effect.

3.19 If we make a change to this Agreement after the expiration of your Contract Term and you do not accept the change, you may cancel this Agreement by giving us notice. The Agreement will be terminated from the date the change takes effect.

3.20 If you do not notify us of your decision to terminate this Agreement under clause 3.18 or 3.19 and continue using the Service from the date on which the change comes into effect, you will be taken to have agreed to the change.

## **4 Liability**

Our liability to you

4.1 This contract is made up of the terms that are expressly set out in this contract and those implied by laws that cannot be excluded by us. No other terms apply.

4.2 If you are a Residential Customer, clauses 4.3, 4.4, 4.5 and 4.11 apply to you.

4.3 We accept our liability to you if we breach this Agreement or act negligently under the principles applied by the courts, except for as set out in clauses 4.4 and 4.5.

4.4 As you have taken up the Service predominately for personal, domestic or household use, we do not accept liability for any business related losses that result from the use of the Service. However, we will accept that liability if it cannot be excluded under any legislation.

4.5 We are not liable for any loss to the extent that it is caused by you, for example, through your negligence or breach of this Agreement.

4.6 If you are a Business Customer, clauses 4.7, 4.8, 4.9, 4.10 and 4.11 apply to you.

4.7 Subject to clause 4.8, where the price of the Service does not exceed \$40,000 or the Service is of a kind ordinarily acquired for personal, domestic or household use or consumption, we accept liability for direct loss caused by:

- (a) our failure to provide the Service with due care and skill;
- (b) any goods or materials supplied in connection with the Service not being reasonably fit for the purpose for which they are supplied; and
- (c) our breach of a condition or warranty that is implied into this Agreement by the Trade Practices Act, provided that you have mitigated the direct loss to the extent possible. We are not liable for any loss to the extent that it is caused by you, for example, through your negligence or breach of this Agreement.

4.8 To the extent (if any) that the Service is not of a kind ordinarily acquired for personal, domestic or household use (and provided it is fair and reasonable to do so), our liability under clause 4.7 is limited to, at our option:

- (a) resupplying or paying for the costs of having the services resupplied, if the liability relates to services; or
- (b) repairing the goods or refunding the purchase price of the goods, if the liability relates to goods (including for example, Equipment).

4.9 To the extent permitted by law, we exclude all liability to you for any indirect or consequential loss arising from or relating to this agreement (including your use of the Service) including:

- (a) any loss of profits or loss of business (whether direct, indirect, anticipated or otherwise); or
- (b) any loss you may suffer as a result of any faults or interruptions in your Service, or
- (c) any loss caused by any use made of the Service (including any content that is sent, received, viewed or hosted using the Service).

Your liability to us

4.10 You are liable to us if you breach this Agreement or act negligently under the principles applied by the courts. However, you are not liable for any loss we suffer to the extent that it is caused by us, for example, through our negligence or breach of this Agreement.

## 5 Information

5.1 Information concerning you will be held in a database. The database will contain your name, address, telephone numbers, bank account or credit card details, billing details, information relating to the provision and use of the Service, and information provided by you in connection with this Agreement or the Service.

5.2 This information (other than bank account and credit card details) may be used:

- (a) to enable us to perform our obligations to you under this Agreement, including to provide the Service;
- (b) to enable us to ensure that you perform your obligations under this Agreement;

5.3 In addition to our other rights under this clause 13, we may give Credit Information about you to a credit reporting agency to:

- (a) obtain a consumer credit report about you; or

(b) allow the credit reporting agency to create or maintain a credit information file containing information about you.

5.4 In addition to our other rights under this clause 6, we may (in accordance with the Privacy Act 1988):

- (a) obtain and use information concerning your commercial activities and commercial credit worthiness from a credit reporting agency or other business that reports on commercial credit worthiness to assess your application for the Service (if the application is for consumer credit) or the collect overdue payments;
- (b) obtain or use a consumer credit report about you from a credit reporting agency to assess your application for the Service (if it is for commercial credit) or collect overdue payments; and
- (c) disclose information about you to other credit providers or obtain and use information from other credit providers for the purposes of assessing your application for the Service, your ongoing credit worthiness or the status of any account held by you with us or with any other credit provider.

5.5 We may send out regular newsletters to you via email. The newsletter will contain information relating to the Service and may also contain information about VolPex and/or new products and services offered by VolPex that may be of interest or benefit to you. VolPex's newsletter will not contain any advertising, marketing or promotional material for other parts of VolPex or for third party suppliers.

