

The terms set out in these Service Terms apply to the provision of VoIP Services in addition to the General Terms and Conditions (available at [www.truedatavoice.com.au](http://www.truedatavoice.com.au) or in hard copy on request from TDV). Any capitalised terms not defined in these Service Terms have the meaning given to them in the General Terms and Conditions.

## Part A - VoIP Service

### 1. Service Description

- 1.1 Subject to **clause 1.2**, Parts A and C of these Service Terms apply to the following products and services:
- (a) Hosted PBX;
  - (b) SIP Trunks;
  - (c) Call Centre;
  - (d) Receptionist;
  - (e) Assistant Enterprise; and
  - (f) Direct In Dials (DIDs),
- (each a “**Service Component**” and together comprising the “**VoIP Service**”).

- 1.2 **Clause 2** does not apply where Customer accesses VoIP Service via third party broadband services.
- 1.3 Subject to its right to cancel the VoIP Services under the General Terms, Customer is not entitled to remove any Nominated Numbers from the scope of the VoIP Services during a Period for the purpose of replacing TDV as the service provider for those Nominated Numbers with an alternative Provider.

### 2. Service Level Guarantee

- 2.1 Subject to **clause 16** of the General Terms, if Customer experiences an Outage in respect of any or all of the Service Components for 4 hours or more in the aggregate for any calendar month, Customer will be entitled to claim a Service Credit in an amount equal to 10% of the monthly Charges (excluding GST and any VoIP Equipment charges) payable by Customer for the affected Service Component.

### 3. Call Plan and Charges

- 3.1 TDV will monitor call usage against the Call Plan on a monthly basis and Customer agrees and accepts that TDV monitors call type and duration.
- 3.2 If Customer’s call usage exceeds the Included Value during any month, Customer will be charged an amount additional to the Monthly Charge for the Call Plan to the value of the additional call usage.
- 3.3 Call usage is calculated based on the rates set out in the VoIP Product and Pricing Schedule.
- 3.4 Customer agrees that:
- (a) if, in any month, Customer has not made an amount of calls equal to the Included Value, the balance of the Included Value will not be carried forward to the next month and the Customer will forfeit the unused balance of the Included Value;
  - (b) if TDV reasonably believe that the VoIP Service is being used by Customer in a manner which is unreasonable, excessive or fraudulent, TDV may suspend or limit the VoIP Service (or any part of it), or terminate the Service in accordance with the General Terms and Conditions by providing 30 days’ written notice

to Customer. The Fair Use Policy sets out what constitutes excessive and unreasonable use.

### 4. Service Activation

- 4.1 Service installation for VoIP Services will be undertaken between the hours of 8:00am to 6:00pm Monday through Friday (excluding local public holidays). If a request is made to activate the VoIP Service outside of these hours, TDV’s standard professional services rates will apply.
- 4.2 TDV will endeavour to install the VoIP Services within the time frames set out below upon confirmation by email of the acceptance of a signed Application Form and related VoIP Product and Pricing Schedule:

Conditions	Service Activation Period
Where VoIP Service is within a serviceable area and where TDV has a reservation of geographic numbers for that area	15 Business Days*
Where TDV does not have a reservation of geographic numbers for that area	30 Business Days*
Where third party software licenses are required by TDV to deliver a service	25 Business Days*

*\*The Service Activation Period does not include the activation of any broadband services such as modems, cabling or infrastructure and private networks. Should the installation and activation of a broadband internet service or private network service delay the activation of the VoIP Service and VoIP Service, the Service Activation Period will exclude any such delay.*

- 4.3 The Service Activation Period does not include any delays caused by:
- (a) Planned Outages;
  - (b) any acts, omissions and delays by Customer including installation requirements notified after the date of the accepted Application Form;
  - (c) Customer Equipment, third party equipment, facilities or applications;
  - (d) Intervening Events; or
  - (e) Force Majeure Events.
- 4.4 Any relocation or modification of an existing VoIP Service requires a Service Activation Period of not less than 5 Business Days. The relocation or modification of an existing VoIP Service will only be performed pursuant to an accepted MAC Request.
- 4.5 Customer agrees and acknowledges that no rebates apply in respect of any failure to install the VoIP Services within the Service Activation Periods. Establishment charges apply where new sites are added to an existing VoIP Service.

