

Standard Form of Agreement: VoIP Service Description

Contact Vonex Telecom

If you have any concerns or queries, you may contact us as follows:

By Telephone	Customer Service Trading Hours: Monday – Friday: 7:00 a.m. – 7.00 p.m. Saturday 10am -4pm (AEDST) Contact Number: 1800 828 668
Non English Speaking Customers	Translating and Interpreting Service (TIS) Contact Number: 131450
Communication, Speech or Hearing Impairments	National Relay Service Contact Number: 133 677
Postal Contact	Customer Service Manager PO Box 1448 Milton Qld 4064
Email	helpdesk@vonex.com.au

Introduction

The Standard Form of Agreement: VoIP Service Description sets out the terms and conditions of the Service, relating specifically to the VoIP Service. To the extent of any inconsistency, the Standard Form of Agreement: General Terms shall prevail over the relevant Service Description.

These customer terms and conditions (agreement) between *Vonex Telecom* and the Customer commence upon the date of acceptance by *Vonex Telecom* of an Application Form;

The Standard Form of Agreement: VoIP Service Description has been partitioned into 11 sections:

Section One:	The Service
Section Two:	Charges and Billing
Section Three:	Service Features
Section Four:	Miscellaneous
Section Five:	Suspension and Termination of Service
Section Six:	Hardware
Section Seven:	Warranties
Section Eight:	Indemnity
Section Nine:	Liability
Section Ten:	Force Majeure
Section Eleven:	Resolution of Disputes

These customer terms and conditions (agreement) between *Vonex Telecom* and the Customer commence upon the date of acceptance by *Vonex Telecom* of your signed application form.

IMPORTANT: This agreement must be read in conjunction with any other relevant SFOA Service Descriptions where required.

Section One – The Service

You agree to acquire the Service from *Vonex Telecom*, on these Standard Form of Agreement: VoIP Service Description, Standard Form of Agreement: General Terms, and any other terms and conditions, ancillary or necessary that are to be read in conjunction with Standard Form of Agreement: VoIP Service Agreement.

To the extent of any inconsistencies, the Standard Form of Agreement: General Terms shall prevail. To the extent of any inconsistencies between the relevant Service Descriptions, the Standard Form of Agreement: VoIP Service Description shall prevail when contextualised, particularly with regard to matters relating to VoIP Telephony.

It should be noted that the *Vonex Telecom* IP Voice product does not offer priority assistance to customers with life threatening medical conditions. If the Customer requires a service which includes priority assistance for a life threatening medical condition, such a direct PSTN service is available from *Vonex Telecom* but must be ordered separately.

1.1 Reselling the Service

- a) The Customer must not resell any part of the Service or use the Service to provide a service to any third party.
- b) If a customer is found to be reselling service, *Vonex Telecom* may terminate the service with customer.

1.2 Tampering with the Services

The Customer must not hack or disrupt the Service or make any use of the Service that is inconsistent with its intended use or purpose or attempt to do so.

1.3 Credit checks

Vonex Telecom may require the Customer to undergo a credit check prior to *Vonex Telecom* providing the Customer with a Service. *Vonex Telecom* may refuse to supply a Service to the Customer if the Customer fails such credit check or *Vonex Telecom* considers the Customer represents a credit risk.

1.4 Payment by direct debit

- a) If the Customer has provided to *Vonex Telecom* a written authority authorising *Vonex Telecom* to direct debit the Customer's nominated account, or credit card, the Customer consents to *Vonex Telecom* directly debiting the Customer's nominated account on the relevant date any amount due at that time. The Due Date is 4 days after the issuing of the bill. If any amount payable by the Customer to *Vonex Telecom* is not paid by or on the date then *Vonex Telecom* may immediately suspend its provision of the Service and the Support Services until the amounts outstanding are paid to *Vonex Telecom*.
- b) The Customer must keep *Vonex Telecom* informed of any change to the details of its nominated account and, where relevant, credit card.
- c) If a direct debit fails or is rejected, we reserve the right to pass on any charges that we may incur due to the failure or rejection.

1.5 The Customer warrants to *Vonex Telecom* that:

- a) its nominated account can accept direct debits; and
- b) on the date payment is due under this agreement; there are sufficient cleared funds in the nominated account to make the direct debit payment.

The Customer must notify *Vonex Telecom* in advance if the nominated account is to be transferred or closed.

1.6 Payment dispute

If the Customer disputes that an amount invoiced by *Vonex Telecom* under this agreement is payable, the Customer must:

- a) notify *Vonex Telecom* of the dispute within 14 days of the date *Vonex Telecom* issued the invoice; and
- b) pay to *Vonex Telecom* any invoiced amounts that are not in dispute.

If it is determined that the disputed amount is payable by the Customer, the Customer must immediately pay to *Vonex Telecom* the disputed amount.

1.7 Costs incurred in Recovery of Overdue Amounts:

If we incur costs in recovering overdue amounts from you, including (without limitation) mercantile agents' costs, disconnection of services costs, costs incurred in commencing legal action such as service fees and search fees, we reserve the right to recover these amounts from you in addition to the overdue amounts.

