

## COLOCATION SERVICE SCHEDULE

### -New Zealand-

#### 1. DEFINITIONS AND INTERPRETATION

##### 1.1 Definitions

Defined terms in the Standard Terms and Conditions have the same meaning in this Service Schedule unless expressed to the contrary. In this Service Schedule, unless the context otherwise requires:

**Cabinet** means any relevant rack, cabinet or part thereof as set out in a Service Order.

**Customer** means the customer described in the Service Order and any of its employees, sub-contractors, agents and representatives and includes references to “You” and “Your”.

**Data Services** means the data services described in the applicable Service Order.

**End Users** means a customer of the Customer.

**Excess Power Rate** means the rate specified in the Service Order.

**Exclusive Area** means the area defined in the Service Order as being for the exclusive use of the Customer.

**Key Holder** means a person with Secure Access Status.

**Location** means the data centre premises at which the Services shall be provided, the details of which are set out in the applicable Service Order.

**Reserved Racks** has the meaning set out in clause 3.5(a) of this Service Schedule.

**Secure Access Status** means the right to enter a Customer’s Exclusive Area or Cabinet unaccompanied by Vocus personnel using an access card or key issued by Vocus, afforded to those people listed in the Secure Access Status item of the Service Order.

**Service** means the services to be supplied by Vocus as described in this Service Schedule.

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

**Supplier** means any person who enters to Location at your behest, including suppliers, consultants, contractors, agents, representatives or employees.

**Supplier Terms and Conditions** means the terms and conditions set out in Appendix 1 of this Service Schedule.

**Term** means the term of this Service Schedule, commencing on the date of execution and ending on the date it is terminated in accordance with its terms.

**Third Party** means any party other than Vocus or the Customer.

**Work** means the work required to be performed by Vocus to enable the provision of the Services and includes any arrangements made with any other Supplier in relation to the provision of the Services.

**Vocus SLA** means the Vocus service level agreement which can be found at <http://www.vocus.co.nz/legal-contracts>, as updated from time to time.

#### 2. SERVICES

##### 2.1 The Services

- (a) This Service Schedule is for the supply of Services. It will apply to the first and any subsequent Service Orders for Services executed by the Customer and Vocus.
- (b) Vocus will provide Services to the Customer on the terms of the Standard Terms and Conditions, this Service Schedule and any applicable Service Orders, all of which are binding on the Customer. The Customer must use the Services (and, where applicable, will ensure that its End Users use the Services) in accordance with the terms of the Standard Terms and Conditions, this Service Schedule, any applicable Service Orders and all applicable laws.
- (c) Vocus may vary the Service if reasonably required for technical, operational and commercial reasons provided such variation does not

have a material adverse effect on the Customer.

## 2.2 Maximum Power Draw

The Customer must not exceed the maximum power draw stated in a Service Order without the prior written consent of Vocus. If the Customer exceeds the maximum power draw without Vocus' consent:

- (a) the Excess Power Rate applies to all power used by the Customer in excess of the stated maximum power draw;
- (b) Vocus' obligation to comply with Vocus SLA is waived and Vocus has no liability to the Customer for any loss or damage suffered by the Customer as a result of any failure to meet Vocus SLA for the duration of the period of the excess power usage; and
- (c) the Customer indemnifies Vocus in respect of any losses, damages, costs or other liabilities incurred by Vocus as a result of the excess power use, including those arising as a result of any failure of power or cooling equipment caused directly or indirectly by the Customer's excess use.

## 2.3 Vocus SLA

Subject to the terms of the Standard Terms and Conditions, this Service Schedule and any applicable Service Orders, Vocus will provide the Services in accordance with the Vocus SLA.

## 3. SERVICE CHARGES AND PAYMENT

### 3.1 Service Charges

The Charges payable by You for the Services are payable in accordance with this clause 3 and as set out as in the relevant Service Orders or as otherwise agreed in writing between the parties from time to time

### 3.2 Revised Charges and Cost Escalation

- (a) If, at any time there is an increase in Vocus' cost of providing the Services, Vocus may review and modify the Charges and advise You by notice in writing (the **Revised Charges**). The Revised Charges so advised will become the Charges effective from the date that is 10 Business Days after the date of the notice.

