



SIP Trunk Services - Terms and Conditions

These Terms and Conditions apply to the provision of SIP Trunk services to a Customer by **ViTIC Pty Ltd** ACN 646 196 027 (**ViTIC**).

1 Definitions

1.1 Definitions

In these Terms & Conditions the following words have the following meanings:

- (a) **Agreement** means the agreement between ViTIC and the Customer described in clause 2.1.
- (b) **Activation Date** means the date on which ViTIC commences supplying that Service to the Customer, as indicated in the Application.
- (c) **Application** means an application for service document (in a form approved by ViTIC) completed in full and signed by a party wishing to be supplied with Services by ViTIC.
- (d) **Carrier** means a telecommunications carrier licensed under the Telecommunications Act 1997 (Cth) as a general carrier or a public mobile telecommunications carrier.
- (e) **Customer** means entity that agrees to purchase one or more Services from ViTIC named as the customer in the Application or any user or customer accessing the Services for any reason.
- (f) **Customer Internet Connection** has the meaning given in clause 5.4.
- (g) **Customer Infrastructure** means the customer-provided service or equipment that the SIP Trunk service will be connected to and is external to the **Service**.
- (h) **Fees** means the fees described in clause 14.
- (i) **Force Majeure Event** means any circumstance beyond the control of ViTIC including:
 - (j) Internet access failure caused by, amongst other things, any third party action that results in denial of service or access;
 - (ii) any regulation, law, restriction, action or inaction of any governmental agency;
 - (iii) industrial action or labour disturbance;
 - (iv) interruption, suspension or cancellation of any telecommunications service provider;
 - (v) any act of God, act of nature, pandemic, requirement or restriction of governmental authorities, inability or delay in the grant of governmental or other approvals, consents, permits, licences or authorities; and

- (vi) any act or omission of a third party which affects the provision of the Service.
- (i) **Fixed Initial Term** means the fixed initial term for which the Customer has agreed to purchase the Service, as set out in the Application.
- (j) **Intellectual Property** includes any copyright, design, patent, trademark, logo, circuit layout owned and or used by ViTIC (and whether registered, unregistered or applied for) used in connection with the Service, trade, business, company or domain name, knowhow, techniques, methods, inventions, processes, confidential information, manuals or practices used in connection with the Service; and any other proprietary, licence or personal rights arising from intellectual activity in or used in connection with the Service and all improvements and modifications to any of them.
- (k) **Loss** means any loss, cost, liability or damage, including reasonable legal costs on a solicitor/client basis.
- (l) **Personal Information** has the meaning given to it in the *Privacy Act 1988* (Cth).
- (m) **Related Body Corporate** means, with respect to an entity, a body corporate that is related to that entity in any of the ways specified in section 50 of the Corporations Act 2001 (Cth).
- (n) **Service** means ViTIC's "SIP Trunk" services, being the cloud-based voice over internet telephone services as described in the SIP Trunk Service Description, and any other services that ViTIC may make available to the Customer in connection with the SIP Trunk services from time to time.
- (o) **Service Description** means the document describing ViTIC's "SIP Trunk" services as provided by ViTIC to the Customer.
- (p) **Supplier** means a telecommunications service provider or equipment supplier who supplies telecommunications services or equipment to ViTIC.
- (q) **Supplier Network** means any telecommunications network, equipment, or facilities, or cabling controlled by ViTIC or a Supplier.
- (r) **ViTIC** means ViTIC Pty Limited ACN 646 196 027.

1.2 Interpretation

- (a) A reference to a person includes a body corporate, an unincorporated body or other entity and vice versa.
- (b) A reference to a clause means a clause of these Terms and Conditions.

2 Formation of Agreement

2.1 Agreement documents

- (a) An Agreement is formed when ViTIC accepts the Customer's Application to acquire the Service. These Terms and Conditions will govern the use of the Service. The Agreement incorporates the Application, these Terms & Conditions, and the Service Description.. If there is any inconsistency between these documents, the priority of the documents will be ranked in that order.
- (b) The Customer warrants that it is entitled to enter into the Agreement.

2.2 Application

- (a) The Customer warrants that:
 - (i) information provided to ViTIC in the Application is true and correct in all material respects; and
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- (ii) ViTIC may rely upon the service delivery address for the Service being accurate when it allocates the service number to the Customer,

and the Customer acknowledges that ViTIC will rely on the information provided to ViTIC in the Application. The Customer must maintain and promptly update the information to keep it true, accurate, current and complete.

- (b) An Application may be declined where:
 - (i) there is a technical limitation to ViTIC's ability to provide the Customer the Service, including where there are network capacity constraints;
 - (ii) the Customer has not completed an Application correctly or has been unwilling to provide ViTIC with a document or information ViTIC requires; or
 - (iii) the Customer does not meet ViTIC's credit assessment criteria.
- (c) By applying for a Service, the Customer authorises ViTIC to communicate with credit referencing bodies/associations about the Customer's credit history and in so doing to provide them with the details that the Customer have provided to ViTIC, including Personal Information. ViTIC may do this from time to time during the term of the Agreement. ViTIC may apply restrictions to a Service where the Customer has not met ViTIC's credit assessment criteria.