### 5. VoIP Equipment

#### 5.1 Supply

TDV will supply to Customer the VoIP Equipment. The VoIP Product and Pricing Schedule indicates whether the VoIP Equipment will be supplied as:

- (a) Rented Equipment; or
- (b) Purchased Equipment and, if Purchased Equipment, whether it will be purchased on an upfront basis or by instalments.

## 5.2 Payment

- (a) Where the VoIP Product and Pricing Schedule indicates that the VoIP Equipment will be purchased by Customer on an upfront basis, Customer must pay the Outright Purchase Price in one instalment on an upfront basis by the Due Date of the relevant invoice from TDV.
- (b) Where the VoIP Product and Pricing Schedule indicates that the VoIP Equipment will be paid by Customer over the Contract Period by payment in instalments, Customer must pay the Monthly Charge to TDV in advance in the amounts specified in the VoIP Product and Pricing Schedule.

## 5.3 Risk and title

- (a) Title in the VoIP Equipment will only pass to Customer upon full payment of the Outright Purchase Price to TDV or upon payment of the final Monthly Charge payable for the Contract Period as the case may be.
- (b) If the Outright Purchase Price is not paid in full by the Due Date or if any of the Monthly Charges are not paid by the relevant Due Date (as the case may be), TDV has the right, with or without prior notice, to recover possession of the VoIP Equipment and Customer agrees that TDV may enter any premises occupied by Customer to exercise its rights under this paragraph, without prejudice to any of TDV's other rights and remedies.
- (c) TDV retains title to any VoIP Equipment until title in the VoIP Equipment passes to Customer under **clause 5.3(a)** and while TDV retains title to the VoIP Equipment, Customer agrees to hold the equipment in a fiduciary capacity as bailee for TDV.
- (d) Customer acknowledges and accepts that TDV is entitled under the *Personal Properties Securities Act 2009* to register its interest in any VoIP Equipment that TDV supplies to Customer as a purchase money security interest and Customer waives its rights to receive a copy of any such registration.
- (e) Risk of loss or damage to the VoIP Equipment passes to Customer upon delivery of the VoIP Equipment to the Premises.

## 5.4 Insurance

If the VoIP Equipment is delivered to the Premises before title passes to Customer pursuant to **clause 5.3(a)**, then until title passes to Customer, Customer must insure and keep the VoIP Equipment insured with an insurer of recognised standing acceptable to TDV in both the names of TDV and Customer for the parties' respective rights and interests for their full insurable value against loss or damage by fire, theft, accident and such other risks as are insured against by prudent persons engaged in a similar business to Customer. Customer must promptly provide TDV

with evidence of the currency of the insurance described in this clause, if requested by TDV.

## 6. Site Preparation

### 6.1 Customer obligations

- (a) Customer must, at Customer's own expense, prepare the Premises, and access to the Premises, prior to delivery of the VoIP Equipment. Customer must comply with any directions or specifications issued by TDV in respect of such preparation of the Premises.
- (b) If Customer's inadequate preparation of the Premises or access to the Premises causes TDV to delay delivery or installation of the VoIP Equipment, Customer is liable for all reasonable costs and expenses incurred by TDV directly or indirectly as a result of the delay.

### 6.2 TDV's obligations

TDV will, on Customer's request and at Customer's cost, supply such information and assistance as TDV considers reasonable and necessary to enable Customer to prepare the Premises.

## 7. Delivery

- 7.1 TDV will use its reasonable endeavours to deliver the VoIP Equipment to Customer at the Premises on or prior to TDV Ready for Service Date, or at such other times as agreed between the parties, at the Premises.
- 7.2 If Customer wishes for the VoIP Equipment to be delivered to a location other than the Premises, Customer must make such request to TDV in writing no later than 30 days prior to the TDV Ready for Service Date. TDV may, at its sole discretion, determine whether to agree to such a request and the conditions upon which TDV may agree to such a request (including any additional charges that Customer must pay for compliance with such a request).

