

VostroNet

Terms & Conditions

Parties

VostroNet (Australia) Pty Ltd ACN 602 624 215
of Level 1, 171 Edward Street, Brisbane,
Queensland 4000 ("VostroNet")

The retail service provider identified in the
particulars ("Retailer")

Background

The Retailer and VostroNet have agreed to
enter into this Agreement, for VostroNet to
provide wholesale telecommunications
services to the Retailer.

1. Agreement, Term and Termination

1.1 Formation and Structure of Agreement

- (a) This Wholesale Telecommunications
Master Services Agreement sets out
the general terms and conditions
under which the Parties agree for
VostroNet to supply wholesale
telecommunications services to the
Retailer.
- (b) The Parties' obligations in relation to
a Service commence when the
Retailer makes, and VostroNet
accepts, a request for a Service to be
provided at a Site that is made
through the VostroNet platform that
VostroNet will make available to the
Retailer. VostroNet may accept or
reject any such request.

1.2 Term of Agreement

- (a) The Wholesale Telecommunications
Master Services Agreement
commences on the day it is signed by
both Parties and continues until
terminated in accordance with this
Agreement.
- (b) A Service continues on a month-to-
month Term until terminated by
either Party giving the other Party

notice of termination using the
VostroNet platform that VostroNet
will make available to the Retailer,
with termination having effect at the
end of the Term in which the notice is
provided.

1.3 Precedence

To the extent of any inconsistency, the
Agreement will be read in the following
descending order of precedence:

- (a) this Wholesale Telecommunications
Master Services Agreement;
- (b) VostroNet protocols, price lists, rules
and policies published on the
VostroNet website or otherwise
notified to the Retailer;
- (c) The Final Access Determination No. 2
of 2017 (LBAS), made pursuant to
Section 152BC of the *Competition
and Consumer Act 2010* (which
applies to the extent that VostroNet is
required to comply with any standard
access obligations in respect of the
LBAS).

2. Termination

2.1 Termination by VostroNet

VostroNet may terminate this Agreement or a
Service, without liability to the Retailer by giving
written notice to the Retailer, if:

- (a) the Retailer suffers an Insolvency
Event;
- (b) the Retailer fails to pay an undisputed
invoice within 30 days of its due date
and not remedied within 30 days of
reminder notification of any unpaid
invoice;
- (c) the Retailer fails to pay any invoices
by their due date on 3 or more
occasions in any 12-month period
and not remedied within 30 days of
reminder notification of each unpaid
invoice;

- (d) the Retailer commits a material breach of the Agreement that is not capable of remedy;
- (e) the Retailer commits a material breach of the Agreement that is capable of remedy but fails to remedy the breach within 30 days of receiving a notice to do so from VostroNet;
- (f) a Force Majeure Event prevents VostroNet from substantially performing its obligations under this Agreement for a period of more than 60 days; or
- (g) a Supplier failure occurs, a Supplier alters its terms of supply, or any permit, consent, licence, or lease required for the provision of the Service cannot be obtained or retained and is not capable of remedy within 30 days of such notice to the Retailer. Under this sub-clause VostroNet may only terminate any affected Services and not the Agreement, unless all Services are affected.

2.2 Termination by the Retailer

The Retailer may terminate this Agreement or a Service by giving written notice to VostroNet if:

- (a) VostroNet commits a material breach of the Agreement that is not capable of remedy;
- (b) VostroNet commits a material breach of the Agreement that is capable of remedy but fails to remedy the breach within 30 days of receiving a notice to do so from the Retailer;
- (c) a Force Majeure Event prevents VostroNet from substantially performing its obligations under this Agreement for a period of more than 60 days;
- (d) VostroNet suffers an Insolvency Event; or
- (e) in the case of a Service, by giving VostroNet written notice prior to the RFS Date and paying VostroNet all reasonable costs that it has incurred in preparing for the Service including costs relating to equipment, infrastructure, installation and any

costs that are payable to VostroNet's Suppliers.