2.3 Activation of Service

If ViTIC accepts the Application, ViTIC will allocate the service number to the Customer and will inform the Customer that the Service is activated. The Service will be available for use and the Customer must set up the equipment to enable use of the Service.

3 Commencement and term

3.1 Commencement

- (a) The Agreement commences when ViTIC accepts the Customer's Application for Service.
- (b) The Service will commence on the Activation Date.

3.2 Contracts without a Fixed Initial Term

For contracts which do not have a Fixed Initial Term, the Agreement will continue until it is terminated by either party on 30 days' notice or otherwise in accordance with the Agreement.

3.3 Fixed Initial Term contracts

- (a) For contracts with a Fixed Initial Term, the Agreement will continue for the minimum fixed period referred to in Application unless it is terminated earlier in accordance with clause 21.
- (b) If neither the Customer nor ViTIC terminates the Agreement at the end of the Fixed Initial Term, ViTIC will continue to supply the Service to the Customer on a month-to-month basis, and the Customer will continue to be charged for the Service, until such time as the Customer or ViTIC terminate the Agreement.

4 Changes to the Agreement

- (a) ViTIC may change the Agreement (including the Service Description and the Fees) in the following circumstances:

- (i) where the Customer agrees to the change;
 - (ii) where the change will not adversely affect the Customer, ViTIC has given the Customer 30 days' notice of the change;
 - (iii) where the change is in relation to charges for making calls, ViTIC has given the Customer 30 days' notice of the change;
 - (iv) where the change is to pass on a tax or levy imposed by law, ViTIC has given the Customer 30 days' notice of the change;
 - (v) where the change is to introduce or to vary a charge to reflect any increase in charges levied on ViTIC by a third party supplier, ViTIC has given the Customer reasonable notice of the change; or
 - (vi) where the change is adverse to the Customer, ViTIC has given the Customer not less than 30 days' notice of the change. If the Customer does not agree with the change the Customer may terminate the Agreement by giving ViTIC notice of termination within that 30 day period and if that termination occurs before the expiry of the Fixed Initial Term, the Customer must then pay ViTIC:
 - (A) the portion of any equipment costs that have not been recovered from the Customer by ViTIC as at the date of termination; and
 - (B) the portion of the setup and configuration costs that have not been recovered from the Customer by ViTIC as at the date of termination.
- (b) Notice of a change to the Agreement or the Service Description may be given by ViTIC by email to the Customer's nominated account email address, with or as part of a bill, or otherwise in writing.
- (c) The Customer's ongoing use of the Service after the date of a variation, is deemed acceptance of the variation, alteration, replacement or revocation.

5 Provision of the Service

5.1 Waiver of the Customer Service Guarantee

The Customer may have certain rights and remedies under the Customer Service Guarantee issued by the ACMA (**CSG**), which establishes minimum connection and fault repair times, and outlines minimum performance requirements for specified services (including enhanced call handling features such as call waiting), breach of which entitles the Customer to certain specified amounts of damage. The standard excludes customers with 5 or more 'phone lines' and does not apply to customer equipment or the disconnection of a service.

- (a) Part 5 of the CSG allows for a service provider to propose that a customer waive their rights and protections and other performance standards in order to obtain a significant service benefit (**CSG Waiver**).
- (b) By agreeing to the terms and conditions of this Agreement, the Customer hereby waives its rights and protections under the CSG so that ViTIC may provide the Customer with a significant service benefit. The significant service benefit is the provision of the Service at lower rates than would apply to other telephone services that are not provided over the internet and also the provision of additional functionality that is not always supported by non-internet based telephone services. The CSG Waiver takes effect 7 days from the date the Customer enters into this Agreement. ViTIC has provided to the Customer a statement of the terms of the CSG Waiver at the following link:

<http://www.acma.gov.au/Citizen/Consumer-info/Rights-and-safeguards/Phone-connection-and-repair/waiver-of-rights-under-the-csg-standard-fact-sheet>

- (c) If the Customer withdraws the CSG Waiver, ViTIC is under no obligation to provide the Customer with the Service.

5.2 Service description and limitations

- (a) The Service is described in the Service Description. The Customer may elect to receive all or part of the Service, as agreed in the Application.
- (b) The Service includes a voice service where, generally, the call is carried over the Customer's broadband internet connection. It is not a normal telephone service and requires special equipment other than a standard telephone.
- (c) The Service may be used to make and receive calls to/from other telephones connected to public networks including local and national numbers and Australian mobile numbers.
- (d) The Service cannot be used to make calls to premium numbers, back to base alarms and other monitoring systems using phone lines, dial up modem and other analogue data calls.
- (e) The Service is not intended to be used as a standard telephone service. The Customer acknowledges and agrees that there are limitations on the use of the Service. In particular, and without limitation:
 - (i) quality of service may differ depending on the broadband product the Customer uses for the Customer Internet Connection; and
 - (ii) the Service will not function or will not function correctly in the event of:
 - (A) broadband interruption;
 - (B) power failure; or
 - (C) if the Customer Internet Connection is not functioning properly for any reason, including data congestion, throttling, or other internet outage.