1.8 Voice Calls

All timed voice calls are charged in one minute blocks unless otherwise specified.

a) Local and National Calls

Make calls using the Service to PSTN telephone Services with a Geographical Number throughout Australia. Where these calls are included in your plan fee and are not charged.

b) Calls to Australian Mobiles

Make calls using the Service to Australian mobile telephone Services with an appropriate Mobile Telephone Number registered to any Australian mobile telecommunications network. Connected calls with a duration of one or more seconds will be charged at the advised rate. Irrespective of when a call is made, the standard call rate remains constant. Call charges include GST and are rounded up to the nearest whole cent on individual calls. All Mobile calls are timed unless otherwise specified.

c) Calls to International Destinations

Make calls using the Service to an international fixed line, International Special Service or mobile International telephone Services. You will be charged for all connected International calls. Calls rates vary by destination and call type. Connected calls with a duration of one or more seconds will be charged at the advised rate. All International calls are timed unless otherwise specified. Call charges include GST and are rounded up to the nearest whole cent on individual calls. Prior to making calls, we recommend that you ascertain what kind of service you are calling e.g. International mobile, special service, landline etc.

Please be advised that calls will be mapped to international destinations by *Vonex Telecom's* underlying carriers. We bear no responsibility for the methods used by our underlying carriers in mapping international calls e.g. calls made to disputed international territories will be mapped in a manner that would see calls terminate in different zoning units. Accordingly, *Vonex Telecom* makes no guarantee that calls will be mapped to destinations according to your expectations. *Vonex Telecom* does not guarantee that you will be able to make successful calls to every valid telecommunications number as *Vonex Telecom* does not operate every aspect of the telephone network used to provide the Service to you.

Furthermore, *Vonex Telecom* may bar calls to certain International Destinations if calls pose a real threat to the *Vonex Telecom* network, our customers or national security e.g. some international destinations are known for hacking, for customers protection we have barred these destinations. A security PIN may be issued to customers to enable international dialling as further protection from fraudulent use.

All costs charged by our underlying carriers will be passed onto you appropriately.

You will be responsible for all charges for all Services used on your account, whether the use was by you or by another person, with or without your permission.

To place call restrictions against International Calls, please contact *Vonex Telecom* Customers Service on 1800 828 668.

Please be advised that Mobile to International Service Interconnectivity is not supported by *Vonex Telecom*. If you call an Australian Mobile Service to interconnect to an International Destinations you will be affected.

PLEASE NOTE – International Call rates may be subject to change due to carrier charge changes.

1.9 Special Services

Make calls using the Service to Special Service Numbers throughout Australia. Connected calls with a duration of one or more seconds will be charged at the advised rate. Irrespective of when a call is made, the standard call rate remains constant. Call charges include GST and are rounded up to the nearest whole cent on individual calls. Rates vary by call type and destination. Please note that certain Special Service Calls cannot be made over the *Vonex Telecom* network.

Service Calls Type	Associated Charges
1221 International Faults & Service Difficulties	Not available for use
1222 Call costs and enquiries (national & international) service	Not available for use
1225 International directory assistance service	\$1.00 per minute with \$1.20 flagfall (GST inc.)
1234 Sensis	Not available for use
1223 Directory Assistance	\$0.66 (GST inc.) fixed fee per call
125 xx, 125 xxx, 125 xxxx Operator service	Not available for use
012 and 013 Operator service	Not available for use
124xx, 124 xxx, 124 xxxx Operator service	Not available for use
12711 Pre-selection verification service	Not available for use
13xx xxx xxx service	Refer to applicable rate sheet
13x xxx service	Refer to applicable rate sheet
1345 xxxx service	Not available for use
1800 service	Free of <i>Vonex Telecom</i> charges
1900 Premium rate service	Not available for use
Australian Mobile to International Interconnect	Not available for use
Back to base alarms	Not available for use
EFTPOS systems	Not available for use
Fax services	Not available for use

1.10 *Vonex Telecom* to *Vonex Telecom* Calls

Make calls using the Service to other numbers connected on the *Vonex Telecom* Network. All calls from one *Vonex Telecom* IP Voice Service to another *Vonex Telecom* IP Voice Service are free of any call charges.

1.11 Emergency Service Calls

a) When you dial '000' from the *Vonex Telecom* Service, you will be connected to Emergency Services. **IT IS IMPERATIVE THAT YOU UNDERSTAND THAT THE VONEX TELECOM SERVICE CANNOT BE UTILISED IF THERE IS A POWER OUTAGE, WHEN YOUR INTERNET CONNECTION IS INTERRUPTED OR IF THE HARDWARE YOU ARE USING TO ACCESS THE SERVICE IS IN ANY WAY FLAWED OR A TERMINATION OF THE SERVICE IN ACCORDANCE WITH THE TERMS OF THIS AGREEMENT; OR ANY OTHER SERVICE OUTAGE**

We recommend that you have an alternative telecommunications service such as a cellular, fixed line or satellite telephone connection to contact Emergency Services in the event of the unforeseen.

b) IT IS ILLEGAL FOR YOU TO RELOCATE THE SERVICE FROM ONE DESTINATION TO ANOTHER. Accordingly you must advise *Vonex Telecom* of any changes to your personal and address details so that Emergency Service Calls are connected correctly.