## 8. Installation

### 8.1 TDV's obligations

- (a) TDV will install the VoIP Equipment at the Premises on the TDV Ready for Service Date or at such other times as agreed between the parties.
- (b) If Customer wishes for the VoIP Equipment to be installed at a location other than the Premises, Customer must make such request to TDV in writing no later than 30 days prior to the Service Start Date. TDV may, at its sole discretion, determine whether to agree to such a request and the conditions upon which TDV may agree to such a request (including any additional charges that Customer must pay for compliance with such a request).

### 8.2 Customer obligations

- (a) Customer must provide TDV with such assistance, including the provision of personnel and facilities, as TDV reasonably considers necessary for TDV to install the VoIP Equipment.
- (b) Customer must provide TDV with all reasonable access, including the necessary

security clearances, for the purpose of enabling TDV to install the VoIP Equipment.

## 9. Manufacturer's Warranty

### 9.1 Assignment of manufacturer's warranty

- (a) Where Customer elects to purchase the VoIP Equipment either upfront or by instalments over the Contract Period, TDV will use its reasonable endeavours to assign to Customer, to the extent permitted by law, the benefit of any warranties given to TDV by the manufacturer of the VoIP Equipment.
- (b) To the extent permitted by law, TDV does not provide Customer with any additional warranties or guarantees in respect of the VoIP Equipment in addition to the warranty set out in **clause 9.1(a)**.

### 9.2 Defective VoIP Equipment

Subject to **clause 9.3**, if, during the Warranty Period, Customer notifies TDV in writing that the VoIP Equipment is defective or in breach of its manufacturer's warranty, TDV will, at its election, replace or repair the defective VoIP Equipment.

### 9.3 Misuse

**Clause 9.2** does not apply where the defect or breach of manufacturer's warranty is not caused by a defect in design or manufacture of the VoIP Equipment but is caused by misuse or unauthorised modification of the VoIP Equipment by Customer.

## 10. Training

If requested by Customer, TDV may provide Customer with training on the features and use of the VoIP Equipment at such times as agreed between the parties. TDV reserves the right to:

- (a) impose Charges (at its then current standard rates) for providing such training; and
- (b) change the details and nature of such training at its sole discretion.

## 11. Unauthorised Modification of VoIP Equipment

11.1 TDV is not responsible for Customer's inability to access the VoIP Service or for any degradation in VoIP Service quality which is caused by any unauthorised modification made by Customer to the VoIP Equipment.

11.2 TDV reserves the right to charge Customer a fee for any work it is required to do to rectify any VoIP Equipment that has been modified without authorisation in order to restore Customer's access to the VoIP Service.

## 12. Customer Service Guarantee Waiver

12.1 Part 5 of the CSG allows TDV to propose that Customer waive the protections and rights provided for under the CSG. The CSG contains performance standards, which carriage service providers such as TDV are required to fulfil (unless the customer has waived these performance standards). More information in relation to the CSG is available on the ACMA's website ([www.acma.gov.au](http://www.acma.gov.au)).

12.2 The VoIP Service provides significantly lower call costs in comparison to a normal telephone service provided over the public switched telephone network. TDV is only able to provide this service on the basis that it is not required to meet the CSG's performance standards. To enable TDV to offer the VoIP Service, it requires that all TDV VoIP Service customers waive their rights under, and in respect of, the CSG.