5.3 Access to emergency services

- (a) The Customer acknowledges and understands that:
 - (i) the Services are not designed, intended, authorised or warranted to be suitable for making calls to emergency services;
 - (ii) When the Customer dials '000' from the ViTIC Service, it will generally be connected to emergency services, however the Service cannot be used (and calls to emergency services cannot be made) if:
 - (A) there is a power outage;
 - (B) the Customer Internet Connection is interrupted;
 - (C) the equipment the Customer is using is in any way flawed;
 - (D) there is a suspension or termination of the Service; or
 - (E) there is any other Service outage.
- (b) ViTIC recommends that the Customer maintain an alternative telecommunications service such as a cellular, fixed line or satellite telephone connection to contact emergency services.
- (c) The Customer must not relocate the Service from one destination to another without ViTIC's prior written consent. The Customer must advise ViTIC of any changes to the Customer's personal and address details so that emergency calls can be connected correctly.

- (d) ViTIC's liability is excluded for any Service outage and/or inability to dial emergency services is as set out in this Agreement.

5.4 Internet access

To use the Service the Customer must acquire, at the Customer's cost, its own compatible service / equipment (**Customer Infrastructure**) and internet connection that will connect the Services (**Customer Internet Connection**) to the Customer Infrastructure. Any applicable charges for accessing and using the Customer Infrastructure and Customer Internet Connection will be billed separately by the Customer's provider(s).

5.5 Evaluation of suitability for Customer's needs

The Customer acknowledges and agrees that it has relied on its own judgment to evaluate the suitability of the Service for the purpose for which it requires the Service.

5.6 Modifications to the Service

ViTIC reserves the right to modify the Service, and the rules governing its use, at any time and from time to time, including as set out in the Service Description. Notice of modifications may be given by ViTIC by email to the Customer's nominated account email address, with or as part of a bill, or otherwise in writing.

6 Telephone numbers

- (a) ViTIC will allocate telephone numbers to the Customer in accordance with the Australian Telecommunications Numbering Plan under the Telecommunications Act for the period during which the Customer acquires the Service. The number allocated to the Customer will be at ViTIC's discretion. ViTIC has no obligation to give the Customer an alternative number.
- (b) The number allocated to the Customer will be based on the service delivery address that the Customer nominates in the Application or as subsequently advised. If the Customer moves the service delivery address, ViTIC may be required to give the Customer a different service number, relevant to the Customer's new service delivery address.
- (c) All telephone numbers provided by ViTIC in connection with the use of the Service are registered to ViTIC and are provided for the Customer's use while using the Service. The Customer has no right, title or interest in any telephone numbers allocated to it by ViTIC as part of the Service.
- (d) Although ViTIC makes every attempt to ensure continued availability of telephone numbers, ViTIC reserves the right to alter or replace any number to comply with any relevant legislation and in such case will notify the Customer of any numbering change that will affect the Service.
- (e) The Customer may request a new phone number. If ViTIC agrees to issue the Customer a new phone number, the Customer may have to pay a charge.
- (f) The Customer's right to use the phone number ends if the Customer no longer obtains the Service unless the Customer ports the phone number.
- (g) The Service does not support the preselection or use of override codes. It is not possible to make calls using the Service using any other telephone service provider.
- (h) If, on termination or expiry of this Agreement, the Customer requests that ViTIC port the number used by the Customer to another service provider, ViTIC will port that number in accordance with the requirements of any applicable Communications Alliance codes, and charges may apply.

7 Equipment

7.1 Equipment requirements

To use the Service, the Customer must obtain and maintain a compatible Customer Infrastructure which is capable of making / receiving a call via the Customer Internet Connection.

7.2 Purchase of ViTIC Equipment

If the Customer purchases equipment from ViTIC, the following clauses will apply:

- (a) ViTIC transfers title to that equipment to the Customer on payment of the purchase price.
- (b) ViTIC 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 ViTIC by the manufacturer of any equipment supplied by ViTIC to the Customer. Such warranty passes to the Customer when the Customer pay for the equipment.
- (c) Risk in the ordered equipment passes to the Customer when the equipment is shipped from the ViTIC warehouse.
- (d) ViTIC reserves the right to supply an alternative model or brand of equipment, of similar quality and technical specification to the one indicated in the Service Description when the Customer ordered during the application process.
- (e) ViTIC will only deliver ordered equipment to the service delivery address supplied by the Customer in the Customer's Application. If the Customer is not available to receive delivered equipment and the equipment is returned, the cost of the return will be borne by the Customer. In addition, ViTIC will charge the Customer to redirect/resend the equipment. Shipping & handling fees are non-refundable.

