

GENERAL TERMS AND CONDITIONS APPLYING TO THE PROVISION OF VOIP SERVICES

1. What Delacon provides to You

- 1.1 Delacon Pty Ltd ABN 42 074 596 553 (**Delacon**) will provide You with the Service on the terms and conditions of the Agreement.
- 1.2 You acknowledge that to use the Service You must acquire at Your cost your own hardware, along with a suitable broadband internet connection that will support the Services. For the avoidance of doubt, You agree that charges for accessing broadband connection will be billed separately by Your internet service provider.
- 1.3 All telephone numbers provided by Delacon in connection with the use of the Service are registered to Delacon and are provided for Your use while you are a customer of the Service. You acknowledge that You have no right, title or interest in any telephone numbers allocated to You by Delacon as part of the Service. Although Delacon makes every attempt to ensure continued availability of telephone numbers, Delacon reserves the right to alter or replace any number as a result of compliance with any relevant legislation and in such case will notify You of any numbering change that will affect the Service supplied to You.
- 1.4 In acquiring the Service, You expressly acknowledge and agree that there are limitations on the use of the Service as set out in the Service Description. Without limitation, these include:
 - (a) quality of service may differ depending on the broadband product You acquire; and
 - (b) the Services cannot be used in the event of broadband interruption or power failure.
- 1.5 You may acquire from Delacon from time to time additional services. You acknowledge that such additional services may be subject to additional conditions and charges as notified by Delacon.
- 1.6 You acknowledge and agree that You have relied on Your own judgment to evaluate the suitability of the Service for the purpose for which You require the Service.
- 1.7 Delacon reserves the right to modify the Service, and the rules and regulations governing its use, at any time and from time to time. Modifications will be posted on its web site www.delacon.com.au, and You are deemed to be apprised of and bound by any changes to the Service.
- 1.8 To the extent applicable You are responsible for maintaining the confidentiality of any applicable registration number and password and for all uses of Your registration number or password and any and all related charges whether or not authorised by You.

2. Commencement and Term

The Agreement will commence on Activation Date and will continue for the Term. The Agreement may be terminated at any time by the provision of not less than 30 days written notice from one party to the other, which notice may not be issued prior to that date which is eleven months after the Activation Date.

3A. Credit Check

3A.1 Prior to connection of Services Delacon will conduct a credit assessment. The Customer is required to provide all information necessary to complete this assessment. Delacon requires the Customer to provide Delacon with authorisation so that Delacon, if required:

- (a) May obtain from a credit-reporting agency a credit report containing personal information regarding the Customer.
- (b) May seek from any credit provider named in a credit report in the Customer's application, information in relation to the Customer's credit rating including and without limitation, any information about the Customer's credit worthiness, credit history or credit capacity that credit providers give or receive under the Privacy Act 1988 (Cth).
- (c) May make independent enquiries of third parties concerning the Customer's financial standing and for this purpose the Customer has authorised and permitted such third parties to supply such information regardless of any confidentiality or privilege, which applies to the information sought.
- (d) May provide to any Carrier or its Related Bodies Corporate such information concerning the Customer as Delacon may have or obtain from time to time.

3A.2 For the purposes of the ongoing credit management of the Customer's account Delacon may need to disclose to a credit reporting agency:

- (a) the fact that the Customer has applied for the Services, and any credit limit on the Customer's account;
- (b) the Customer's personal identifying details, including name, current and previous addresses, driver's license number, date of birth and employer.
- (c) the amount of any payments which are overdue for at least sixty days on the Customer's account, when steps have been taken by Delacon to recover those overdue payments;
- (d) where an overdue payment has been previously reported, advice that the payment is no longer overdue;
- (e) cheques or credit card payments by the Customer which have been dishonoured;
- (f) Court judgments or bankruptcy orders made against the Customer;
- (g) that in the opinion of Delacon, the Customer has committed a serious credit infringement; and
- (h) when Delacon ceases to provide services to the Customer.

3A.3 The Customer authorises Delacon to disclose the information described in paragraph 3A.2 above to a credit reporting agency.

3A.4 Delacon may refuse to supply Services, or cancel the Services, to the Customer on the basis of its credit assessment of the Customer undertaken in accordance with paragraph 3A.1 above.