5.6 You consent to the collection, use and disclosure of information as set out in this clause 6.

## **6 Taxes**

6.1 The charges in the Order Form may not include all taxes. You must pay us any applicable taxes that we include as part of your invoice for the Service. Applicable taxes may include any stamp and other duties, fees, taxes (including GST) and charges relating to your purchase of any Equipment, this Agreement or the performance of this Agreement, and any other transaction arising out of this Agreement.

6.2 GST may be imposed on a supply we make to you under this Agreement. Unless the consideration payable for the supply is expressed to include GST you must pay us an additional amount to cover the GST. We will issue a Tax Invoice to you for any supply on which GST is imposed. GST may be imposed on a supply we make to you under this Agreement. Unless the consideration payable for the supply is expressed to include GST, you must pay us an additional amount to cover the GST. We will issue a Tax Invoice to you for any supply on which GST is imposed.

6.3 In this clause 15, "GST" and "Tax Invoice" have the same meaning as in the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

## **7 Other**

7.1 Neither party waives any of its rights under this Agreement merely because it does not exercise them, or there is a delay in our exercising them.

7.2 This Agreement is governed by the laws of the Australian State or Territory in which you are connected to the Service.

7.3 Clauses 5, 6 survive termination of this Agreement (regardless of any other clauses that may survive termination).

7.4 If we need to notify you of any matters relating to the Agreement we ask, and you agree, that we may use post, fax, or email to the default email address we allocated to you. If we do use email, you will be taken to have received the email if the email leaves our servers, unless we receive evidence to the contrary.

7.5 If you acquire the Service through a channel partner or reseller, we ask you to acknowledge that:

- (a) the channel partner or reseller may act as our agent for the purposes of receiving a copy of this Agreement signed by you and providing it to us; and that
- (b) the Service is provided by us and not by the channel partner or reseller.

## **9 Glossary**

Words in this Agreement with initial capital letters (eg Acceptable Use Policy) have defined meanings, as follows:

"Acceptable Use Policy" means

our policy about the acceptable levels and methods of use of the VoIPex ADSL Service.

"Additional Services" means  
Additional Users, applications and enhanced speed.

"Additional User" means  
a person (other than you) whom you nominate and we authorise to access the VoIPex ADSL Service through your modem.

"Agreement" means  
these terms and conditions and the terms contained on your Application Form.

"Application Form" means:  
the application form you sign or if you apply through a channel partner or reseller, the application form you ask the channel partner or reseller to complete.

"VoIPex Service" and "Service" mean  
the ADSL service we provide from the Equipment to the internet, including:  
(a) access to the world wide web, VoIPex web hosting services, electronic mail service and newsgroups;  
(b) the ability to upload and download files to and from the global internet using the file transfer protocol;  
(c) access to Telnet and native and HTTP access to global gopher services; and  
(d) other services we may advise to you from time to time.

"Business Customer" means  
a customer who is not a Residential Customer.

"Cancellation Fee" means  
the cancellation fee set out in the Order Form.

"Contract Term" means  
the period you nominated on the Application Form and starting on the Service Commencement Date.

"Credit Information" means:  
(a) identity particulars (name, address, and date of birth);  
(b) your application for credit or commercial credit, including the amount applied for;  
(c) the fact we are a current credit provider to you;  
(d) payments which are overdue by more than 60 days and for which debt collection has commenced;  
(e) advice that payments are no longer overdue in respect of a default which has been listed;  
(f) information that you have committed a credit infringement.

"Maintenance Period" means:  
(a) for new Equipment that we provide to you, the longer of:  
(i) your Contract Term;  
(ii) 12 months from the date on which we deliver the Equipment to you; or  
(b) for new Equipment that you order from us after the commencement of this Agreement, 12 months from the date we provide the Equipment to you.

"Order Form" means  
the charges and features that apply to your Service (as amended from time to time).

"Premises" means  
the location or building to which the Service will be provided and the land at that location or on which the building stands.

"Regulatory Event" means:  
(a) a determination or notice issued by the Australian Competition and Consumer Commission; or  
(b) a determination by any court; or  
(c) a determination by us that, in our opinion, on reasonable grounds and acting in good faith, the supply of the VoIPex Service, the terms of this Agreement or any action taken or required to be taken in accordance with this Agreement contravenes or may contravene any applicable law including, without limitation, the Telecommunications Act 1997 (Cth) or the Trade Practices Act 1974 (Cth).

"Residential Customer" means  
a customer who takes up the Service predominantly to use for personal, household or domestic use or consumption.

"You" and  
"Your" (with or without initial capital letters) means  
the person named as the customer on the Application Form.

"We",  
"Our", and  
"Us" means  
VoIPex Pty Limited (ABN 44 102 443 532) and its employees; as well as its channel partners, resellers and their respective employees.