7.3 Equipment must comply with laws

- (a) The Customer must ensure that all equipment the Customer uses in connection with the Service and the way the Customer uses that equipment complies with all laws, all directions by a regulator and the reasonable directions of ViTIC and its Suppliers.
- (b) If, in the reasonable opinion of ViTIC, the Customer breaches this clause 7.3, ViTIC may disconnect the Service. ViTIC will try to give the Customer reasonable notice before the equipment is disconnected, but may disconnect the equipment immediately if there is an emergency.

7.4 Equipment support

Support, maintenance and/or consulting in respect of any ViTIC equipment will be provided as described in the Service Description and agreed in the Application. The Customer is otherwise responsible for any expenses relating to cabling, configuration and/or modifications to the Customer's equipment.

8 Customer's obligations

8.1 Customer's cooperation

The Customer must cooperate with ViTIC and its Suppliers to allow ViTIC to establish and supply the Service to the Customer safely and efficiently. This includes following ViTIC's reasonable requests in relation to the establishment and supply of the Service.

8.2 Customer's information

If the Customer provides information that is untrue, inaccurate, not current or incomplete, or if ViTIC has reasonable grounds to suspect that such information is untrue, inaccurate, not current or incomplete, ViTIC may suspend or terminate the Customer's use of the Service. ViTIC staff members also have the right to request further information about the Customer from the Customer. Should a Customer not wish to give out this information for any reason their Service will be terminated.

8.3 Usage charges and unauthorised use

- (a) As ViTIC is not able to control access or usage of the Customer Infrastructure, the Customer is responsible for all usage charges in respect of the use of the service, whether or not such usage was authorised by the Customer, unless the usage was caused by a mistake by ViTIC. The Customer should ensure that the Customer has appropriate protection systems operating on the Customer Infrastructure to restrict or limit the possibility of unauthorised usage.
- (b) The Customer is not permitted to authorise a third party to use the Service without the written authorisation by ViTIC.

9 Usage

9.1 Use at own risk

- (a) The Customer acknowledges that ViTIC cannot be held responsible for any loss incurred by the Customer because of faults and/or failures within a third party Carrier's network infrastructure or the Customer Internet Connection.
- (b) While ViTIC will use ViTIC's best endeavours to provide the Service, the Customer use of the Service is at the Customer's own risk. Even if the Customer loses equipment or permits another person to use the Customer's service, the Customer is solely responsible for its use including:
 - (i) the calls made and messages sent;
 - (ii) the installation or use of any equipment or software whether provided by ViTIC or not;
 - (iii) the modification of any settings or data on the Customer's service or related services or equipment whether instructed by ViTIC or not; or
 - (iv) the lawfulness of the Customer's activities when using the service.

9.2 Prohibited uses

- (a) The Customer must not use or attempt to use, and must use all reasonable endeavours to ensure that others within its control do not use or attempt to use the Service:
 - (i) to make or receive calls, or send or receive content, other than for the Customer's own personal or business use;
 - (ii) for any purpose that is defamatory, offensive, abusive, obscene, menacing, threatening, harassing, or for any (other) unlawful purpose;
 - (iii) to do any act that may cause the quality of the Service to be impaired;
 - (iv) in any way which damages, interferes with or interrupts the Service, or any Supplier Network, as those things are configured at the time;
 - (v) to engage in any activities in such a manner that is reasonably likely to expose ViTIC or its Suppliers to liability;
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- (vi) in any way which may damage any property or injure or kill any person;
 - (vii) to break any law or to infringe another's rights; or
 - (viii) in a manner that does not comply with the terms of any legislation (including privacy legislation) or licence applicable to the Customer.
- (b) The Customer must not use the Service in a way which contravenes any fair use policy or acceptable use policy that applies to the service.
 - (c) The Customer must not resell the Service.

9.3 Compliance with directions and laws

- (a) In using the Service, the Customer must comply with all laws, all directions by a regulator, reasonable directions by ViTIC and any usage policies as notified from time to time.
- (b) The Customer will comply (and will procure that each of its customers and any third party user of a Service complies) with:
 - (i) all reasonable directions issued by ViTIC to assist it or any Carrier involved in the supply of the Services in complying with any applicable laws or regulatory obligations, and in particular directions relating to the provision of information to the police and other law enforcement agencies, the provision of information for directory purposes and the provision of emergency services;
 - (ii) all laws and regulations, directions, orders, codes and guidelines concerning privacy, including (without limitation) all laws, regulations, directions, orders, codes and guidelines applying to the recording of telephone calls; and
 - (iii) all relevant directions, orders, codes and guidelines issued by any regulatory or industry body from time to time.

9.4 Investigations

ViTIC may investigate any misuse of the Service by the Customer, in conjunction with relevant law enforcement agencies. If the Customer's use of the service results in loss to other users or ViTIC, the Customer may be liable to pay compensation.

10 Interception and monitoring

- (a) The Customer acknowledges that ViTIC or its Suppliers may be required by law to intercept communications over the Service and may also monitor the Customer's usage of the Service and communications sent over it.
- (b) If ViTIC identifies excessive use or unusual activity ViTIC may temporarily restrict or suspend the Service. If ViTIC does so ViTIC will endeavour to contact the Customer via the Customer's nominated primary contact details and may require an advance payment before the Service is restored.