2.3 Consequences of termination

- (a) Termination of the Agreement also terminates all Services.
- (b) Termination of a Service does not automatically terminate the Agreement.
- (c) Termination does not affect any accrued rights or remedies of either Party including the right to payments due.
- (d) If termination occurs pursuant to any of clauses 2.1(a) - 2.1(e) the Retailer must pay VostroNet on demand any reasonable and applicable outstanding charges.
- (e) Upon termination of the Agreement each Party must return or destroy any of the other Party's Confidential Information that is in its possession.

2.4 Surviving rights after termination

- (a) Termination or expiry of this Agreement does not operate as a waiver of any breach by a Party or any of its provisions and is without prejudice to any rights, liabilities or obligations of any Party that have accrued up to the date of the termination or expiry, including a right of indemnity.
- (b) Termination of this Agreement for any reason will not affect the operation of the provisions of this Agreement which by their nature survive termination.

3. Co-operation

Each Party must reasonably co-operate with the other in performing obligations under this Agreement and must ensure that they and their contractors undertake their activities in any Site in a manner that protects the safety of persons and minimises interference with the activities of the other Party and third-parties performing work on the Site. Each party is responsible for the safe operation of its network, systems, equipment and facilities.

4. Payment terms

- (a) The Retailer agrees to pay interest on overdue amounts, which accrues at 2% per annum above the 60-day Bank Bill Swap Reference Rate.
- (b) All amounts payable under this Agreement are exclusive of GST. The Retailer will pay VostroNet the GST that applies to any amounts payable to VostroNet.
- (c) VostroNet will issue monthly invoices in advance to the Retailer for the Wholesale Service Charge. VostroNet may include amounts in an invoice relating to a previous billing period to the extent that such amounts have not previously been invoiced.
- (d) The Retailer will pay invoices within 14 days of being issued by VostroNet.

5. Title in facilities

Except for any rights expressly granted under this Agreement, the Retailer does not obtain any right, title or interest in any part of VostroNet's infrastructure, equipment, software or other components of the Network.

6. Subcontracting

A party may subcontract any of its obligations under this Agreement but will remain responsible to the other party for the performance of those obligations.

7. Wholesale Services

- (a) VostroNet will provide Wholesale Services to the Retailer at the Wholesale Service Charge.
- (b) VostroNet may modify products, prices and terms (including the addition or modification of a Wholesale Service or a price change) by giving no less than 40 days prior notice to the Retailer, although lesser or no prior notice is required for any price reductions or if reasonably necessary for VostroNet to comply with any regulatory or legal obligation.
- (c) In accordance with its regulatory obligations, VostroNet may use the Network to provide Wholesale Services to other Carriage Service

Providers or Carriers who may provide Retail Services to End-Users at a Site.

- (d) VostroNet will take all reasonable care to ensure that the Wholesale Service is fit for its intended purpose and is provided to an industry standard.
- (e) The Retailer will pay the Wholesale Service Charge to VostroNet in accordance with the Agreement.
- (f) The Wholesale Service Charge for a particular Service commences from the RFS Date (whether or not the End-User has used the Service by that date).
- (g) The Wholesale Service Charge for a particular Service ceases at the time that the Service is terminated, in accordance with Clause 2.
- (h) The Retailer must comply with and, to the reasonable extent possible, ensure that End-Users comply with the Acceptable Use Policy.
- (i) The Retailer will comply with all relevant Acts, Regulations and directions from regulatory bodies, including the Australian Competition and Consumer Commission, the Telecommunications Industry Ombudsman and the Australian Communications & Media Authority.
- (j) The maximum period within which VostroNet will connect premises after the Retailer makes a request on behalf of an End-User in relation to a Service is:
 - (i) After the RFS date – 14 days;
 - (ii) Prior to the RFS date – on a date to be mutually agreed.