- (b) On each anniversary of the RFS Date, each of the Charges shall increase by the CPI increase for the previous 12 months. The Revised Charges will become the Charges effective from that date.

### 3.3 Power Charges

- (a) Power may be charged separately and in addition to any colocation services fees, as specified in a Service Order.
- (b) Notwithstanding any other provision of this Service Schedule, Vocus may pass on to the Customer all increases in the cost of power immediately they occur. Any such increased power rates automatically supersede existing rates. Vocus must notify the Customer promptly after any such increase in rates. A failure to notify does not negate the Customer's obligation to pay the higher rates.

### 3.4 Lien over Customer Equipment

The Customer grants Vocus a lien over the Customer Equipment as security for payment of all sums due under this Service Schedule, a Service Order or the Standard Terms and Conditions. Vocus may, while any payment remains unpaid past its due date, prevent the Customer from entering the Location.

### 3.5 Rack Reservations

- (a) This clause 3.5 applies where the Customer indicates on the Service Order that it wishes to reserve racks (**Reserved Racks**).
- (b) Vocus must, prior to selling the Reserved Racks to another customer, provide the Customer with written notice of its intention to do so, and grant the Customer the opportunity to order the respective racks within 7 days of Vocus' notice under this clause.
- (c) If the Customer elects to order the Reserved Racks, the Customer must purchase the service under Vocus' standard terms and conditions and at Vocus' standard rates and charges at the time the Reserved Racks are ordered.
- (d) If the Customer does not order the Reserved Racks within 7 days in accordance with clause 3.5(c), the

Customer forfeits any rights provided under 3.5(b).

#### 4. SET-UP AND INSTALLATION

##### 4.1 Installation and Use of Customer Equipment

- (a) You must provide Vocus with no less than two Business Days' prior written notice of the proposed delivery and installation date of any Customer Equipment. Vocus must, within one Business Day of receipt of such notice, confirm the date on which installation may occur. You must organise delivery and installation of the Customer Equipment at Your own cost. If You fail to provide Vocus with prior notice, Vocus may elect not to accept delivery, at its sole discretion.
- (b) Where specified in the Service Order, Vocus will provide the Cabinet for storing and operating the Customer Equipment.
- (c) Vocus must connect the Customer Equipment to the Data Services, if applicable, in accordance with the Service Order for the Charges (if any) specified in the Service Order.
- (d) Vocus may at any time and in its sole discretion, reject any item or items of equipment if in Vocus' opinion the equipment generates excess power, heat or data load, or interferes with the operation of any other equipment.
- (e) All Customer Equipment, including network terminating units or equipment otherwise required to provide services to the Customer Equipment, and spare parts for the Customer Equipment must be stored wholly within the Cabinets. Vocus will remove any items of Customer Equipment not stored within the Cabinets and is not liable to maintain, share or return such items to You.

#### 5. SITE CONDITIONS AND USE

##### 5.1 Performance of Work

- (a) You must provide the items (if any) specified in a Service Order to Vocus on or before the date set out in that Service Order.

- (b) Provided You have complied with paragraph 5.1(a), Vocus must carry out the Work in accordance with the Service Order.
- (c) You acknowledge that the quoted charge for carrying out the Work is based on the information that You have provided to Vocus. If any of that information is inaccurate, or anything unforeseen occurs (other than as a result of Vocus' negligence), You will pay Vocus an amount equivalent to any additional costs and expenses incurred by Vocus.
- (d) Vocus is not liable for any delay in performing the Work where such delay is due to the information provided by You to Vocus being inaccurate or the acts or omissions of You or any other person (other than an agent or employee of Vocus).

##### 5.2 Access to Location

- (a) Each Key Holder(s) may access the Location for the purpose of installing, operating, maintaining, repairing or removing the Customer Equipment in the Customers Exclusive Area or Cabinet. This right is personal to each Key Holder and cannot be assigned without the consent of Vocus. You must ensure that each Key Holder keeps his/her access card or key securely and does not transfer, or allow the access card or key to be used by, any third party. Vocus reserves the right to charge you the cost of replacing any keys, access cards, or locking devices (as the case may be). You must immediately notify Vocus in the event that You become aware that any key or access card has been misplaced or compromised.
- (b) If the Customer wishes for any person other than the Key Holder to access the Location, the Customer must obtain the prior written consent of Vocus, which it may withhold in its absolute discretion.
- (c) Subject to paragraph 5.2(d), You will use Your best endeavours to give Vocus such notice as Vocus requires of a request to enter the Location.