11 Security

- (a) The Internet is an unsecure environment. ViTIC advises that it may be possible for a third party (such as a hacker) who has obtained access to the Customer's equipment or software, including equipment supplied by ViTIC, to make calls using the Service.
- (b) Where ViTIC provides the Customer with a username and password at the time of activation. The Customer must keep that username and password safe and ensure that appropriate security mechanisms are placed on all equipment so as to protect against hacking, including over wireless networks.

- (c) Calls made from Service will be chargeable, whether such calls have been authorised by the Customer or not, except to the extent to which ViTIC caused or contributed to the hacking or unauthorised access.

12 Faults and support

12.1 Support requests

- (a) The Customer must direct all queries regarding faults/outages of the Service to ViTIC's technical support Help Desk at support@vitic.com.au or 1300 19 26 26 or www.helpdesk.vitic.com.au.
- (b) The Customer must not direct inquiries to third party service providers. ViTIC will invoice the Customer for costs incurred by ViTIC if the Customer engage a third party for assistance with the Customer's service.

12.2 No guaranteed service

- (a) While ViTIC will endeavour to make Service available to customers 24 hours a day, 7 days a week, the Services are not fault free and ViTIC cannot guarantee uninterrupted service, or the performance or quality of the Service. There are many factors outside of ViTIC's control which affect Services, such as the performance of third party suppliers (including overseas telephone companies) and equipment, Force Majeure Events, and the amount of bandwidth available for use by the Service.
- (b) ViTIC reserves the right to perform maintenance work from time to time, which may temporarily interrupt the Customer's access to the Service. Where possible, ViTIC will perform this work during non-peak times.
- (c) ViTIC will endeavour to keep the Service operating but will not be liable if the Service is suspended or interrupted.
- (d) ViTIC is not responsible for rectifying any fault in the Service where the fault arises in or is caused by a Supplier Network, the Customer Internet Connection, the Customer's equipment or other equipment beyond the control of ViTIC.
- (e) ViTIC makes no representations or warranties that use of the Service will be continuous, uninterrupted or error-free.
- (f) To the full extent permitted by law, all terms, conditions, warranties, undertakings or representations, whether express, implied, statutory or otherwise relating in any way to the Service supplied under this Agreement, are excluded.

13 Suspension of Service

13.1 Reasons for suspension

ViTIC may without liability and with immediate effect suspend or limit the Service:

- (a) If requested by the Customer;
- (b) to perform necessary maintenance (including emergency maintenance work) or other service work in connection with the Service, or if there are technical problems with the service network;
- (c) if the Customer has breached clause 9;
- (d) if the Customer uses the Service:
 - (i) for telemarketing, call centre or similar purposes;

- (ii) to make threatening, abusive or hoax calls; or
 - (iii) to make calls via another carriage service provider, whether by way of an override code or by preselection.
- (e) if, in ViTIC's reasonable opinion, the Service has been directly or indirectly involved in activities that ViTIC believe are contrary to law, detrimental to ViTIC's internet service or jeopardise the use of the Service or its performance for other customers.
 - (f) if the Customer fails to comply with its obligations under the Agreement and does not remedy the breach within 12 days of notice;
 - (g) if the Customer has not paid charges when due and has not remedied that failure within what ViTIC consider to be a reasonable time;
 - (h) in the event of an emergency;
 - (i) if ViTIC believe it is necessary to comply with ViTIC's legal obligations, or if an authority such as the ACMA or enforcement agency instructs ViTIC to do so; or
 - (j) if required to by so by its Suppliers or if ViTIC's supply arrangements are terminated with any of its Suppliers required for the provision of the Service.

13.2 Fees after disconnection

While the Service is suspended or disconnected due to the Customer's request or failure to comply with the Customer's obligations under this Agreement, ViTIC may continue to charge the Customer any applicable Fees and charges.

13.3 No liability

ViTIC is not liable to the Customer or any person(s) claiming through the Customer for any loss or damage arising from suspension or disconnection of the Customer's service in accordance with this clause.

14 Fees and payment

14.1 Fees

The Fees are as set out in the Service Description and as otherwise agreed in the Application. They may include (but are not limited to):

- (a) One-off setup and configuration fees, which will be either:
 - (i) amortised across the contract term and paid monthly; or
 - (ii) paid in full upfront,
 as agreed in the Application.
- (b) Monthly recurring fees , which will be payable monthly in advance;
- (c) Fees for ViTIC equipment, which will be either:
 - (i) amortised across the contract term and paid monthly or paid in full upfront; or
 - (ii) paid in full upfront
 as agreed in the Application; and
- (d) All call charges, being the usage fee or fees in respect of the Customer's use of the Service from time to time. Depending on the plan chosen by the Customer, call charges may be payable separately of bundled together with other fees.

