



L A W Y E R S

**STANDARD FORM OF
AGREEMENT**

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1. STANDARD FORM OF AGREEMENT

- 1.1** This standard customer agreement (**Agreement**) contains the terms upon which Telecom Connect Pty Ltd (ABN 62153486198) will provide you with the Services.
- 1.2** This Agreement has been filed with the ACMA and is a standard form of agreement for the purposes of Part 23 of the Act.
- 1.3** This Agreement uses defined terms, which start with a capital letter. The definitions of these terms can be found below, in clause 18.2.
- 1.4** “You” means the customer as specified in an Account Application. You are responsible for all calls made from any account specified in your Account Application, so “you” also refers to anyone else that uses a telephone service specified in your Account Application. “We” means Telecom Connect Pty Ltd (ABN 62153486198) and includes are permitted assigns and sub-contractors.

2. PROVISION OF SERVICES

- (a) We will provide the Services using either our facilities and services or those of Other Suppliers as we may determine at our discretion from time to time.
- (b) We will provide the Services subject to availability, geographical and technical capability. There may be times when availability is limited due to maintenance being performed. We are not obliged to provide you with Services where capacity, geography or technical capability affect the application or installation of the Services to your premises.

3. BILLING

3.1 Invoicing

We will usually invoice you monthly for the Services at rates calculated in accordance with the Rate Card, which may change in accordance with this Agreement, plus GST. We reserve the right to defer billing in respect of any billing period and to add the charges incurred to any subsequent billing period.

3.2 Method of Billing

We will bill you in arrears for usage charges and in advance for all periodic charges, equipment rental, connections and service fees and all other charges. The bill shall be calculated in accordance with call data recorded and supplied to us by the CSP and we will be entitled to rely in good faith upon call data recorded and supplied to us by the CSP. The bill shall be calculated by reference to data recorded by you.

3.3 Time for payment

All bills must be paid by you within 14 days of the date of the invoice. We may suspend provision of Services immediately thereafter without further notice to you if any bill remains unpaid for longer than 14 days of the date of the invoice.

4. CHARGES

4.1 Rate Card

The Services will be provided at the rate set out in the Rate Card. There are two options - Maximum Monthly Call Credit Contract or Fixed Period Contract – as specified below. The option that applies to you will be that specified by you in the Application.

4.2 Option 1 - Maximum Monthly Call Credit Contracts

- (a) The charges to you for your use of the Services will be calculated each calendar month in accordance with the Rate Card.
- (b) Subject to clause 4.2(b), under Maximum Monthly Call Credits Contracts, you will receive a credit each calendar month towards the cost of Eligible Calls made by you. The amount of that credit is specified in your Account Application. The use of the credit by Eligible Calls made in each calendar month will be calculated by applying the Rate Card. You will be charged each month for all Eligible Calls made, and other Services supplied, in that month in accordance with the Rate Card, except to the extent that the cost (calculated by applying the Rate Card) of Eligible Calls made in that calendar month is less than the amount labelled “Monthly Call Credit” in your Account Application (**Monthly Call Credit**).
- (c) Monthly Call Credit is calculated on a calendar month by month basis. That is, you cannot carry forward any unused balance of Monthly Call Credit in any month and apply that balance towards a later month.
- (d) You will be entitled to Monthly Call Credit towards the cost of Eligible Calls in each month in accordance with clause 4.2(b) until the total of Monthly Call Credit entitlements (whether or not used in any month and regardless of level of usage in any month) reaches the amount labelled “Maximum Call Credits” in the Account Application (**Maximum Call Credits**). This means that once you reach your entitlement to Maximum Call Credits, your entitlement to Monthly Call Credit in any subsequent month will automatically terminate in relation to all subsequent Eligible Calls made in any month and you will therefore then pay for all Eligible Calls made in any month, at rates calculated in accordance with the Rate Card.
- (e) In relation to the Maximum Monthly Call Credit Contracts, we may from time to time increase our charge for any Service (including decreasing the rate of any discounts associated with Services) by giving one months’ notice in writing to you of a new Rate Card.
- (f) Notwithstanding clause 17.6, you acknowledge and agree that we may provide details of the new Rate Card to you by sending it to the email address provided by you in your Account Application.