1.12 Value Added Services

Value Added Services are additional features available to you at no cost, unless otherwise specified. For more information on the use of these features, please contact *Vonex Telecom* on 1800 828 668. Access to and use of these features may vary depending on the hardware and software you use.

Value Added Services	Associated Charges
<p>Voicemail</p> <p>You can have voice messages left on your <i>Vonex Telecom</i> service.</p> <p>When a message has been left you will receive an electronic voicemail notification, which is sent to your registered e-mail address.</p>	<p>This service may attract a monthly fee depending on your plan</p>
<p>Call Waiting</p> <p>The call waiting feature allows you to switch between calls.</p> <p>While you are on a call, the call waiting tone will advise you of an incoming call waiting to be answered.</p>	<p>This feature does not attract charges</p>
<p>Caller Number Display (CND)</p> <p>Identify an incoming caller by the phone number before you answer the call. If you do not wish to speak to a caller, whose CND is not displayed, you may block your phone from these Anonymous callers.</p> <p>When making a call, your phone number will be displayed to the person you are dialling, provided they have access to CND. You may control the display of your phone number by either blocking your number for all calls or on a call-by-call basis.</p>	<p>This feature does not attract charges.</p>
<p>Unlisted Number</p> <p>The customer can choose to have their number listed or unlisted in the white pages directory.</p>	<p>This feature does not attract charges.</p>
<p>Call Forwarding</p> <p>This service diverts/forwards incoming calls to another phone number connected to any service provider.</p>	<p>Standard <i>Vonex Telecom</i> call rates apply for forwarded calls that connect.</p>
<p>Call Barring</p> <p>This service allows you to place a bar (call restrictions) on all incoming and outgoing calls.</p> <p><i>Vonex Telecom</i> may also initiate call barring for administration or account management purposes.</p>	<p>This feature does not attract charges.</p>

For call barring enquires contact Customer Service.	
<p>Partial Barring</p> <p>This service allows you to individually bar outgoing calls only for International, Mobile and National calls.</p> <p>For partial barring enquires contact Customer Service on 1800 828 668.</p>	This feature does not attract charges.
<p>Three Way Calling</p> <p>While engaging in an active call, you can originate a call to a third party and have a Three-Way, conference style, conversation.</p>	The feature itself does not attract a <i>Vonex Telecom</i> charge. Connected calls will be charged in accordance with your chosen pricing plan.
<p>Turbo Dialling</p> <p>When making a call, you can speed up the time taken to dial a phone number.</p>	The feature itself does not attract a <i>Vonex Telecom</i> charge. Connected calls will be charged in accordance with your chosen pricing plan.
<p>Call Return</p> <p>Call Return allows you to automatically dial the last callers' number providing their number has not been CLI blocked.</p>	<p>The feature itself does not attract an <i>Vonex Telecom</i> charge.</p> <p>Connected calls will be charged in accordance with your chosen pricing plan.</p>
<p>Twinning your Mobile</p> <p>Allow your business phone extension to be auto forwarded to your mobile on each call. Allowing you to answer your office extension on you mobile if out of the office.</p>	Standard rates apply for calls to Mobile on each call answered on the mobile. Or a monthly fee applies. See your plan rate sheet.
<p>Conference 'Room'</p> <p>Allows for instant conference calls to be set up in your conference room any time any day with no expensive set up or rates.</p>	Monthly charge of \$10 for the service. Standard call costs apply for calls to the conference 'room'.

Section Two - Charges and Tariffs

Plans are located in the annexure at the end of this document for individual rate plans.

- a) Details pertaining to the Pricing Plans are also available at www.vonex.com.au. We reserve the right to make changes to or close Pricing Plans at our discretion. Any Pricing Plan change that may be detrimental to the customer will be communicated via email to the customers nominated email address a minimum of 21 days before becoming effective.
- b) Certain untimed calls are subject to the Fair Use Policy, available at www.vonex.com.au.
- c) Certain plans have included calls. If in any month, you have not made an amount of calls equal to the free or included call allowance per month the balance of the free or included calls will not be carried forward to the next month. You will forfeit those calls during each monthly billing cycle.
- d) If your chosen plan states that there is a certain amount of free or included calls per month; in addition to charging you the Monthly Service fee, we will charge you for any calls you make that month in excess of the free calls per month, applicable to your chosen plan.
- e) You agree that only standard calls qualify as free or included calls per month, except where your plan states that other call types may also qualify.
- f) If, in any month, you have not made an amount of calls equal to the free or included call allowance per month the balance of the free or included calls per month will not be carried forward to the next month. You will forfeit those calls during each monthly billing cycle.

2.1 Charges

Except in the period for which the Customer has made an Advance Payment in accordance with clause 2.2 below, *Vonex Telecom* will invoice the Customer:

- a) Plan Fees are charged monthly in advance for all Recurring Charges; and
- b) as and when incurred, for all Additional Charges and any other charges.

2.1.1 In the event that the Customer's use of the Service in a particular month is lower than the Included Volume of Calls, when payment is made under clause 2.2 below, the Customer will not be entitled to:

- a) a refund of any Recurring Charges; or
- b) make use of any unused volume of the Included Volume of Calls in the following month.

The Customer must make all payments under this agreement in Australian currency, without any set-off, counter-claim, deduction or withholding.