14.2 Payment

- (a) The Fees and charges for the Service accrue on and from the Activation Date.
- (b) The Customer must pay the applicable Fees and charges for the Service in the amount and at the times set out in the Application for Service.
- (c) Payments may be made via ViTIC's available payment methods. Service fees and charges may apply for some available payment methods. ViTIC will apply payments made by the Customer against outstanding tax invoices at ViTIC's discretion.
- (d) If the Customer has chosen to use ViTIC's direct debit facilities, and ViTIC have not received the Customer's payment by the due date, unless ViTIC agrees with the Customer otherwise, ViTIC will debit the Customer's nominated account on or after the due date. We may continue to do so at any time until all amounts due are paid.
- (e) If a payment is not honoured (for example, in the case of insufficient funds for direct debit), ViTIC may charge the Customer a fee.
- (f) ViTIC may re-issue any invoice if any error is later discovered. If the Customer has overpaid as a result of a billing error, the Customer's account will be credited with the overpayment or, if the Customer has stopped acquiring the Service from ViTIC, ViTIC will refund the overpayment after the Customer's request and after deduction of any other due amounts.

14.3 Overdue Fees

- (a) If the Customer's account is not paid within 14 days of its due date, ViTIC may:
 - (i) charge the Customer interest on any overdue amounts at the rate of 1.25% per month on any sum that remains outstanding for so long as such amount remains overdue; and/or
 - (ii) suspend or cancel the Service.
- (b) If ViTIC suspends or cancels the Service, ViTIC may charge the Customer a suspension fee, cancellation fee and/or reconnection or reactivation fee. Reconnection or reactivation of the Service is subject to payment of the reconnection or reactivation fee.

14.4 Billing Disputes

- (a) The Customer may dispute an amount invoiced by ViTIC within 3 months of the date of the invoice by requesting ViTIC to investigate the specific charges or invoice and providing specific evidence demonstrating that the invoice is incorrect.
- (b) If the Customer raises a valid billing dispute, then ViTIC will conduct investigations which are reasonably necessary and appropriate in the circumstances. Within five business days of the end of these investigations, either ViTIC will provide the Customer with a credit or the Customer will pay any outstanding amount.

14.5 Taxes

The Customer must pay any taxes (including, without limitation, any goods and services tax), duties, stamp duties, imposts, levies or government charges relating to the Customer's use of the Service.

15 GST

- (a) In this clause 15, the expressions Consideration, GST, Input Tax Credit, Recipient, Supply, Tax Invoice and Taxable Supply have the meanings given to those expressions in the A New Tax System (Goods and Services Tax) Act 1999 (**GST Act**),

and Supplier means any party treated by the GST Act as making a Supply under this Agreement.

- (b) Unless otherwise expressly stated, all prices or other sums payable under or in accordance with this Agreement are exclusive of GST.
- (c) If GST is imposed on any Supply made under or in accordance with this Agreement, the Recipient of the Taxable Supply must pay to the Supplier an additional amount equal to the GST payable on or for the Taxable Supply, subject to the Recipient receiving a valid Tax Invoice in respect of the Supply at or before the time of payment.
- (d) Payment of the additional amount must be made at the same time and in the same way as payment for the Taxable Supply is required to be made in accordance with this Agreement.

16 Privacy and Personal Information

- (a) ViTIC may obtain Personal Information from the Customer in connection with the provision of the Service to the Customer. ViTIC is required by law to collect certain Personal Information about the Customer, including the Customer's name, address and telephone service number to provide it to the operator of the Independent Public Numbering Database (**IPND**). Information in the IPND is used to develop directories and to assist emergency service organisations.
- (b) ViTIC uses its best endeavours to comply with the ViTIC privacy policy which is available on ViTIC's website www.vitic.com.au or by contacting us on 1300 192 626. This policy governs the information ViTIC collects, how ViTIC uses it and the Customer's rights to access it. The Customer consents to ViTIC to collect and disclose the Customer's personal information including any unlisted telephone number and address from or to:
 - (i) any credit providers or credit reporting agencies to use the information for all purposes permitted by the Privacy Act (1988) including to obtain a credit report about the Customer or the Customer's registered business, maintaining a credit information file about the Customer, or notifying a default by the Customer;
 - (ii) such persons as may be necessary to enable ViTIC to comply with any applicable industry codes;
 - (iii) emergency services organisations;
 - (iv) any law enforcement agencies to use the information to assist them in the prevention or prosecution of criminal activities;
 - (v) to conduct ongoing credit management of the Customer's account;
 - (vi) any of ViTIC's related entities, suppliers, agents or professional advisers for reporting, accounting, product supply and service, marketing and audit purposes;
 - (vii) any of ViTIC's upstream suppliers, to use the information for any purposes connected with the Service or the Customer's use of the Service; and
 - (viii) any person who provides ViTIC with the Customer's username(s) or password(s).
- (c) If the Customer does not provide part or all of the Personal Information requested by ViTIC, ViTIC may refuse to supply, or limit the supply to the Customer of, the Service.

- (d) From time to time ViTIC will update the Customer on ViTIC's services, news, promotions and offers including those from related or affiliated organisations. the Customer consents to ViTIC contacting the Customer at any time (including after the Customer has terminated the agreement), for this purpose.