8. Service suspension

VostroNet may suspend or restrict a Service:

- (a) on one week's notice, if the Retailer or an End-User fails to comply with the Acceptable Use Policy, however, VostroNet may immediately suspend a Service without notice if the Retailer or an End-User materially fails to comply with the Acceptable Use

Policy, or if VostroNet believes it is necessary to comply with any law or direction of a government or regulatory body, or if VostroNet believes it is necessary to protect any person, facility, equipment, network or because of an emergency;

- (b) on two weeks' notice, if required to address technical issues or maintenance is required, and not rectified within the two weeks' notice period, however VostroNet may immediately suspend a Service without notice if emergency maintenance is required.

9. Representations and warranties

Each Party represents that: it is a corporation incorporated under the laws of Australia; it has legal capacity to enter into this Agreement and the right or interest necessary to fulfil its obligations in this Agreement; it will perform its obligations under this Agreement with due care and skill and in accordance with any applicable laws; and any equipment used to perform its obligations under this Agreement will be fit for the purpose. Each Party acknowledges that it has not relied on any representations or warranties except as set out in this Agreement. If the Retailer is entering into this Agreement in the capacity as trustee for any trust, the Retailer warrants that it has, and will continue to have for the term of this Agreement, a right to be fully indemnified out of the assets of the relevant trust in respect of obligations incurred by the Retailer under this Agreement and its right of indemnity out of, and lien over, the relevant trust has not been, and will not be during the term of this Agreement, limited in any way.

10. Liability and indemnity

10.1 Indemnity

- (a) Each Party indemnifies the other Party from and against loss that is suffered by the indemnified Party as a result of the death, personal injury and loss or damage to the indemnified party's property directly caused or contributed by the acts of the indemnifying Party.
- (b) Each Party must mitigate any loss that it suffers and which is indemnified under subclause (a).

- (c) If a third-party makes a claim that a Party considers is indemnified by the other Party, that Party must:

- (i) give the other Party full particulars of the claim as soon as practicable;
- (ii) not make any admissions, compromise or offer to settle the claim without written consent of the other Party;
- (iii) permit the other Party to have carriage of negotiations and litigation at the other Party's expense; and
- (iv) provide the other Party with all reasonable assistance in relation to the claim.

10.2 Limitation of Liability

- (a) To the extent permitted by law, VostroNet excludes all express or implied warranties and conditions of any kind including without limitation any implied warranties and conditions of merchantability or fitness for a particular purpose. VostroNet does not warrant that the Services will be secure, continuous or error-free. VostroNet's liability for non-excludable conditions and warranties is limited (where it can be limited) to:
 - (i) resupplying the Services or goods; or
 - (ii) paying the Retailer the cost of having the Services or goods resupplied.
- (b) Neither Party is liable to the other Party for any Consequential Loss, loss of revenue, profit or anticipated profit, or for any loss that does not naturally or directly result from its acts, omissions, or breach of this Agreement.
- (c) Except in relation to charges payable under this Agreement including the Wholesale Service Charge, the aggregate liability of each Party to the other Party for all losses including indemnified loss is limited to the proceeds of any insurance policy.

10.3 Proportionate Liability

Each Party's liability for loss is reduced to the extent that the other Party caused or contributed to the death, injury, damage or loss.

11. Insurance

VostroNet must have and maintain the following policies with insurance companies of good financial standing and reputation: public and products liability insurance in respect of individual claims of at least \$10 million; professional indemnity insurance in respect of individual claims of at least \$2 million; and workers compensation insurance as required by law. The Retailer must have and maintain the following policies with insurance companies of good financial standing and reputation: public and products liability insurance in respect of individual claims of at least \$10 million. Upon request, each Party must provide the other Party with a copy of any insurance policy required under this Agreement. VostroNet must ensure that each subcontractor engaged by it to undertake any work or supply any goods or other materials under this Agreement, takes out and maintains insurances in the type and level of cover as VostroNet considers appropriate, having regard to the nature and extent of the work to be undertaken by that subcontractor or the goods or other materials to be supplied by that subcontractor.