2.2 Advance Payment of Charges

If the Application Form specifies that Advance Payments apply, the Customer will pay the Advance Payments to *Vonex Telecom* in accordance with this agreement.

Notwithstanding any Advance Payments made by the Customer to *Vonex Telecom*, the Customer must pay *Vonex Telecom* for all Additional Charges and any other charges incurred by it as and when incurred.

2.3 Rounding

Vonex Telecom may round up to the nearest minute calls made by the Customer using the Service.

2.4 Variations to the Charges

Vonex Telecom may at any time vary the Charges by providing the Customer with not less than 21 days notice.

2.5 Electronic invoices

- a) *Vonex Telecom* will provide the Customer with monthly electronic invoices.
- b) *Vonex Telecom* will not provide the Customer with a paper invoice except where the Customer agrees to pay a reasonable charge, as notified by *Vonex Telecom* to the Customer.

Section Three – Service Features

Vonex Telecom will endeavour to provide the Service in accordance with the relevant Service Description but may change some elements of the Service Description at any time for operational or network planning reasons. *Vonex Telecom* will use its reasonable endeavours to ensure that such changes do not adversely impact your use of the Service.

3.1 Access

In order to access the Service, you:

- a) will need a broadband connection;
- b) may need extra hardware depending on your broadband set up e.g. router, Analogue Telephone Adapter.

When installing the Service, *Vonex Telecom* accepts no responsibility for damage to any hardware provided by *Vonex Telecom* or the customer's personal property. *Vonex Telecom* limits that liability as we provide you with a user/installation guide and offer technical support.

Please note that *Vonex Telecom* will only offer full technical support for the IP Voice aspect of any hardware dispatched, even if that hardware has additional functions (e.g. If the hardware is a IP Voice / Wireless Router, *Vonex Telecom* will not guarantee support for the Wireless configuration of the router). You accept this as a term of the Service.

You may purchase equipment from *Vonex Telecom* for use with the Service. The manufacturer's warranty in any such equipment and title to that equipment passes to you when you pay for it. Risk in that equipment passes to you on delivery.

3.2 Call Termination

You are responsible for ensuring all calls that you or another person (with or without your consent) initiates on the *Vonex Telecom* Network are terminated.

3.4 Firmware

You accept that from time to time the manufacturers of the IP handsets will release and send new versions of firmware to hardware provided by *Vonex Telecom*. These releases may have an effect on your data usage. If any changes to the firmware have an effect on the hardware provided by *Vonex Telecom*, there may be a fee for re-configuring the hardware.

3.5 Firewall and Security Requirements

Vonex Telecom will not accept liability for any change, or consequence that may occur as a result of changes, to firewalls or other security devices, which may be required to use the *Vonex Telecom* service.

3.6 Required Ports

Use of the *Vonex Telecom* Service may require you to open/forward UDP ports in your firewall or other security devices. This is to allow communication of the SIP protocol and voice traffic.

Vonex Telecom can supply the complete port settings upon request. Port settings may change from time to time; *Vonex Telecom* will notify customers via email if these settings change.

3.7 Data Usage

At the default codecs (G711a or G.729 codec) the IP Voice hardware use an average of approximately 200 – 300 KB per min. Higher rate codec's will increase the data usage of using the *Vonex Telecom* service. Throughout the day the IP Voice hardware will contact the network for various reasons using approximately 100 – 200 KB per day.

IMPORTANT - Various factors can influence the data usage levels using the *Vonex Telecom* service, the above figures provide only general guidance as to expected bandwidth usage.

3.8 Data Allowance

Your ISP may classify your use of the *Vonex Telecom* Service as data usage and this may attract separate charges from your Internet Service Provider, particularly if your broadband quota is limited. You are responsible of contacting your Internet Service Provider for details and charges and to ensure that you are on a suitable broadband plan for use with the *Vonex Telecom* Service.

3.9 Bandwidth, Broadband Speeds and Broadband Type

A high speed broadband internet connection is recommended as a minimum. The Service is not supported on wireless, satellite or mobile broadband connections.

3.10 External Interruptions

As the Service is dependent on the broadband networks of other carriers over which we have no control, certain features of the Service may not be available and we do not guarantee the quality and reliability of the Service.

Other factors such as third party hardware and or software may interrupt your *Vonex Telecom* Service for which *Vonex Telecom* takes no responsibility.

Vonex Telecom will not be liable to provide the Service to you if it becomes impracticable to do so because of any cause beyond *Vonex Telecom's* reasonable control, including without limitation force majeure acts, civil disorder or war, national or local emergency, adverse weather conditions, industrial dispute or acts or omissions of other carriers or carriage service providers or any authority.

Section Four – Miscellaneous

4.1 Direct -in-dial (DID) numbers

Vonex Telecom will provide the Customer with one DID number per User extension. Additional DID numbers may be purchased by the Customer from *Vonex Telecom* for an additional charge, as advised by *Vonex Telecom* from time to time.

The Customer does not own any DID numbers.

The Customer must return all DID numbers to *Vonex Telecom* upon expiration or termination of this agreement, unless porting arrangements have been made between the parties.