- (d) Where the Customer requires urgent access to the Location in order to carry our urgent repairs to its Customer Equipment, the Customer must notify Vocus as soon as practicable to make arrangements for access to the Location.
- (e) Vocus may charge fees for escorted access to the Location outside of 9 am to 5pm Monday to Friday or on public holidays.
- (f) You agree to comply with Vocus' security regulations and other local site operating policies and procedures as advised by Vocus or any Vocus staff member to You from time to time. You must ensure that Your employees, agents, contractors, subcontractors or representatives comply with such regulations and other local site operating policies and procedures.
- (g) You and Your agents, employees and contractors must not interfere with or modify any equipment at the Location other than the Customer Equipment.
- (h) You and Your agents, employees and contractors must not cross-connect any of the Customer Equipment with any other equipment at the Location without the prior written consent of Vocus (which is subject to Your agreement to pay additional Charges for such cross-connect Services) and the third party owner of such other equipment.
- (i) You will be liable for any damage to other equipment by You, Your agents, employees or contractors.
- (j) All of Your employees, agents, representatives and contractors other than Key Holders must be accompanied by an authorised Vocus staff member when accessing the Location.
- (k) You must ensure that all of Your contractors, agents and suppliers comply with the Supplier Terms and Conditions at all time when they are at the Location, and indemnify Vocus in respect of any loss suffered as a result of a failure by any of Your contractors, agents or suppliers to comply with the

Supplier Terms and Conditions at the Location.

- (l) Vocus may withdraw any Secure Access Status if You or any of your employees, agents or contractors fail to comply with Your obligations under this Service Schedule.
- (m) If specified in the Service Order, Vocus will provide an Exclusive Area to which You will have exclusive access (except for access by Vocus) for the purpose of installing, operating, maintaining, repairing or removing the Customer Equipment.

### 5.3 Make Good

- (a) On or before the end of the Term, the Customer must at its cost:
  - (i) remove all Customer Equipment from the Location; and
  - (ii) make good all damage caused by reason of the Customer's use of Location and the removal as set out in paragraph (i) above (having regard to the condition of the Site at the RFS Date) subject to fair wear and tear.
- (b) If the Customer fails to comply with its obligations in clause 5.3(a), Vocus may at the Customer's cost make good the damage to the area utilised by You and treat the Customer Equipment as abandoned and sell or otherwise dispose of the Customer Equipment.

### 5.4 No Lease or Licence

Neither this Service Schedule nor any Service Order grants You any property rights in, or licence to occupy, any part of any Vocus premises, including the Location.

### 5.5 Relocation of Customer Equipment

Vocus may relocate the Customer's Equipment within the Location from time to time on the following conditions:

- (a) Vocus will act reasonably in making its decision to relocate the Customer Equipment;
- (b) the new space must be suitable for the Customer Equipment;

- (c) Vocus will give to the Customer 30 days' notice of a change, except in an emergency, when Vocus will give the Customer as much notice as it reasonably can; and
- (d) Vocus will bear the direct costs of relocating the Customer Equipment.

## **6. VOCUS EQUIPMENT**

### **6.1 Use of Vocus Equipment**

Where Vocus provides You with or allows the use of any of Vocus Equipment:

- (a) You must notify Vocus promptly on becoming aware of any damage to or malfunction of the Vocus Equipment or that any Vocus Equipment requires maintenance of any kind; and
- (b) You will not, without Vocus' prior written consent, remove any of Vocus Equipment from the Location.

## **7. CUSTOMER EQUIPMENT**

### **7.1 Risk of Loss**

You bear the entire risk of loss or damage to the Customer Equipment after its delivery to the Location (except to the extent that the loss or damage was caused by Vocus' gross negligence).

### **7.2 Customer Equipment**

- (a) You must ensure that all Customer Equipment is appropriate, adequately maintained and meets minimum technical standards determined by the ACMA and any other standards advised by Vocus to You from time to time.
- (b) You must ensure that all Customer Equipment is separately fused.
- (c) You must properly configure all Customer Equipment prior to its delivery to Vocus.
- (d) You must arrange for delivery to the Location of all Customer Equipment, together with all labour, tools and test equipment necessary to completely install and test the Customer Equipment within the area and timeframe designated by Vocus.