3. Customer's Obligations

- 3.1 You must cooperate with Delacon and its Suppliers to allow Delacon to establish and supply the Service to You safely and efficiently. This includes following Delacon's reasonable requests in relation to same.
- 3.2 You are responsible for all usage charges in respect of the use of the Service whether or not such usage charges was authorised and including all usage charges in excess of your account balance or in excess of any credit extended to You. It is your responsibility to maintain security of the means of access to the Service and ensure unauthorised use does not occur. You are liable for all usage charges whether or not you have authorised the particular use of the Service by another person and you will continue to be liable for the usage charges if you allow another person to use the Service irrespective of whether you have authorised that person to use the Service.

3.3 You must not use, or attempt to use, the Service:

- (a) to make receive calls or send or receive content other than for Your own personal or business use;
- (b) to break any law or to infringe another's rights;
- (c) to expose Delacon or its Suppliers to any liability;
- (d) in any way which damages, interferes with or interrupts the Service, or any telecommunications network, equipment, or facilities, or cabling controlled by Delacon or a Supplier (the latter being a "Supplier Network") to supply the Service, as those things are configured at the time; or
- (e) in a manner that does not comply with the terms of any legislation or licence applicable to You;
- (f) in any way which may damage any property or injure or kill any person.

3.4 You:

- (a) must not resell any Service;
- (b) must not use or attempt to use another person's or entity's account, number, Service, system or confidential information without written consent from the owner;
- (c) in using the Service, must comply with all laws, all directions by a regulator, reasonable directions by Delacon and any usage policies as notified from time to time;
- (d) must not use, or attempt to use, the Service to transmit or communicate any material which is defamatory, offensive, abusive, obscene, threatening, harassing, indecent, menacing, illegal, or unwanted; and
- (e) acknowledge that Delacon or its Suppliers may be required to intercept communications over the Service and may also monitor Your usage of the Service and communications sent over it.

You will use all your reasonable endeavours to ensure that others within your control will comply with the foregoing provisions of this clause 3.4.

3.5 Delacon may ask You to stop doing something which Delacon reasonably believes is contrary to clauses 3.3 or 3.4. You must immediately comply with such request. If You do not, Delacon may take any steps reasonably necessary to ensure compliance with clauses 3.3 and 3.4 or any the request arising from same.

3.6 You acknowledge that:

- (a) the Services are not designed, intended, authorised or warranted to be suitable for making calls to emergency services; and
- (b) You understand that the Services cannot and should not be used to make calls to emergency services; and
- (c) The Services do not provide access to the emergency call service number Triple Zero. Emergency calls can be made using fixed/PSTN or mobile phone services.

4. Equipment

4.1 You must ensure that all equipment You use in connection with the Service and the way You use that equipment complies with all laws, all directions by a regulator and the reasonable directions of Delacon and its Suppliers. If, in the reasonable opinion of Delacon, You breach this clause 4.1, Delacon may disconnect the equipment from the Service. Delacon will try to give You reasonable notice before the equipment is disconnected, but may disconnect the equipment immediately if there is an emergency.

4.2 You are responsible for any lost, stolen or damaged Delacon or Supplier owned equipment in Your possession at any time during the provision of the Services, except if it is caused by Delacon, a Supplier, Delacon personnel or a Supplier's personnel.

5. Service Charges

5.1 You must pay the applicable charges for the Service in the amount and at the times set out in the Application for Service. Delacon reserves the right to vary its rates and charges in providing the Service at any time and such changes will apply to You forthwith.

5.2 Charges for the Service accrue on and from the Activation Date.

5.3 Unless otherwise agreed, Delacon may invoice You:

- (a) for any deposit referred to in the Application for Service, on or before the Activation Date, which amount must be paid on or before the Activation Date;
- (b) for any monthly charges, in advance, with the first such payment payable on or before the Activation Date;
- (c) for any use charges, Delacon's estimate for same is payable monthly in advance, subject to the provisions of the Application for Service and the Delacon Standard Terms and Conditions; and
- (d) otherwise, as notified by Delacon from time to time.

