

# VoIPex Terms and Conditions

## Broadband ADSL1/2+ Terms



### Agreement for Provision of Internet Services

You have requested that VoIPex Pty Limited ABN 66 102 443 532 ("VoIPex") provide you with access to the Internet (the "service"). The basis for the provision of the service by VoIPex and your obligations in receiving the service are completely set out in the terms which follow (the "Agreement").

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If the Agreement is not a Fixed-Term Agreement, VoIPex will provide the Service to the Customer in accordance with the Agreement on a month-to-month basis until the Service is cancelled in accordance with the Agreement.

If the Agreement is a Fixed-Term Agreement, VoIPex will provide the Service to the Customer in accordance with the Agreement for the minimum term or until the Service is cancelled in accordance with the Agreement, as the case may be.

If at the end of the minimum term neither VoIPex nor the Customer cancels the service then VoIPex will continue to supply the Service to the Customer on a month-to-month basis in accordance with the Agreement until the Service is cancelled in accordance with the Agreement.

VoIPex may vary the terms of this Agreement at any time by giving you 21 days notice.

Notice will be given in the form of either:

- An email to your primary email address.
- Mail to the billing address you have provided.
- A message accompanying your next bill.

Where the variation is to a Fixed-Term Agreement and is likely to have a detrimental impact on you that is not minor, you may cancel the affected Services within 42 days from the date of the notice without incurring fees or charges other than Accrued Charges.

You cannot impose on VoIPex any terms or conditions outside this Agreement. Any attempt by you to impose such conditions will be of no effect.

Where this Agreement refers to a party giving notice that means written notice hand delivered or delivered by mail or facsimile or electronic mail to your VoIPex supplied email account.

You must be aged at least eighteen (18) years to enter into this agreement.

The laws applicable to this agreement will be the laws of New South Wales.

### Ending the Agreement

If there is no Fixed-Term Agreement in place either you or VoIPex may end this Agreement by giving 30 days written notice to the other party. The written notice must be delivered in a form by post, fax or email.

The written notice must be acknowledged by VoIPex for the notice to take effect. VoIPex will confirm acknowledgement of written notice to cancel an account within 48 business hours from date of receipt. You

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must ensure you receive written notification from VoIPex that the service has been cancelled. The sending of written notice without a written confirmation from VoIPex will mean that the account has not been cancelled, and charges will continue to apply.

VoIPex may also end this Agreement and the provision of the service immediately if you breach this Agreement or if it reasonably considered you have misused or abused the service.

### **What Will VoIPex Provide?**

VoIPex will endeavour to provide the service on a continuous basis 24 hours a day, 7 days a week.

However, you understand that factors including failure of VoIPex's hardware, software, power supply or telecommunications link could result in the service being unavailable.

The service may also be unavailable from time to time due to emergency or scheduled maintenance by VoIPex. In the case of scheduled maintenance, VoIPex will notify you of the time during which the service will be unavailable via email or a notice on our web site.

You acknowledge that at times the number of users using the service will mean the service is slower or more limited than at other times or temporarily not available.

You acknowledge that temporary unavailability of the service for these and other reasons is not a breach of this Agreement by VoIPex.

VoIPex reserves the right to close accounts that have not been active for a period of 90 days or greater. Upon closure of the account we will no longer accept email for your account.

VoIPex will provide you with a single electronic mail ("email") mailbox. You acknowledge that this email address will only be active while you maintain an account with VoIPex and that this account is not transferable to another Internet provider. Additional mailboxes may be available upon payment of an additional fee.

VoIPex reserves the right to delete email messages in your mailbox that have not been deleted within 90 days of receipt and to refuse mail if your total mailbox exceeds fifty megabytes in size.

VoIPex may choose to offer services with varying service and performance levels which may be less than those offered by our standard service.

You should refer to our web site or printed documentation for any limitations or conditions.

VoIPex will provide limited free support via telephone, electronic mail and our web site. While we endeavour to respond in a timely fashion we do not make any guarantees as to the response times or performance of this support. Support is limited to our service and any access software we may choose to supply to you. We reserve the right to refer customers to another party such as a products' manufacturer if the support required, in our opinion, exceeds this limited support service.

Where it is determined that you or your equipment is the cause of a fault in your Service that we need to repair, we can charge you a call-out fee and our reasonable Charges for repairing the fault. Call-out fees will be a minimum of \$165 inclusive of GST, unless otherwise advised.

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### How Will You Access the Service?

VoIPex will provide you with an account (your "account") giving you access to the service.

You will be provided with an individual identity code or username and a password which will allow access to your account.

Your password should be kept secret. You will be responsible for all charges to your account and any misuse of the system committed using your account. This liability applies whether it was you, someone authorised by you or an unauthorised person using your account.

You must not attempt to gain access to the service through someone else's account without their authority.

You must not attempt to guess someone else's password.

VoIPex will only provide you with your account. In order to access this you will need to provide a telephone line, compatible modem, suitable computer and appropriate communications software.

You are not permitted to transfer or resell your rights to use this service or any other rights conferred on you by this Agreement.

### Information and Content on the Internet

You are solely responsible for your selection and use of information accessed via the service. VoIPex do not control or edit the information available through the service in any way. You understand that some information available on the Internet may be offensive or accessing it may be illegal or leave you liable to claims by other parties. You accept all responsibility for the selection of information accessed through your account by you or any other person.