- (e) You must, or must procure that Your agents, employees or contractors install, burn-in and test the Customer Equipment in accordance with the standards referred to in paragraph 7.2(a) and any relevant Customer Equipment supplier/manufacturer instructions, so as to satisfy safe technical and environmental operation standards. Vocus may assist with installation as set out in clause 4.1 and may provide additional installation assistance, for the Charges specified in the Service Order, Service Schedule or as notified by Vocus to You from time to time.

- (f) If, in Vocus' opinion, the Customer Equipment is causing, or is likely to cause, service degradation to other Vocus customers due to overheating, excessive power load, non-standard installation practices, noise or other interference, Vocus reserves the right to turn off the Customer Equipment. Where practicable, Vocus will endeavour to give You 24 hours' notice to remedy the situation, prior to turning off the Customer Equipment.

- (g) You must maintain and provide to Vocus a contact list of Your relevant agents, employees and contractors, including escalation contacts and contacts for the reporting of faults and maintenance enquiries.

- (h) You must maintain at all Locations and provide to Vocus a list of all circuits installed, specifying pairs, carrier(s) and where they are terminated in the Cabinet(s).

### **7.3 Maintenance and Troubleshooting**

- (a) You are responsible for, and must pay all costs in relation to, all routine and emergency maintenance and repair of the Customer Equipment in a timely fashion.
- (b) You must work co-operatively with, and provide assistance to, Vocus in the isolation of faults and maintenance requirements relating to the Customer Equipment and the Services. Such assistance includes the provision of loop backs and bit error rate testing.

- (c) You must bear all costs associated with third party efforts in disaster recovery, trouble-shooting or other support agreements, provided that You agree in advance to retain third parties to provide such services. You must advise Vocus of the material terms of such agreements.
- (d) You must ensure that the equipment and cabling connecting the Customer Equipment to Vocus' Network provide the proper transmission quality to Vocus' Network and that all local, State and Commonwealth laws and regulations, ACMA regulations and the insurance requirements specified in paragraph 7.1 in relation to the Customer Equipment are complied with at each Location.
- (e) If requested by Vocus, You must provide Vocus with any necessary agency authorisation reasonably required for Vocus to be able to fulfil its obligations under this Service Schedule.

## **8. INSURANCE**

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### **8.1 Insurance**

- (a) You must, at your own expense, obtain and maintain with a reputable insurer the following insurances:
  - (i) public and products liability insurance for not less than \$20 million for any single event;
  - (ii) property and casualty insurance including fire and perils coverage for the Customer Equipment as well as Third Party equipment at the Location for an amount not less than the aggregate of the replacement cost of all Customer Equipment or Third Party equipment; and
  - (iii) workers compensation insurance as required by law or regulation.
- (b) The Customer must provide to Vocus certificates of currency issued by the insurer for the insurance policies referred to in clause 8.1(a) on request by Vocus, which will not be on more than one occasion per 12 month period.

### **8.2 Failure to maintain insurance**

If the Customer fails to effect and keep in force the insurance policies specified in clause 8.1, Vocus may effect and keep in force the insurance policies and the cost of the insurance will be immediately due and payable by the Customer to Vocus.

## **9. DUTIES OF VOCUS**

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### **9.1 General obligations**

Vocus must:

- (a) provide You with reasonable information and assistance in relation to the Services or on such terms as the parties may agree from time to time;
- (b) provide You with copies of, and the updates to, any documentation which materially affects the Services; and
- (c) endeavour to assist You in the investigation of any fraudulent use or other misuse of Services by End Users.

## **10. SUPPLIER TERMS AND CONDITIONS**

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### **10.1 Supplier Terms and Conditions**

You must not permit any of your Suppliers, contractors, or service providers to access the Location unless they have executed and agreed to be bound by the Supplier Terms and Conditions. You are liable for, and indemnify Vocus against, any loss or damage incurred by Vocus or any of its customers as a result of any act or omission of any such Supplier, contractor or service provider who enters the Location at your request.