12. Force Majeure

Neither Party is liable to the other Party for a delay or failure to perform its obligations under this Agreement because of an event outside its reasonable control, however it must take all reasonable steps to overcome the event and resume the performance of its obligations as soon as practical upon abatement of the event. This does not relieve either Party from its obligation to make payment as and when due under this Agreement.

13. Assignment

- (a) Subject to subclause (b) neither Party may assign its rights under this Agreement without the consent of the other Party.
- (b) VostroNet may, upon prior notice to the Retailer, novate its rights and obligations under this Agreement to a Related Body Corporate (as that term

is defined in the *Corporations Act 2001* (Cth)) or to any person buying VostroNet's business or assets.

14. Relationship between Parties

The Parties are independent of each other and nothing in this Agreement creates any partnership, joint venture, employment or other relationship.

15. Failure or delay in exercising rights

Unless stated in this Agreement, a partial exercise, failure to exercise, or delay in exercising a legal right or a right under this Agreement does not waive, prevent or limit a Party's rights or remedies under this Agreement.

16. Costs

The Parties agree to pay their own costs in connection with the preparation and execution of this Agreement.

17. Intellectual Property

- (b) Except as otherwise provided by subclauses (c) and (d) this Agreement does not transfer any of VostroNet's Intellectual Property to the Retailer, or any of the Retailer's Intellectual Property to VostroNet.
- (c) VostroNet grants the Retailer a non-exclusive, non-transferable, irrevocable licence during the term of this Agreement, to use VostroNet's Intellectual Property to the extent necessary to obtain the benefit of this Agreement.
- (d) The Retailer grants VostroNet non-exclusive, non-transferable, irrevocable licence to:
 - (i) reproduce, communicate and adapt the Retailer's Intellectual Property internally within VostroNet to the extent necessary for VostroNet to supply Services to the Retailer;
 - (ii) list and refer to the Retailer, and display the Retailer's logo, on its websites and otherwise in its advertising or on its marketing collateral.

18. Confidentiality

The terms of this Agreement and the Confidential Information of each Party are confidential and may not be disclosed to third parties except to the extent necessary for the exercise of the Agreement, required by law, or permitted by the non-disclosing Party.

19. Authorised Representative and Notices

Each Party confirms that the authorised representative listed below is authorised to act on its behalf with regard to all matters pertaining to this Agreement. The Parties may change their authorised representative by giving notice to the other Party. All notices relating to this Agreement must be given to the other Party's authorised representative or if there is no authorised representative to the registered business address of the other Party. Notices will be taken to be given, when emailed, when the sender receives an automated read receipt message, if delivered by hand, on delivery to the recipient during business hours, or if sent by certified or registered post, on the third business day following the notice being posted to an address within the same country and on the tenth business day following the notice being posted to an address in a different country.

20. Disputes

If the Parties cannot reach agreement on any matter arising under this Agreement, a Party may issue a notice detailing the dispute to the other Party. If the dispute remains unresolved, then 5 business days after the notice, the Parties must exchange written summaries of the dispute and within a further 5 business days a senior employee or Director from each party must attempt to resolve the dispute. If the senior employees or Directors are unable to resolve the dispute within a further 10 business days or longer period agreed by the Parties, either Party may refer the dispute for resolution by a person agreed between the Parties or if unable to agree, by a person nominated by the President of the Institute of Arbitrators and Mediators of Australia in the State. This clause does not prevent a Party applying to a court for urgent interlocutory relief. To the extent possible, the Parties must continue to perform their obligations despite the existence of a dispute.

21. Governing law

This Agreement is governed by the law of Queensland ('State') and each Party submits to the jurisdiction of the courts in that State.