12.3 The protections and rights Customer is waiving are:

- (a) the provision of written information. The CSG requires carriage service providers to at least every two years give written information to each customer about:
  - (i) the performance standards that apply to supply of specific services;
  - (ii) the obligations of the provider under those standards;
  - (iii) the customer's entitlements to damages under the *Telecommunication (Customer Protection and Service Standard) Act 1999 (Cth)* for contravention of the performance standards; and
  - (iv) on request, provide information to the customer about a performance standard.
- (b) guaranteed maximum service connection periods. The CSG provides timeframes within which connection to services should occur.
- (c) guaranteed maximum fault rectification periods. The CSG provides timeframes within which rectification of service faults should occur.
- (d) making and changing appointments. The CSG requires carriage service providers to:
  - (i) make appointments with customers at times that are convenient for the customer,
  - (ii) make appointments with customers that are either for a particular time of the day or to nominate a five hour period during which the appointment will occur; and
  - (iii) change appointments by giving at least 24 hours' notice or by obtaining the agreement of the customer to the change.

12.4 If Customer waives its rights under the CSG, it is not able to claim compensation from TDV for any failure to meet the prescribed performance standards in relation to the supply of the VoIP Service.

12.5 This waiver will take effect seven days from the date Customer signs the Application Form, unless Customer notifies TDV of its intent not to be bound by this waiver within the given timeframe. In the event Customer notifies TDV of its intent not to be bound by this waiver, TDV reserves the right not to provide Customer with the VoIP Service and terminate the Agreement.

## 13. Geographical Service Numbers

### 13.1 Geographical Numbers

The VoIP Service uses a geographical Service Number and is contractually a fixed location service. TDV recommends that VoIP Services are only used at fixed locations as nominated during the service application stage. Should Customer physically relocate the VoIP Services to a different site address, Customer must inform TDV of its new site address as soon as it is known. Services that are relocated outside TDV's associated Standard Zone Unit (SZU) are prohibited. Customer should confirm with TDV prior to relocating any VoIP Service as to whether such relocations are allowed or possible.

### 13.2 Rights to Service Numbers

Customer acknowledges that it has no right, title or interest in any Service Number allocated to it as part of the VoIP Service. TDV will comply with the Numbering Plan and reserves the right to alter or replace any Service Number as a result of compliance with the Numbering Plan or with any direction from the ACMA. TDV will inform Customer if any alternation or replacement of a Service Number by TDV is likely to or does affect Customer.

### 13.3 Local Number Portability

Customer acknowledges and agrees that if it applies to Port geographic Service Numbers from another Provider to TDV, TDV does not warrant such a port or that numbers can be successfully ported to TDV or vice versa. Local number portability involving complex Porting is subject to extended lead times.

### 13.4 CLI Barring

If Customer does not request barring CLI in respect of calls made from the VoIP Service, when a call is made from the VoIP Service, Customer's telephone number may be sent automatically to the equipment of the called party. Customer further agrees that if a party calling the IP Tel service has not barred CLI for calls made from its equipment, the telephone number of the calling party may be displayed on the screen of Customer's handset, which receives the call, if the handset is technically capable of displaying CLI.

### 13.5 No Directory Listing

Where the VoIP Service includes the provision of a phone number, TDV will mark the phone number as 'unlisted' in IPND's directory listing.

### 13.6 Number Transfer on Service Cancellation or Termination

Upon the cancellation or termination of a VoIP Service, TDV may, in its sole and absolute discretion, release to Customer's new Provider the Service Number that was Ported to TDV from Customer's previous Provider and used in connection with a VoIP Service if:

- (a) the gaining Provider is able to accept such a Service Number;
- (b) Customer requests the transfer upon cancellation or termination of the VoIP Services; and

- (c) at the time of receipt of the request, all Charges payable to TDV, including charges payable in accordance with **clause 14**, have been paid by Customer.

## 14. Early Termination or Cancellation

14.1 The Charges payable for early termination or cancellation of VoIP Services pursuant to **clause 19.1(a)** of the General Terms are, if the VoIP Services are terminated or cancelled other than in accordance with **clauses 18.2** or **18.5** of the General Terms prior to the expiry of the current Period for those VoIP Services, the sum of:

- (a) 100% of the Minimum Charges; and
- (b) any installation charges that may have been waived by TDV on the basis that the relevant Data Services continue for the duration of the Contract Period or Renewal Period (as the case may be).