5.4 Delacon reserves the right to:

- (a) vary the billing frequency;

- (b) issue an interim bill for accrued charges which will become immediately due and payable; or
- (c) bill You through a billing agent.

Your bill will be mailed to the mailing address provided by You from time to time.

- 5.5 Processing and verification procedures may mean that not all calls made during the period covered by a bill can be included in that bill. Delacon may include those calls in any subsequent bills.
- 5.6 Delacon may re-issue any invoice if any error is later discovered. If You have overpaid as a result of a billing error, Your account will be credited with the overpayment or, if You have stopped acquiring the Service from Delacon, Delacon will refund the overpayment after Your request and after deduction of any other amounts due by You to Delacon.
- 5.7 Unless otherwise requested, You agree that Your bill will contain only a summary of total call charges.
- 5.8 Your bill will be calculated by reference to data recorded or logged by Delacon and any of Delacon's Suppliers. Records held and call logging procedures adopted by Delacon and any of Delacon's suppliers will be conclusive evidence of Your usage and charges payable by You.
- 5.9 Subject to clause 5.10, You are required to make payment by authorising Delacon to deduct from Your nominated bank account, the Fees payable from time to time by You in accordance with this Agreement or by transferring to Delacon's nominated account any amount due on or before its due date.
- 5.10 Delacon is taken to have received a payment from You where it is made by electronic transfer on the date of deposit shown in Delacon's bank account statement.
- 5.11 If Your payment is not honoured (for example, in the case of insufficient funds for direct debit), Delacon may charge You a fee which reflects the cost to Delacon of same.
- 5.12 Subject to clause 6, You must pay each amount invoiced in the way and by the due date specified in the invoice or in the Delacon Standard Terms and Conditions (as the case may be) ("**Due Date**"). If Your account is not paid within 10 days of the Due Date, Delacon may:
 - (a) charge You interest on any overdue amounts on an invoice at the rate of 1.25% per month;
 - (b) suspend or cancel the Service. If Delacon suspends or cancels the Service, Delacon may charge You 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;
 - (c) engage a mercantile agent to recover the money You owe Delacon. If Delacon engages a mercantile agent, Delacon may charge You a recovery fee;
 - (d) institute legal proceedings against You to recover the money You owe Delacon. If Delacon institutes legal proceedings, Delacon may seek to recover its legal costs, and
 - (e) on-sell any unpaid amounts to a third party. If Delacon does this, any outstanding amounts will be payable to that third party.
- 5.13 In addition, Delacon may impose a charge on You to cover Delacon's reasonable expenses and costs incurred in enforcing any failure or delay in Your payment.
- 5.14 You must pay any taxes (including, without limitation, any goods and services tax), duties, stamp duties, imposts, levies or government charges relating to Your use of the Service.

6. Billing Disputes

- 6.1 You may dispute an amount invoiced by Delacon but only if You do so in accordance with this clause 6.
- 6.2 Except to the extent You raise a valid billing dispute in respect of a Delacon invoice, You agree that the invoice is valid and payable (and You must pay any undisputed amount included in the invoice in accordance with clause 5.12).
- 6.3 To raise a valid billing dispute, You must:
 - (a) make a good faith request to Delacon to investigate the specific charges or invoice, providing at the same time specific evidence which demonstrates that a particular charge or invoice is incorrect; and
 - (b) make any such request to Delacon within 3 months of the date of the relevant invoice.
- 6.4 You may only make a claim or commence proceedings alleging that any charge or invoice is incorrect, or You are entitled to a refund for overpayment, if You do so within 3 months of the date of invoice or overpayment.
- 6.5 If You raise a valid billing dispute, then Delacon will conduct investigations which are reasonably necessary and appropriate in the circumstances of the dispute. Within five business days of the end of these investigations, either Delacon will provide You with a credit or You will pay any outstanding amount (together with interest on that amount calculated in accordance with clause 5.12(a) and accruing from the original due date for payment until the date of actual payment), as the case may be. In addition, Delacon may invoice You a daily professional services charge to audit and validate any non-Delacon analysis of the disputed amount. You will pay any such professional services charge in accordance with clause 5.