22. Counterparts

This Agreement may consist of a number of counterparts, each of which when executed will be an original and all the counterparts together will constitute one and the same instrument.

23. Definitions and interpretation

23.1 Definitions

Acceptable Use Policy means the VostroNet policy, as published on the VostroNet website, and as amended from time to time, setting out rules that the Retailer and End-Users must follow in using a Service and is designed to ensure that the Service is used for lawful purposes and that people do not interfere with the Network or other people's use of Services or the internet.

Agreement means this document (the Wholesale Telecommunications Master Services Agreement), any VostroNet protocols, price lists, rules and policies which are published on VostroNet's website or notified to the Retailer, as amended from time to time;

Carriage Service Provider has the meaning given in the *Telecommunications Act 1997* (Cth).

Carrier has the meaning given in the *Telecommunications Act 1997* (Cth).

Confidential Information of a Party (**Discloser**) means the following information, regardless of its form or whether the other Party (**Recipient**) becomes aware of it before or after the date of this Agreement:

- all information treated by the Discloser as confidential, (including but not limited to information regarding strategy, information regarding personnel, and any Intellectual Property or industrial, marketing or commercial information relating to or developed in connection with or in support of the Discloser's business); and
- disclosed by the Discloser to the Recipient or of which the Recipient becomes aware;

except information:

- the Recipient creates (whether alone or jointly with any third person) independently of the Discloser;
- that is public knowledge (otherwise than as a result of a breach of confidentiality by the Recipient or any other person with an obligation to keep such information confidential); or
- acquired from a third party that is entitled to disclose it.

Consequential Loss means loss of revenue, loss of profits, loss of anticipated savings or business, pure economic loss, loss of data, loss of value of equipment (other than cost of repair), loss of opportunity or expectation loss and any other form of consequential, special, indirect, punitive or exemplary loss or damages.

Control has the meaning provided in the *Corporations Act 2001* (Cth).

CPI means the 12-month change in the All Groups Consumer Price Index published by the Australian Bureau of Statistics for the previous four quarters.

End-User means a retail customer of a Service in the Site.

Force Majeure Event means an unforeseeable event or circumstance beyond the reasonable control of the party claiming force majeure, which prevents that party in whole or in part from carrying out its obligations under this Agreement, including:

- (a) an act of God, lightning strike, meteor strike, earthquake, storm, flood, landslide, explosion or fire;
- (b) general strikes or other industrial action (other than industrial action only involving some or all of that party's employees or contractors);
- (c) act of a public enemy, war (declared or undeclared), terrorism, sabotage, blockade, revolution, riot, civil commotion.

GST has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Insolvency Event means an administrator, liquidator, manager and receiver or any other

administrator is appointed over the assets or the business of the entity, or the entity enters into any composition or arrangement with its creditors.

Intellectual Property means all industrial and intellectual property rights, including registered or unregistered trademarks, patents, copyright, rights in circuit layouts, trade secrets, confidential know-how and information and any application or right to apply for registration of any of those rights.

Network means the telecommunications network/s operated by VostroNet where a Service is provided to the Retailer.

Parties means both VostroNet and the Retailer.

Retail Services means Services provided to End-Users.

RFS Date means the ready for service date and is the earlier of the date that VostroNet informs the Retailer using the VostroNet platform that a Service is operational and ready for service, or when the End-User commences to use the Service.

Service means a telecommunications service supplied over the Network in a Site.

Site is any building/s or locations where a Service is provided or to be provided.

Supplier means a third-party that supplies goods or services to VostroNet that are used in VostroNet's provision of Services to the Retailer.

Wholesale Service means a Service supplied by VostroNet to the Retailer, a Carriage Service Provider or Carrier.

Wholesale Service Charge means the charge for Wholesale Services payable to VostroNet by the Retailer. For the avoidance of doubt, the Wholesale Service Charge incorporates both recurring costs and non-recurring costs including new developments charges and labour services.