17 Confidentiality

- (a) **Confidential Information** includes all confidential information of ViTIC and all other information of ViTIC which the Customer knows or ought reasonably to be aware is confidential.
- (b) The Customer must:
- (i) keep the Confidential Information confidential and ensure that no Confidential Information is subject to unauthorised use and disclosure at any time; and
 - (ii) not use any Confidential Information for any purpose other than exercising its rights and performing its obligations under this Agreement;
 - (iii) immediately upon termination of the supply of Services or at ViTIC's request, return the Confidential Information to ViTIC and destroy all copies of the Confidential Information (including electronic copies); and
 - (iv) immediately notify ViTIC of any actual or potential breach of confidentiality.
- (c) The obligations of confidentiality in this clause 17 do not extend to information that:
- (i) is disclosed by the Customer with ViTIC's prior written consent;
 - (ii) is disclosed by the Customer to its employees or legal or financial advisers to the extent necessary and provided they keep the disclosed information confidential;
 - (iii) is rightfully known to or in the possession or control of the Customer and not subject to an obligation of confidentiality on the Customer;
 - (iv) is public knowledge (otherwise than as a result of a breach of these Terms & Conditions); or
 - (v) must be disclosed by law, court order, or pursuant to a requirement of a government agency.

18 Intellectual Property

18.1 Ownership of Intellectual Property

- (a) The Customer acknowledges and agrees that ViTIC owns the Intellectual Property rights in the Services (including any software) and any documentation, training materials, and any other marketing and sales materials provided by ViTIC to the Customer under this Agreement (**ViTIC Marketing Materials**).
- (b) Nothing in the Agreement shall be construed as transferring any Intellectual Property rights of ViTIC to the Customer.
- (c) ViTIC grant the Customer a non-exclusive, non-transferable licence to use ViTIC Marketing Material under the terms of this Agreement, only to the extent required by the Customer to make use of the Services during the term of this Agreement.

18.2 Marketing and use of names

- (a) The Customer may not use ViTIC's name, trade marks and logos (**Name**) without prior written permission from ViTIC.
- (b) ViTIC may use the Customer's Name in press releases, product brochures and similar marketing materials, financial reports and prospectuses indicating that the Customer is a customer. The Customer grants ViTIC a non-exclusive revocable licence to use its Name for this purpose. ViTIC may not alter the Name or continue to use it after the relevant relationship has ended.

19 Customer's Indemnities

The Customer must fully indemnify ViTIC, any Carrier involved in the supply of the Services, and each of their respective Related Bodies Corporate (each, an **Entity**), against any and all Loss incurred by or awarded against an Entity as a result of, or in connection with:

- (a) any claim by the Customer or any third party against ViTIC or any Carrier involved in the supply of the Services, in connection with the supply or use by any person of the Services (including any claim in respect of any outage or failure of the Service, including any inability to call or access emergency services);
- (b) any breach of the Agreement by the Customer;
- (c) any fraud by the Customer or any third person associated with the Customer who uses or purports to use the Services;
- (d) any infringement or non-compliance by the Customer, any of the Customer's customers or any third party user of a Service of any law concerning privacy, including any law applying to the recording of telephone calls;
- (e) any damage to or loss of any equipment, network or other tangible property of ViTIC or any third party to the extent that such loss is caused by a negligent act or omission by the Customer or any person under its control; and
- (f) all loss arising directly or indirectly from or in connection with a claim by a third party against ViTIC to the extent that the claim relates to any negligent act or omission of the Customer or any of person under its control in relation to this Agreement.

20 Liability

- (a) Any representation, warranty, condition, guarantee or undertaking that would be implied in this Agreement by legislation, common law, equity, trade, custom or usage is excluded to the maximum extent permitted by law.
- (b) Nothing in this Agreement excludes, restricts or modifies any consumer guarantee, right or remedy conferred on the Customer by the Australian Consumer Law, Schedule 2 of the Competition and Consumer Act 2010 (Cth) or any other applicable law that cannot be excluded, restricted or modified by agreement.
- (c) To the fullest extent permitted by law, the liability of ViTIC for a breach of a non-excludable guarantee referred to in clause 24.1 is limited, at ViTIC's option, to:
 - (i) in the case of goods, any one or more of the following:
 - (A) the replacement of the goods or the supply of equivalent goods;
 - (B) the repair of the goods;
 - (C) the payment of the cost of replacing the goods or of acquiring equivalent goods; or

- (D) the payment of the cost of having the goods repaired; or
- (ii) in the case of services:
 - (A) the supplying of the services again; or
 - (B) the payment of the cost of having the services supplied again.
- (d) To the extent permitted by law, ViTIC is not liable to the Customer in any manner (whether in contract, negligence or any other tort, under any statute or otherwise) for, or in respect of:
 - (i) any consequential loss, indirect loss, loss of profits of any kind, loss or corruption of data, loss or interruption to business, loss of revenue, loss of use and economic loss of any kind arising directly or indirectly from or in connection with access to or use of the Service or any failure of a Service;
 - (ii) failure or interruption in telecommunication connections to the Service; or
 - (iii) any performance or failure by ViTIC to perform any of its obligations under this Agreement (including as a result of any negligence) and including in relation to the performance or non-performance of the Service.
- (e) To the maximum extent permitted by law, ViTIC limits its liability to the Customer arising out of or in relation to this Agreement, (whether based in contract, tort, including negligence, or statute) to a maximum amount in aggregate that is equal to one month's service fee.