7. Service Suspension and Termination

- 7.1 Notwithstanding clause 2, Delacon may immediately suspend supply of the Service to You and/or terminate this Agreement by written notice to You if:
 - (a) You fail to comply with clause 3 above;
 - (b) You fail to pay by the Due Date any charges payable for the Service;
 - (c) You default in performance or observation of any obligation under this Agreement and, if that breach is remediable, You fail to correct the breach within 21 days of written notice from Delacon;
 - (d) You are declared insolvent;

- (e) a receiver or liquidator or provisional liquidator is appointed to You or You enter into any arrangement with Your creditors or any class of creditors; or
 - (f) Delacon's supply arrangements are terminated with any of its Suppliers required for the provision of the Service.
- 7.2 On termination of this Agreement, all charges for use of the Service and all other amounts owing by You to Delacon will become immediately due and payable.
- 7.3 Termination of this Agreement for any reason shall not prejudice the rights of either party which have accrued up to the time of termination.
- 7.4 Delacon may without liability and with immediate effect suspend or limit the Service in the event of an emergency or if required to by so by its Suppliers or to perform necessary maintenance or other service work in connection the Service.
- 8. Liability**
- 8.1 Delacon does not warrant that the Service will be free of interruption, delays or faults.
- 8.2 To the maximum extent permitted by law all conditions and warranties expressed or implied by any legislation, the common law, or otherwise in relation to the supply of the Service or otherwise in connection with this Agreement are expressly excluded.
- 8.3 Delacon is not responsible for rectifying any fault in the Service where the fault arises in or is caused by a Supplier Network, Your equipment or other equipment beyond the control of Delacon.
- 8.4 To the extent permitted by law, Delacon shall not be liable to You for any loss or damage (including incidental loss, consequential loss, loss of profits of any kind, loss or corruption of data, interruption to business, loss of revenue, or economic loss of any kind) arising out of any performance or failure to perform by Delacon any of its obligations under this Agreement (including as a result any act, omission or negligence and including in relation to the performance or non performance of the Service).
- 8.5 To the maximum extent permitted by law, Delacon limits its liability to You for any liability which may arise out of or in relation to this Agreement, (whether based in contract, tort, including negligence, or statute) to a maximum amount in aggregate of \$5,000.00.
- 8.6 Delacon acknowledges that legislation may imply into this Agreement certain conditions of warranties and confer on You certain rights and remedies which may not be excluded, modified or restricted. Where permitted, Delacon's liability under those non-excludable rights is limited at Delacon's option to: (a) in the case of goods, the replacement, repair or payment of the cost of replacement or repair of the goods; and (b) in the case of services, supplying the services again or payment of the cost of having the services supplied.
- 8.7 You indemnify and hold Delacon harmless in respect of all loss, damage, costs, expenses and liability arising from the use by any person of the Service.
- 9. Privacy and Personal Information**
- 9.1 Delacon may collect, use and disclose personal information provided by You or your personnel or customer for purposes relating to the supply of the Service, including without limitation to our Suppliers, or for purposes that would reasonably be expected as part of the supply of the Service. You agree to: (a) provide true, accurate, current and complete personal information in this regard, and (b) maintain and promptly update such personal information to keep it true, accurate, current and complete. If you provide information that is untrue, inaccurate, not current or incomplete, or if Delacon has reasonable grounds to suspect that such information is untrue, inaccurate, not current or incomplete, Delacon has the right to suspend or terminate Your use of the Service and any future use of the Service (or any portion of the Service).
- 9.2 You acknowledge and give authorisation to Delacon to obtain from a credit reporting agency a credit report containing personal information regarding You, your personnel or your customers.
- 9.3 Without limiting clause 9.1, You acknowledge that Delacon may deal with such personal information and other information about You in accordance with its privacy policy from time to time. Delacon's privacy policy is available at www.delacon.com.au. Without limitation, in order for Delacon to provide the Services to You, You expressly acknowledge and agree that Delacon may provide such information from time to time to:
- (a) a credit reporting agency or credit provider;
 - (b) another Delacon group company;
 - (c) parties who are not related to Delacon, including Delacon's agents, dealers and contractors;
 - (d) suppliers who need access to Your Personal Information to allow supply of the Service;
 - (e) such persons as may be necessary to enable Delacon to comply with any applicable industry codes registered with the Australian Communications and Media Authority.
- 9.4 Delacon may be permitted or required by applicable laws to collect, use or disclose personal information about You, your personnel or your customers (which may include, for example, numbers called, time of call, location of call), including to:
- (a) the operator of the Integrated Public Number Database (IPND), which is an industry wide database of all public number customer data,
 - (b) emergency services organisations, and
 - (c) to law enforcement agencies and government agencies for purposes relating to the enforcement of criminal and other laws.
- 9.5 If You do not provide part or all of the personal information requested by Delacon, Delacon may refuse to supply, or limit the supply to You of, the Service.