4.2 Geographic numbering

Vonex Telecom will allocate numbers to the Customer in accordance with the Telecommunications Numbering Plan 1997 (Numbering Plan). *Vonex Telecom* will allocate to the Customer ten digit telephone numbers that are representative of the Customer's geographical location (Numbers). The Customer has a right to use the Numbers in accordance with applicable Communications Alliance codes.

The Customer is not the owner of the Numbers. The Customer's right to use the Numbers will terminate upon the termination or expiry of this agreement, unless the Numbers are ported to another service provider. *Vonex Telecom* will comply with the Numbering Plan and may alter or replace any Number as a result of compliance with the Numbering Plan or in order to comply with any direction given by the ACMA.

The Numbering Plan stipulates that a geographic number must not be used except in connection with the supply of a local service corresponding to that geographic number and, therefore, geographic numbers should only be used from their allocated geographic area. For example, you are not permitted to use a Melbourne number in Sydney.

Vonex Telecom may agree with you to reserve a number for future use for an agreed period of time. During this time *Vonex Telecom* will not issue this number to another party. *Vonex Telecom* is under no obligation to accept a customer's request for a specific number.

Vonex Telecom does not offer full Number portability and therefore cannot port your number out of the *Vonex Telecom* Network in all cases.

Once a service has been disconnected the number will be quarantined for a specified period and the account holder will no longer have Right of Use of that number.

Vonex Telecom will comply with National Numbering Plan and reserves the right to alter or replace any number as a result of compliance with the National Numbering Plan or with any direction from the ACMA. *Vonex Telecom* will notify the customer of any numbering change affecting the customer as soon as practical.

Information about your Rights of Use is available at www.acma.gov.au.

4.3 IPND (Integrated Public Number Database)

Vonex Telecom, like other carriage service providers, is required by law to supply the Customer's name, address, phone number and certain other details to the IPND Manager for inclusion in the IPND. The IPND is maintained by the IPND Manager and *Vonex Telecom* has no liability to the Customer in connection with any breach by the IPND Manager of its obligations in relation to the IPND, including any publication or disclosure by the IPND Manager of IPND data in public number directories contrary to any instructions given by the Customer to *Vonex Telecom*.

4.4 Porting Numbers

If, on termination or expiry of this agreement, the Customer requests that *Vonex Telecom* port the Number used by the Customer to another service provider, *Vonex Telecom* will port that Number in accordance with the requirements of any applicable Communications Alliance codes.

If the Customer makes such a request, the Customer appoints *Vonex Telecom* as its agent for the purposes of completing any form authorising the porting of the number on the Customer's behalf. It may not always be technically feasible for *Vonex Telecom* to port a Number.

4.5 Transfer of Voice Data

While we will exercise due care and skill in providing the Service, you agree that your ability to use the Service to access, use or send voice data will depend upon the features and functionality of your hardware. You are responsible for any reliance on the voice data sent or received. *Vonex Telecom* does not encrypt or code your voice data.

Changing Tariffs or Pricing Plans.

Vonex Telecom will permit you to change your choice of Pricing Plan once a month. Your Pricing Plan will be changed at the start your next billing cycle after *Vonex Telecom* receives your request. To change Pricing Plans contact Customer Service on 1800 828 668.

The matters referred to in this paragraph may be agreed verbally or in writing between you and *Vonex Telecom* and will be binding on you as at the date of the verbal or written agreement.

4.6 Special Promotions

Vonex Telecom may run special promotions or offers from time to time in connection with the Service under which particular charges may be waived or may differ from those set out in the Description of Service

Features and Charges. You may be eligible to participate in a special promotion or offer depending on its terms and conditions. *Vonex Telecom* may withdraw a promotion at any time. Unless otherwise specified or agreed to by *Vonex Telecom*, promotions may not be used in conjunction with one another.

4.7 High Usage

High usage is randomly monitored by *Vonex Telecom*. At our discretion we may impose a High usage alert at any point in time. If *Vonex Telecom* deem your usage as high, we may suspend or restrict the Service (or any part of the Service) until you pay either the next invoice we send you or you pay an agreed amount of monies toward the un-invoiced charges.

4.8 Service Distinction

You acknowledge and understand that the Service is not a PSTN (Public Switched Telephone Network), which refers a telephone system based on copper wires carrying analogue voice data. There are important distinctions that exist between a PSTN service and the Voice Over Internet Protocol Service offering provided by *Vonex Telecom* – namely that the Service offered by *Vonex Telecom* transfers packets of data over your Internet connection.

4.9 Customer Service Guarantee Waiver

Not applicable.

4.10 Fair Use Policy

- a) *Vonex Telecom* offers a number of plans that are covered by the Fair Use Policy.
- b) *Vonex Telecom* may vary the terms of the Fair Use Policy from time to time and the Customer must comply with the current version of the Fair Use Policy.
- c) The Fair Use Policy is designed to protect the quality and integrity of *Vonex Telecom's* network and applies to plans that incorporate 'included' calls as part of the plan.