14.2 The Charges payable pursuant to **clause 19.1(b)** of the General Terms are:

- (a) in the case of TDV Equipment:
  - (i) if the VoIP Services are terminated or cancelled in accordance with **clauses 18.2** or **18.5** of the General Terms and:
    - (A) Customer returns or, if TDV elects in accordance with **clause 18.7(c)** of the General Terms to collect, permits TDV to collect, any TDV Equipment in accordance with that clause within 30 days after the effective date of termination or cancellation, an amount equal to the periodic Charges specified in the VoIP Product and Pricing Schedule or accepted MAC Request in respect of that TDV Equipment, calculated on a pro rata basis; and
    - (B) Customer fails to return or, if TDV elects in accordance with **clause 18.7(c)** of the General Terms to collect, fails to permit TDV to collect, any TDV Equipment in accordance with that clause within 30 days after the effective date of termination or cancellation, an amount equal to:
      - (I) if the TDV Equipment is owned by TDV, an amount equal to:
        - a. if TDV determines, in its absolute discretion, that the equipment is capable of being redeployed to another TDV customer, the replacement value of the equipment; and
        - b. if TDV determines, in its absolute discretion, that the equipment is not capable of being redeployed, nil; or

- (II) if the TDV Equipment is owned by a third party, an amount equal to any costs imposed on TDV by that third party as a direct result of that failure; and
- (ii) if the VoIP Services are terminated or cancelled other than in accordance with **clauses 18.2 or 18.5** of the General Terms prior to the expiry of the current Period for those VoIP Services and Customer fails to return or, if TDV elects in accordance with **clause 18.7(c)** of the General Terms to collect, fails to permit TDV to collect, any TDV Equipment in accordance with that clause within 30 days after the effective date of termination or cancellation, an amount equal to:
  - (A) if the TDV Equipment is owned by TDV, an amount equal to the written down value of the equipment in the books of TDV as at the effective date of termination or cancellation; or
  - (B) if the TDV Equipment is owned by a third party, an amount equal to any costs imposed upon or otherwise incurred by TDV as a direct result of that failure; and
- (b) in the case of Purchased Equipment, an amount equal to the difference between:
  - (i) the Charges invoiced to or, if not yet invoiced by TDV, for which Customer is otherwise liable to pay in respect of the Purchased Equipment; and
  - (ii) the amounts (if any), paid by Customer in respect of the Purchased Equipment.

## Part B - Broadsoft UC 1

### 15. Application

Parts B and C of these Service Terms apply to the Broadsoft UC 1 (Business Communicator) for Desktop and Mobile with Instant Messaging and Presence (**Broadsoft UC 1**).

### 16. Service

- 16.1 Customer will acquire from TDV the Licence to use Broadsoft UC 1.
- 16.2 TDV will grant to Customer a licence to use the Broadsoft UC 1 and the Software (**Licence**). The Licence will:
  - (a) commence on the Service Start Date and automatically expires at the end of the Contract Period; and
  - (b) be non-exclusive, non-transferable, non-sublicensable, temporary and limited.
- 16.3 Customer agrees that in order to use the Broadsoft UC 1, it may be required to install programs which may be accompanied by a separate licence agreement requiring acceptance prior to installation and that those programs will be governed solely by such licence agreements.

### 17. Disclaimers and Liability

- 17.1 TDV will use its reasonable endeavours to provide to Customer Broadsoft UC 1 but does not provide any warranties in respect of the Broadsoft UC 1 whether express or implied or statutory or have any other liability to Customer or Customer's End Users in respect of the Broadsoft UC 1. Without limiting the generality of the above, TDV does not warrant that the Broadsoft UC 1 is of merchantable quality or is fit for any particular purpose.
- 17.2 Customer agrees and accepts that:
  - (a) TDV does not warrant that use of the Broadsoft UC 1 will be uninterrupted or error free;
  - (b) Customer has made its own enquiries as to the suitability of the Broadsoft UC 1 for its purposes and have not relied on any warranties or representations from TDV; and
  - (c) TDV is not responsible for any liabilities, losses, claims, damages or expenses that Customer may suffer arising from the Broadsoft UC 1 (including loss of data, delays, non-deliveries or mis-deliveries of data).