You must not place on the Internet, obtain through the Internet or transmit using the Internet, Prohibited Content or Potentially Prohibited Content. You must not knowingly place invitations or directions (including hyperlinks) to Prohibited Content or Potentially Prohibited Content.

You acknowledge that under direction of a relevant authority, such as the Australian Communications and Media Authority, VoIPex may be required by law to remove any Prohibited or Potentially Prohibited content from your Web Site or a database.

You understand that the service and the Internet may not be secure or confidential and that information or electronic mail transmitted may be intercepted or read by an unauthorised person. You are responsible for the selection and use of any security features in relation to Internet transmissions. VoIPex is not responsible for any revelation of confidential information occurring through the service.

You acknowledge that there is potential risk of damage to your software, hardware or stored information through computer malfunctions, viruses or worms, which your computer may be exposed to through use of the service. VoIPex is not responsible for any damage suffered as a result of exposure to these or other potential dangers. You are responsible for the initiation and maintenance of any security features, software or procedures to minimise these types of risks.

You are responsible for the supervision and control of any person under the age of eighteen's access to the Internet via your account.

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### Use of the Service

You must not use the service in any way which might interfere, disrupt or impair the Internet network, the service, the equipment or access to the service by other users.

You must not transmit or propagate on the Internet any viruses or worms, any harassing or threatening electronic mail, any forged messages or postings. You must not attempt any unauthorised entry to other machines accessible by the service.

You must not use the Internet for any illegal purpose, transmit information or publish material illegally or do any act which is illegal under any State or Federal law.

Much of the information available on the Internet is subject to copyright or other intellectual property rights. You must not do anything which may constitute an infringement of these rights.

A download is defined as all traffic received via your account including email, file downloads, web pages and other materials received via your account. For billing purposes VoIPex defines a gigabyte as 1000 megabytes and 1 megabyte is equal to 1000 kilobytes.

VoIPex may notify you from time to time of operating rules relating to use of the service. This includes the Acceptable Use Policies listed on the VoIPex web site at <http://www.voipex.com.au>. You agree you will observe these rules. Failure to do so will be a breach by you of the Agreement entitling VoIPex to immediately terminate the Agreement and the service.

### Your Liability

You acknowledge that you will be liable for any damage caused by any breach of this Agreement by you or anyone else using your account.

You indemnify VoIPex against any claims by any other party arising out of your actions or the actions of someone using your account. This indemnity includes, without limitation, claims as a result of the transmission of any illegal, fraudulent or offensive material by you or another person using your account. The indemnity also includes claims as a result of any use of the service or action which infringes the copyright or other intellectual property rights of any other party.

### Our Liability

Where your service is provided for personal, domestic or household use, We do not accept liability for losses that result from the use of Your Service in connection with the conduct of a business.

We are liable to You for breach of contract or negligence under the principles applied by the courts.

We are not liable for any loss to the extent that it is caused by You, for example through Your negligence or breach of contract.

We are not liable for any loss to the extent that it results from Your failure to take reasonable steps to avoid or minimise Your loss.

We are not liable for any loss caused by Us failing to comply with Our obligations in relation to Your Service where that loss is caused by events outside Our reasonable control, such as failure in Equipment that is not owned by Us, an industrial strike or an act of God.

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### Charges and Payment

VoIPex has several different pricing plans. Which one is right for you will depend on how much and when you use the service.

All plans are charged from the start of the calendar month.

Current prices and available plans are listed on the VoIPex web site at <http://www.voipex.com.au>.

All fees and other amounts payable by you are subject to the Goods and Services Tax ("GST").

### Accounts

Payment method is only by way of direct debit or credit card.

All invoices are issued as at the 1st of each month.

When paying via Direct Debit, although a Charge for the fixed amount will be payable by the Customer, we will not issue a bill where that bill is a fixed amount or where the bill would be no more than 10% higher than the fixed amount

Where you have authorised VoIPex to deduct monies from your nominated payment method, VoIPex will attempt to deduct monies owed on the first business day of the month, rather than the usually applicable 10 working days as set out in the Telecommunications Consumer Protections Code.

It is your responsibility to ensure that you have sufficient credit or funds available in your bank account or credit card to pay the bill.

All outstanding monies must be paid within 7 days from the beginning of each month.

Notice to suspend your service/s will be issued on the 8th of each month if outstanding monies are still owed at that time. Your service/s will be suspended on the 15th of the month if there is an undisputed amount outstanding.

A Late Payment Fee of \$5 will apply to all accounts that remain unpaid more than 7 days past the due date shown on the invoice.

An Unprocessed Payment Fee of \$10 will apply to all accounts where the monthly accounts charge, which is processed during the first business week of each month, is not successful.

### Credit Checks

You authorise Us to conduct credit checks and searches and to use the information obtained as a result of these checks and searches to assess Your credit worthiness, so long as in doing so We comply with the Privacy Act.

### Security Bond

At any time, we can require you to provide some form of security, for example a security deposit, a charge or bank guarantee, or pay some or all of the Charges for Your Service in advance. We will only do so if we have reasonable concerns about your credit worthiness or have reasonable grounds for believing that we may not be paid for the Service. In the case of new Services, we can refuse to provide you the new Services until we

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receive the security. In the case of existing Services, if you do not provide the security within 14 days of our request, we can restrict, suspend or cancel the Service in addition to any other rights that we may have.

If you cancel all Your Services, we will return the security deposit or advance payment to you less any outstanding Charges owing to us within a reasonable time.