4.10.1 Fair Use

- a) Reasonable Business Use: Any of *Vonex Telecom* Service Plans that offer 'included' calls are for reasonable business use of Customer only. Such use shall not include certain activities including, but not limited to, any of the following ("Reasonable Business Use"):
 - a) Autodialing, continuous or extensive call forwarding, use of virtual extensions for regular business use, continuous connectivity, fax broadcast, fax blasting, telemarketing (including without limitation charitable or political solicitation or polling), call centre operations, junk faxing, fax spamming, calling/faxing any person (through the use of distribution lists or otherwise) who has not given specific permission to be included in such a process or any other activity that would be inconsistent with reasonable business usage.
 - b) Any other use resulting in improper usage patterns, including but not limited to dialling patterns wherein the Customer's inbound or outbound minutes exceeds 80% of the aggregate usage and/or average minutes per seat are in excess of 90% of all *Vonex Telecom* customers.
- b) If *Vonex Telecom* determines, in its sole discretion, that Customer is not using the included plans for Reasonable Business Use, *Vonex Telecom* reserves the right to immediately-
 - (a) charge the credit card of Customer for the current per-minute rate for any usage determined to be outside of Reasonable Business Use and
 - (b) t to terminate or modify the terms of the Product for that Customer.

To review *Vonex Telecom's* Fair Use Policy, refer to our website

4.11 Fraudulent use of the Service

The Customer must notify *Vonex Telecom* immediately if the Customer becomes aware at any time that the Service is being fraudulently used or accessed by a third party and until such time as *Vonex Telecom* receives a notice from the Customer, the Customer will be liable for all use of the Service and corresponding Charges.

4.12 Intellectual Property

Vonex Telecom is the owner or licensor of the Intellectual Property Rights in the Service, Hardware, information, documents and other materials used by *Vonex Telecom* to provide the Service.

Nothing in this agreement gives any Intellectual Property Rights in any materials to the Customer.

The Customer must not reverse compile, disassemble, reverse engineer or otherwise attempt to derive the source code of any firmware or software provided in connection with the Service.

4.13 Collection of Personal Information

In order for *Vonex Telecom* to comply with its obligations under this agreement, *Vonex Telecom* may from time to time collect Personal Information from the Customer, including the Personal Information of Users.

The Customer must provide all required notices to and obtain all necessary consents from all Users to permit *Vonex Telecom* to collect, use and disclose the Personal Information of such Users for the purposes of this agreement.

4.14 Consents

The Customer consents, and must procure the consent of its Users, to *Vonex Telecom*'s collection, use and disclosure of the Personal Information collected from the Customer for purposes including:

- a) assessing creditworthiness;
- b) all purposes associated with the provision of any Services;
- c) billing the Customer, which may be provided from a location in another country and involve the transfer of Personal Information to such other country;
- d) the provision of Support Services, which may be provided from a location in another country and involve the transfer of Personal Information to such other country;
- e) assisting law enforcement agencies in relation to the enforcement of criminal and other laws;
- f) assisting in internal investigations conducted by *Vonex Telecom* into suspected fraud, misuse of any Services or other unlawful activities; and
- g) complying with applicable Laws.

4.15 Compliance with Privacy Laws

Vonex Telecom will comply with the Privacy Laws when dealing with the Personal Information of the Customer and its Users.

Section Five – Suspension and Termination of the Service

Please be advised that your Service may be suspended or terminated in accordance with the Standard Form of Agreement: General Terms and every care will be taken to undertake these activities with due process. Although *Vonex Telecom* will endeavour to give as much notice as reasonably practicable, *Vonex Telecom* may suspend the Service at any time.

5.1 Suspension for High Usage

Vonex Telecom randomly monitors high usage. At our discretion we may suspend the Service (or any part of the Service) until you pay the next invoice or incurred call charges.

We may suspend or limit the Service if in our opinion the amount of Charges incurred is unusually high, having regard to matters including:

- a. Your previous daily Charges;
- b. Your un-invoiced Charges total;
- c. Any unusual calling use patterns; and
- d. Breach of *Vonex Telecom*'s Fair Use Policy.

Suspension for unusually high charges is to protect you against unaffordable charges incurred. *Vonex Telecom* will attempt to contact you prior to suspension of the service.

5.2 Immediate suspension, limitation and termination in our absolute discretion.

Although we will try to give you as much notice as is reasonably practicable, we may, if we choose (and without notice) immediately:

- a) Suspend or limit the Service (or any feature of it) for any period we think is reasonably necessary; or
- b) Terminate this Agreement, if:

- i. You fail to pay us the Charges or are in breach of this Agreement for some reason other than those set out elsewhere in this Section, and where such breach can be corrected, you fail to correct the breach within 7 days of us requesting you to do so;
- ii. We believe that: the use of the Service (or any feature of it) by you or any other person is or might damage, impair or interfere with the *Vonex Telecom* Network or any of our other systems or equipment;
- iii. The Service (or any feature of it) is being used to commit unauthorised, criminal or unlawful activities;
- iv. If *Vonex Telecom* becomes aware of unauthorised equipment being used on our network, we will issue you with a formal written warning to discontinue use and remove the equipment. If you do not comply with this request, *Vonex Telecom* will take steps to immediately disconnect you from the network.