21 Termination of Agreement

21.1 Termination for convenience

- (a) Subject to the Customer paying ViTIC the early termination fees required by clause 21.5(b), the Customer may terminate this Agreement during the Fixed Initial Term by giving ViTIC 30 days' written notice of termination.
- (b) The Agreement can be terminated by ViTIC or by the Customer at any time after expiry of the Fixed Initial Term by giving the other party 30 days' written notice of such termination.

21.2 Termination by ViTIC for cause

ViTIC may immediately terminate this Agreement by written notice to the Customer if:

- (a) the Customer has breached clause 9 or if, in ViTIC's reasonable opinion, the service has been directly or indirectly involved in activities that ViTIC believes are contrary to law, detrimental to ViTIC's internet service or may jeopardise the use of the Service or its performance for other customers;
- (b) the Customer has not paid charges when due and has not remedied that failure within what ViTIC considers to be a reasonable time;
- (c) the Customer fails to comply with its obligations under the Agreement and does not remedy the breach within 14 days of written notice from ViTIC;
- (d) the Customer is declared insolvent, or a receiver or liquidator or provisional liquidator is appointed to the Customer or the Customer enters into any arrangement with the Customer's creditors or any class of creditors;
- (e) ViTIC believe it is necessary to comply with ViTIC's legal obligations; or
- (f) ViTIC's supply arrangements are terminated with any of its Suppliers required for the provision of the Service.

21.3 Termination by Customer for cause

The Customer may immediately terminate this Agreement by written notice to ViTIC if:

- (a) ViTIC fails to comply with its obligations under the Agreement and does not remedy the breach within 14 days of written notice from the Customer; or
- (b) ViTIC is declared insolvent, or a receiver or liquidator or provisional liquidator is appointed to ViTIC or ViTIC enters into any arrangement with the Customer's creditors or any class of creditors.

21.4 Effect of termination

Termination of the Agreement is without prejudice to a party's rights which have accrued prior to the date of termination.

21.5 Payments on Termination

- (a) On termination of this Agreement, all Fees and charges for use of the Service and all other amounts owing by the Customer to ViTIC will become immediately due and payable.
- (b) If the Agreement is terminated by the Customer for convenience under clause 21.1(a) before the expiry of the Fixed Initial Term, then the Customer must pay ViTIC the following:
 - (i) 50% of the balance of the recurring minimum monthly service fees for the period between the date of termination and the date the Fixed Initial Term expires;
 - (ii) if the Customer has purchased any ViTIC equipment, the Customer must pay the portion of the equipment costs that have not been recovered from the Customer by ViTIC as at the date of termination; and
 - (iii) if the Customer has purchased setup or configuration services, the Customer must pay the portion of the setup and configuration costs that have not been recovered from the Customer by ViTIC as at the date of termination.
- (c) If the Agreement is terminated by ViTIC under clauses 21.2(a) to 21.2(d) before the expiry of the Fixed Initial Term, then without prejudice to any other remedies to which ViTIC may be entitled, the Customer must pay ViTIC the following:
 - (i) if the Customer has purchased any ViTIC equipment, the Customer must pay the portion of the equipment costs that have not been recovered from the Customer by ViTIC as at the date of termination; and
 - (ii) if the Customer has purchased setup or configuration services, the Customer must pay the portion of the setup and configuration costs that have not been recovered from the Customer by ViTIC as at the date of termination.

22 Force Majeure

ViTIC will not be liable or deemed to be in default of any of its obligations under the Agreement for any default, failure or delay resulting directly or indirectly from a Force Majeure Event.

23 General

- (a) Assignment: The Customer may not assign any of its rights or obligations under this Agreement without the prior written consent of ViTIC. ViTIC may assign any of its
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rights and obligations under this Agreement by giving the Customer 14 days' prior written notice,

- (b) Severability: If a provision of this Agreement or a right or remedy of any part under this Agreement is invalid or unenforceable it will be read down or severed to the extent of the invalidity or unenforceability, and will not affect the validity or enforceability of that or the remaining provisions of this Agreement.
- (c) Entire agreement: This Agreement constitutes the entire agreement between the Customer and ViTIC about its subject matter, and any previous agreements, understandings, negotiations and representations on that subject matter cease to have any effect.
- (d) Jurisdiction: This Agreement is governed by the laws of New South Wales and the parties submit to the non-exclusive jurisdiction of the courts in that state and the courts of appeal therefrom.
- (e) No waiver: The failure or omission of a party at any time to enforce or require the strict observance of or compliance with any provision of this Agreement, or exercise any election or discretion under this Agreement, shall not operate as a waiver of the rights of a party, whether express or implied, arising under this Agreement.