### 18. Availability

- 18.1 Customer agrees and accepts that although TDV will use its reasonable endeavours to provide to Customer the Broadsoft UC 1, the continued target availability cannot be guaranteed and Customer acknowledges that the Service may become temporarily unavailable.
- 18.2 Without limiting **clause 17.1**, TDV is not liable for a failure in the Broadsoft UC 1 that results from:
  - (a) a Force Majeure Event;
  - (b) a Planned Outage;
  - (c) Customer Equipment or a fault on Customer's side of the Service Delivery Point;
  - (d) any negligent, fraudulent or wilful act or omission by Customer, its contractors, employees or agents or its End Users;
  - (e) any third party items or services with which the Broadsoft UC 1 is used;
  - (f) installation, operation or use not in accordance with TDV's instructions; or
  - (g) any act or omission beyond TDV's reasonable control.

### 19. Support

- 19.1 Customer agrees and accepts that no Service Level or Service Level Guarantee applies to the remediation of issues with the Broadsoft UC 1.
- 19.2 TDV will use its commercially reasonable efforts to remedy issues with the Broadsoft UC 1 provided Customer using reasonable efforts to first troubleshoot issues with the Broadsoft UC 1.
- 19.3 Customer's sole and exclusive remedy in respect of the Broadsoft UC 1 and TDV's obligation to remedy will be for TDV to use commercially reasonable efforts to re-perform the defective service within a reasonable time.
- 19.4 TDV is not liable for, and is not obliged to provide support or remedy, any faults or issues that arise from:



- (a) Customer Equipment or a fault on Customer's side of the Service Delivery Point;
- (b) any negligent, fraudulent or wilful act or omission by Customer, its contractors, servants or agents or its End Users;
- (c) any third party items or services with which the Broadsoft UC 1 is used;
- (d) installation, operation or use not in accordance with TDV's instructions; or
- (e) any act or omission beyond TDV's reasonable control.

### Part C - Definitions

#### 20. Definitions

In these Service Terms, unless the context otherwise requires:

**Broadsoft UC 1** has the meaning set out in **clause 0**.

**Call Plan** means the call plan selected by Customer as set out in the VoIP Product and Pricing Schedule or as subsequently agreed by TDV.

**CSG** means the *Telecommunications (Customer Service Guarantee) Standard 2011*.

**Included Value** means the value of calls included in the Monthly Charge of the Call Plan as set out in the VoIP Product and Pricing Schedule.

**Licence** has the meaning set out in **clause 16.2**.

**Monthly Charge** means the monthly Charges payable by Customer as set out in the VoIP Product and Pricing Schedule.

**Service Activation Period** means the timeframes described in **clause 4.2**.

**Service Delivery Point** means the location at which TDV will install the Equipment necessary to provide the physical interface by which Customer connects to the VoIP Service.

**Software** means the software included by TDV with Broadsoft UC 1 to enable it to perform its basic functions.

**VoIP Equipment** means the Equipment specified in the VoIP Product and Pricing Schedule.

**VoIP Equipment Price** means the total price for the VoIP Equipment, as specified in the VoIP Product and Pricing Schedule.

**VoIP Product and Pricing Schedule** means the VoIP Product and Pricing Schedule attached to the accepted Application Form or MAC Request.

**VoIP Service** has the meaning set out in **clause 1.1**.

**Warranty Period** means:

- (a) where the VoIP Product and Pricing Schedule indicates that the VoIP Equipment will be purchased by Customer on an upfront basis, a period of 12 months from the date on which title to the VoIP Equipment passes to Customer; and
- (b) where the VoIP Product and Pricing Schedule indicates that the VoIP Equipment will be paid by Customer over the Contract Period by payment in instalments, the Contract Period.