You will be responsible for any costs incurred in:

- a) Becoming Insolvent; or if you are a partnership, the partnership ceases; or
- b) We believe that: the use of the Service (or any feature of it) by you or any other person is or might damage, impair or interfere with the *Vonex Telecom* Network or any of our other systems or equipment;
- c) The Service (or any feature of it) is being used to commit unauthorised, criminal or unlawful activities;
- d) The Service (or any feature of it) is being used by you or another person in a manner which is unusual, unreasonable, excessive or fraudulent;
- e) You have engaged in fraudulent activities in relation to the Service (or any feature of it); or
- f) You are, or are operating as a Carriage Service Provider or Carrier;
- g) Immediate suspension, limitation and termination on instruction of certain third parties or for technical problems

Although we will try to give you as much notice as is reasonably practicable, we may, if we so choose (and without notice) immediately:

- a) Suspend or limit the Service (or any feature of it) for any period we think is reasonably necessary; or
- b) Terminate this Agreement, if we are required to do so by, a regulatory authority such as the ACMA or a law enforcement agency, we are obliged to do so on the request of a Content Provider there are technical problems with the *Vonex Telecom* Network, which require corrective action by us.

5.3 Your right to terminate this Agreement

You may terminate this Agreement by giving us 30 days notice by contacting us on 1800 828 668 between 8am - 7pm AEST, on any Business Day. We will debit your nominated payment service (e.g. Credit Card) for all Charges you incur (including the Monthly Service fee) up until the point of termination. Termination will take place on your next designated invoice issue date (anniversary date). If any calls are made and are not billed on your latest invoice, you may receive a final invoice with calls made after the request for the termination of your Service. You will be required to pay for these calls after termination.

Customers who wish to disconnect their services during the 30 Day Trial Period offered will have this done immediately.

5.4 Consequences of Suspension

If we suspend or limit the Service, you will be barred from using the Service until we un-bar the Service. We will continue to charge you, and you must pay us, the Monthly Service Fee in respect of the period during which we have suspended or limited the Service (or any feature of it).

Section Six - Hardware

The Customer must not alter or reconfigure the Hardware, change the electronic serial number or equipment identifier of the Hardware or perform a factory reset of the Hardware, without the written consent of *Vonex Telecom*.

6.1 Delivery

- a) *Vonex Telecom* will deliver the IP Handsets to the Customer as specified in the Application Form - Delivery Location.
- b) Unless otherwise agreed to, the Customer is responsible for the cost of delivery of the IP Handsets.
- c) Any time and date of delivery specified by *Vonex Telecom* is an estimate only and *Vonex Telecom* will not be liable in any way for any failure or delay in delivery or for any Loss resulting from any failure or delay in delivery of the Hardware.
- d) The Customer agrees to accept delivery of the Hardware during normal business hours or at such other times as are agreed between *Vonex Telecom* and the Customer.

6.2 Title

- a) Title to the Hardware remains with *Vonex Telecom* until the goods has been fully paid for.
- b) The customer must not purport to charge or encumber the Hardware in any way or sell, grant or otherwise give any security interest in the Hardware until such time as the goods have been paid for in full and title has been transferred to the Customer.

6.3 Risk

Risk of loss or damage to the Hardware passes from *Vonex Telecom* to the Customer on delivery of the Hardware to the Delivery Location.

6.4 Condition and use of Hardware

- a) The Customer must use the Hardware in accordance with any documentation, instructions or specifications provided by *Vonex Telecom* or the manufacturer of the Hardware.
- b) *Vonex Telecom* will only supply Hardware which is in good working condition.

6.5 Manufacturer warranties

- a) *Vonex Telecom* will use reasonable commercial endeavours to assign to the Customer, to the extent that it is lawfully and/or contractually able to do so, the benefit of any warranties given to *Vonex Telecom* by the manufacturer of any Hardware supplied by *Vonex Telecom* to the Customer.
- b) To the extent permitted by law, *Vonex Telecom* will not provide the Customer with any warranties in relation to the Hardware other than those expressly set out in this agreement.

6.6 Repair or replacement of Hardware

- a) To the extent permitted by law, if the Hardware contains a defect or fault *Vonex Telecom* will either repair or replace such Hardware (in its discretion) if:
 - i. the defect or fault arises within twelve (12) months from the Commencement Date; and
 - ii. the cause of the defect or fault is not a cause specified in clause 6.6(b).
- b) To the extent permitted by law, *Vonex Telecom* is under no obligation to repair or replace Hardware that contains a defect or fault where:
 - i. the Hardware has been incorrectly set up or used;
 - ii. the Hardware has been damaged as a result of a failure by the Customer to perform and maintain the Hardware in accordance with any instruction manual provided by *Vonex Telecom* or the manufacturer;
 - iii. the defect or fault is a result of normal wear and tear;
 - iv. damage to the Hardware was caused by incorrect adjustment or use by the Customer; or
 - v. damage to the Hardware was caused by abuse, misuse, improper or abnormal usage or repairs not authorised by *Vonex Telecom*.

6.7 Return of Hardware

- a) The Customer must return the Hardware to *Vonex Telecom* at the place specified by *Vonex Telecom*, upon notice in writing by *Vonex Telecom* to the Customer;
- b) The Customer must ensure that the Hardware is returned to *Vonex Telecom* in good working condition, subject to normal wear and tear and in its original packaging, with all cables and instruction manuals.
- c) The Customer is responsible for paying any freight charges in connection with the return of the Hardware to *Vonex Telecom*.