10. Intellectual Property

- 10.1 Nothing in this Agreement shall be construed as transferring any Intellectual Property rights of Delacon to You;
- 10.2 Except as otherwise provided in this Agreement, no part of any content or software on the Service may be copied, downloaded, recorded or stored in a retrieval system for any other purpose, nor may it be redistributed for any purpose, without the express written permission of Delacon;
- 10.3 The Service is protected by Australian and international copyright laws. Except for your informational, personal, non-commercial use as authorised above, you may not modify, reproduce or distribute the content, design or layout of the Service, or individual sections of the content, design or layout of the Service or Delacon logos without our express written permission.

11. Force Majeure

- 11.1 Delacon shall not be liable to You for any failure or delay in the performance of any obligation under this Agreement caused directly or indirectly by any event beyond Delacon's reasonable control.

12. General

- 12.1 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.
- 12.2 If a provision of this Agreement or a right or remedy of any part under this Agreement is invalid or unenforceable it will:
- (a) be read down or severed to the extent of the invalidity or unenforceability; and
 - (b) not affect the validity or enforceability of that or the remaining provisions of this Agreement. Delacon may vary this Agreement from time to time and at its discretion without prior notice.
- 12.3 This Agreement constitutes the entire agreement between the parties as to its subject matter and supersedes any prior understanding or agreement between the parties and any prior condition, warranty, indemnity or representation imposed, given or made by Delacon.
- 12.4 This Agreement is governed by and must be construed in accordance with the laws of the State of New South Wales for the time being in force and the parties submit to the jurisdiction of the courts and tribunals of that State.
- 12.5 You must not assign or purport to assign any of its rights or obligations under this Agreement without the prior written consent of Delacon.
- 12.6 In the event, and to the extent, of any conflict or inconsistency between (i) these General Terms and Conditions and (ii) the Delacon Standard Terms and Conditions, these General Terms and Conditions will prevail.
- 12.7 We may revise these Terms & Conditions at any time by updating this posting. You should visit this web page periodically to review the Terms & Conditions, because they are binding on You.

13. Definitions and Interpretation

- 13.1 In these General Terms and Conditions, unless the context otherwise requires:

Activation Date means, with respect to any Service, the date on which Delacon commences supplying that Service to You.

Agreement means the agreement between You and Delacon comprising the terms and conditions set out or referred to in these General Terms and Conditions, the Application for Service and any schedule, appendix or attachment to the Application for Service;

Application for Service means an application for service document (in a form approved by Delacon) completed in full and signed by a party wishing to be supplied with VoIP services by Delacon;

Delacon Standard Terms and Conditions means the set of standard terms and conditions located at www.delacon.com.au, as the same may be updated at any time and from time to time.

GST means GST within the meaning of the *A New Tax System (Goods and Services Tax) Act 1999*;

Intellectual Property includes any:

copyright;

design, patent, trademark, logo, circuit layout owned and or used by Delacon (and whether registered, unregistered or applied for) used in connection with the Service;

trade, business, company or domain name;

know how, techniques, methods, inventions, processes, confidential information (whether in writing or recorded in any form used established and or developed by Delacon from time to time in connection with the Service);

manuals or practices used in connection with the Service; and

any and all 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;

Services means those services to be provided by Delacon as specified in the Application for Service;

Supplier means a telecommunications service provider or equipment supplier who supplies telecommunications services or equipment to Delacon;

You and Your means the party named as the customer or subscriber in the Application for Service.

- 13.2 In these General Terms and Conditions:

(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 General Terms and Conditions;

(c) a reference to an Annexure means an annexure of the Application for Service.