## **11. ACKNOWLEDGMENTS AND INDEMNITY**

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### **11.1 Acknowledgments**

- (a) You acknowledge that the Vocus network is not necessarily a secure and confidential method of communications and You shall transmit data on the Vocus network at Your own risk.
- (b) You acknowledge that Vocus does not and cannot in any way supervise, edit or control the nature, content and form of any material available to be accessed through use of the Services and that Vocus is not responsible in any way for the nature, content and form of that material,

access to that material or use of that material.

- (c) You acknowledge that Vocus will not be responsible for ensuring that any material sent or received by means of the Services is sent or received correctly.
- (d) You acknowledge that, to the extent permitted by law, Vocus makes no representations or warranties as to the effectiveness or fitness for purpose of any access restrictions, Vocus' network security or Your network security. You shall make no claim against Vocus concerning any access restrictions, Vocus' network security or Your network security.
- (e) You agree not to disclose to any other person any identification or log-in information, whether in use or not, nor any other confidential information relating to the Services, other than to Your employees, agents and contractors who require this information to properly perform their function.

employees or contractors at the Location;

- (ii) the installation, operation, maintenance or removal of Customer Equipment on or from the Location;
- (iii) the connection by You or at Your direction of the Customer Equipment to any carrier or service provider network that is not in accordance with any relevant laws or regulations;
- (iv) any defects or faults in the Customer Equipment;
- (v) the acts or omissions of any of You or Your officers, agents, employees or contractors, or any other person for whom you are vicariously liable at the Location;
- (vi) Your use of the Services;
- (vii) the transmission of or the presence of any illegal, fraudulent or offensive material by You (or any of Your End Users);

## 11.2 Indemnity

- (a) You indemnify, and will keep fully indemnified, Vocus and its Related Bodies Corporate, and each of their officers, agents, employees and contractors, from and against any losses, damages, costs or expenses (including legal costs assessed on a solicitor Customer basis) which Vocus, its Related Bodies Corporate or any of their officers, agents, employees or contractors, may suffer or incur arising out of or in connection with:
  - (i) the presence of the Customer Equipment or Your officers, agents,

## 11.3 Liability for release of gas fire suppression system

Without limiting the application of clause 11.2, You indemnify Vocus in respect of any cost, liability or damage incurred by Vocus as a result of the gas fire suppression system being activated at the Location (including the cost of replacing or refilling the gas canister) as a result of any act or omission of the Customer or any employee, contractor, agent, Supplier or representative of the Customer, or any other person for whom the Customer is vicariously liable.

## APPENDIX 1 - SUPPLIER TERMS AND CONDITIONS

You must ensure that each of your Suppliers complies with all of the following obligations and otherwise does everything necessary to ensure Your continued compliance with this Agreement.

- (a) Suppliers may only access the Location if accompanied by an employee of Vocus.
- (b) Where the on-site work is likely to take more than one day, Vocus may issue named representatives of a Supplier with access cards. If so issued, the access cards may not be used by any other person, or transferred to another person without the prior written consent of Vocus.
- (c) Every person who accesses the Location must notify a Vocus employee, even if they have been issued an access card, each time they access the Location.
- (d) Access to the Location is for the purposes of performing the Supplier's services only. No access for any other purpose is permitted.
- (e) The Supplier must comply with Vocus' security regulations and other local site operating policies and procedures as advised by Vocus to You from time to time and must follow all reasonable instructions given by Vocus employees on-site.
- (f) Suppliers must not interfere with or modify any equipment at the Location including Vocus Equipment or Customer Equipment, other than Your equipment.
- (g) The Supplier must notify Vocus promptly on becoming aware of any damage to or malfunction of Vocus Equipment or any Customer Equipment which arises as a result of the Supplier's actions on site.
- (h) The Supplier may not use any flammable equipment or products or do anything else which could cause a fire, or activate the fire suppression systems at the Location without the prior approval and supervision of a Vocus employee.
- (i) The Supplier must not, without Vocus' prior written consent, remove any Vocus Equipment from the Location.
- (j) The Supplier must comply with all Vocus' health and safety policies and guidelines advised to You or to the Supplier at the Location.
- (k) The Supplier must obtain and maintain with a reputable insurer the following insurances:
  - (i) public and products liability insurance for not less than \$20 million for any single event; and
  - (ii) workers compensation insurance as required by law or regulation.