- d) If the Customer does not return the Hardware to *Vonex Telecom* in accordance with clause 6.7(b), *Vonex Telecom* may by notice to the Customer, declare the Hardware to be lost *Vonex Telecom* may recover from the Customer, as compensation for its loss, an amount equal to the Market Value of the Hardware

6.8 Locked Hardware

If the Hardware is locked and programmed to work only with the Service, the Customer must not unlock the Hardware.

6.9 BYO hardware

- a) The Customer may not use its own or any third party hardware to access the Service.
- b) The Customer's ability to access the Service will be contingent upon the functionality of the Customer's hardware and *Vonex Telecom* does not represent or warrant that any hardware included in *Vonex Telecom*'s list of authorised hardware will be fully compatible with the Service.

6.10 Hardware Advertising

The customers agree that where and when available that *Vonex Telecom* may from time to time promote products and services on the screen of their handset.

Section Seven - Warranties

7.1 Mutual warranties

Each party represents and warrants to the other party that:

- a) its execution of this agreement has been properly authorised;
- b) this agreement constitutes a legal, valid and binding obligation on it; and
- c) this agreement does not conflict with or result in the breach of or default under any provision of its constitution or any provision of any law to which it is subject.

7.2 Warranties excluded

Subject to any condition, warranty or right implied by the Trade Practices Act 1974 or any other law which cannot lawfully be excluded:

- a) *Vonex Telecom* gives no warranties, whether in relation to service standards, reliability, availability or otherwise, and the Customer has no other rights, apart from those expressly set out in this agreement; and
- b) all implied conditions, warranties and rights are excluded.

7.3 Statutory warranties

Where any condition, warranty or right is implied by law and cannot lawfully be excluded, *Vonex Telecom* limits its liability for breach of that implied condition, warranty or right:

- a) subject to the qualifications in section 68A of the Trade Practices Act 1974 or any other law:
- b) in connection with the supply of goods, to any one or more of the following (as *Vonex Telecom* may determine):
- c) the replacement of the goods or the supply of equivalent goods;
- d) the repair of the goods;
- e) the payment of the costs of replacing the goods or of acquiring equivalent goods; or
- f) the payment of the costs of having the goods repaired; and
- g) in connection with the supply of services, to one of the following (as *Vonex Telecom* may determine):
- h) the supplying of the services again; or
- i) the payment of the costs of having the services supplied again; and
- j) otherwise, to the extent permitted by law.

Section Eight - Indemnity

The Customer must indemnify *Vonex Telecom* in respect of any Loss incurred by *Vonex Telecom*, directly or indirectly, in connection with:

- a) any breach by the Customer of any provision of this agreement;
- b) any fraudulent act or omission of the Customer or its Users;
- c) any negligent act or omission of the Customer or its Users in connection with this agreement.

The Customer's liability to indemnify *Vonex Telecom* will be reduced proportionally to the extent that any of *Vonex Telecom*'s acts or omissions contributed to the Loss.

Section Nine – Liability

9.1 Indirect loss

Subject to clause 9.2, and despite any implication arising from any other provision of this agreement, *Vonex Telecom* will not be liable to the Customer in contract, in tort (including negligence), under any statute (to the extent permitted by law) or otherwise for, or in respect of, any:

- a) indirect or consequential loss or damage; or
- b) loss of profits, sales, turnover, reputation (or damage to it), production, anticipated savings, goodwill, business opportunities, customers, software or data, whether of a direct, indirect or consequential nature, suffered by the Customer or any other person in connection with this agreement.

9.2 Liability cap

Subject to this clause and despite any implication arising from any other provision of this agreement, the total liability of *Vonex Telecom* in contract, in tort (including negligence), under statute (to the extent permitted by law) or otherwise for, or in respect of, any direct loss or damage arising out of any breach or other act or omission of *Vonex Telecom* in connection with this agreement will not exceed one month of Recurring Charges.

Section Ten – Force Majeure

10.1 No liability

A party is not liable for any failure to observe its obligations under this agreement where such failure is wholly or substantially due to a Force Majeure Event, provided that the party seeking to rely on the benefit of this clause:

- a) as soon as reasonably practicable, notifies the other party of the extent to which it is unable to perform its obligations; and
- b) uses its best endeavours to mitigate the adverse effects of the Force Majeure Event and perform its obligations under this agreement as quickly as possible.

10.2 Termination

Where a Force Majeure Event prevents a party from performing a material obligation under this agreement for a period in excess of 30 days, the other party may by notice terminate this agreement, which will be effective immediately, unless otherwise stated in the notice.

Section Eleven – Resolution of Disputes

11.1 No litigation

- a) Subject to clause 11.1(b), unless a party has complied with clause 11.2, that party may not commence litigation or arbitration relating to any dispute arising from this agreement except where that party seeks urgent interlocutory relief, in which case that party need not comply with this clause before seeking the relief.
- b) This clause 11 does not exclude or limit the ability of a party to refer any dispute to the Telecommunications Industry Ombudsman.

11.2 Notice

A party claiming that a dispute has arisen in connection with this agreement (first party) must give notice to the other party designating, as its representative in negotiations relating to the dispute, a person with authority to settle the dispute and the other party must, within 10 days of receipt of the notice, give notice to the first party and each other party acknowledging the dispute and designating a corresponding representative for itself.