23.2 Interpretation

In this Agreement, headings are for convenience only and do not affect interpretation and, unless the contrary intention appears:

- (a) a reference to a person includes a reference to a corporation, trust, partnership, association or other entity and vice versa;

- (b) the singular includes the plural and vice versa;
- (c) if an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
- (d) a word defined in this document and used but not defined in other parts of the Agreement, has the meaning given to it in this document;
- (e) a provision of this Agreement must not be construed adversely to a Party solely because that Party drafted this Agreement or any part of it;
- (f) the meaning of general words is not limited by specific examples introduced by "including", "for example" or similar expressions;
- (g) reference to a clause or schedule is a reference to a clause of or schedule to this Agreement;
- (h) reference to a Party includes its successors and assigns and any Related Bodies Corporate (as that term is defined in the Corporations Act 2001 (Cth));
- (i) reference to a Party's act, omission or negligence is also a reference to the act, omission or negligence of any person who is under that Party's control;
- (j) reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them.

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Addendum: Price List (as at 1 January 2021)

Premises Charges

Monthly Recurring Charges:

Product	Monthly Recurring Charge (\$ ex GST)		Inclusions
	Layer 2	Layer 3	
12/1	\$35.00	\$36.00	<i>CVC included (subject to fair use)</i>
50/20	\$45.00	\$52.00	<i>CVC included (subject to fair use)</i>
100/20	\$58.00	\$66.00	<i>CVC included (subject to fair use)</i>
100/40	\$65.00	\$75.00	<i>CVC included (subject to fair use)</i>
250/25	\$68.00	\$103.00	<i>CVC included (subject to fair use)</i>
250/100	\$100.00	\$140.00	<i>CVC included (subject to fair use)</i>
1000/50	\$80.00	\$121.00	<i>CVC included (subject to fair use)</i>
1000/400	\$180.00	\$275.00	<i>CVC included (subject to fair use)</i>
Voice Port (bundled with Data)	\$0.00	\$0.00	<i>n/a</i>
Voice Port (Standalone)	\$12.00	\$12.00	<i>n/a</i>

Notes:

Not all Network Service speeds are available at all locations. Confirm with VostroNet or utilise Portal/API for quoting/ordering

Network Service permits one MAC Address per connection

Network Service max mtu set at 1500

Network Services may not be used for aggregation of networks or services

Network Services may not be used as network backhaul, upstream layer 2, private networks, or upstream layer 3 connection

Non-Recurring Charges:

Product	Non-recurring Charge (\$ ex GST)	
	Layer 2	Layer 3
New Development Charge	\$300.00	\$300.00
RFoF MATV/Foxtel only Connection	\$500.00	\$500.00
Service Adds/Moves/Changes	\$0.00	\$0.00

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Network Interface Charges

Product	Non-recurring Set-up Charge (\$ ex GST)	Monthly Recurring Charge (\$ ex GST)
1000BASE-T or LX	\$0.00	\$0.00
10GBASE-LR	\$0.00 (on approval)	\$0.00 (on approval)
40GBASE-LR4	\$0.00 (on approval)	\$0.00 (on approval)
100GBASE-LR4	\$0.00 (on approval)	\$0.00 (on approval)
Additional Ports per PoP	\$0.00 (on approval)	\$0.00 (on approval)

Notes:

Cross Connect Port services provided on S-LAN as C-LAN at VostroNet PoP closest to Network Service connection
RSP will require cross connect to PoP to connect to Port and receive S-LAN/C-LANs. LOA Provided at facility of interconnect

Labour Charges

Product	Between Hours (\$ ex GST)	Afterhours / Emergency (\$ ex GST)
Call Out Standard – No fault found (per hour)	\$150.00	\$250.00
Complex Installation / Build / Consulting (per hour)	\$200.00	\$300.00

Notes:

Minimum 1 hour charged for labour services