4.3 Option 2 - Fixed Period Contracts

- (a) In relation to Fixed Period Contracts, you must pay for the Services used by you in accordance with the Rate Card.
- (b) Subject to clause 4.4, the charges set out in the Rate Card provided to you at the date of your Application will apply for the term specified in your Account Application.

4.4 Other Supplier charges – Both Option 1 - Maximum Monthly Call Credit Contracts and Option 2 - Fixed Period Contracts

- (a) In relation to both Maximum Monthly Call Credit Contracts and Fixed Period Contracts, our charges to you may include charges which Other Supplier charges to us in relation to the provision of the Services (including increases and special or one-off charges) from time to time, without notice to you.
- (b) In the event that any Other Supplier increases its charges to us, and such increase affects the cost of providing the Services to you, we will increase the charge to you in proportion to the increased cost of providing the Services.

4.5 Other charges

- (a) You will pay to us in accordance with clause 3 any charges which any Other Supplier charges to us because you approach that Other Supplier directly, or otherwise than through us.
- (b) You will pay to us in accordance with clause 3 any charges which any Other Supplier or other Person charges to us for connection or initiation of any Service or for cancellation of any Service.

4.6 Overdue amounts

- (a) We reserve the right to reduce any available call credits, and charge interest on any part of the charges, not paid to us by the due date.
- (b) Interest will be charged from the due date until payment at 2% above the overdraft rate from time to time charged by our principal bankers.
- (c) In addition to interest, you agree to pay us all costs, fees, charges incurred by us in respect of collecting any overdue amounts, including bank charges incurred as a result of dishonoured cheques.

4.7 Taxes and GST

- (a) Unless expressly stated otherwise, charges for the Services are exclusive of government taxes, duties (including stamp duty), imposts or levies, which will be your responsibility and will be itemised on your invoice.
- (b) Unless expressly stated otherwise, all fees, charges and other amounts payable (and quotes given) under or in accordance with the terms of this Agreement (including charges for Services, late payment charges and reconnection fees) are exclusive of GST and you must pay to us in addition to the charges an amount equal to any GST payable on the supply of the Services. That additional amount is payable at the same time as any part of the charges for the Services is payable.

4.8 Re-issue bills

We reserve the right to re-issue any bill in order to correct any misdescription, error, omission or miscalculation, subsequently discovered and such re-issued bill will take precedence over any prior bill.

4.9 Disputed Amounts

In the event that you dispute a bill, you agree to pay to us all amounts payable pursuant to the disputed bill without deduction or set-off, and we agree to refund any amount found to be charged incorrectly after a reasonable and proper investigation.

4.10 Obligation to pay

Your obligations under this Agreement, including the obligation to pay the charges referred to in clause 4, are independent from and do not depend upon your or our obligations under any other agreement you may have with us or our Related Bodies Corporate or any financier under any Rental Agreement. This means that if a Rental Agreement is terminated or ceases to operate for any reason, this Agreement will continue to operate unless and until terminated in accordance with the terms of this Agreement.

4.11 Reduce call credits

We reserve the right to reduce any available call credits (including the Monthly Call Credits and Maximum Call Credits described in your Account Application) if you are in material breach of this agreement.

5. TERM

5.1 Commencement of Agreement

This Agreement commences on the date that an Account Application that is signed by you is accepted by us, unless the term is specified elsewhere in the Agreement.

5.2 Commencement of Service

Provision of Services commences when the Transferred Services accounts are transferred from your Current Supplier to our nominated CSP by your Current Supplier and upon completion of installation of any necessary equipment and any other arrangements with any Other Supplier for the provision of the Services.

5.3 Termination by You - Maximum Monthly Call Credit Contract

- (a) If we provide you with the Services pursuant to a Maximum Monthly Call Credit Contract, you may terminate this Agreement at any time by giving us 30 days' notice in writing of your intention to do so. You will immediately cease to be entitled to any Monthly Call Credit towards the cost of the Services.
- (b) If you give notice to us in accordance with clause 5.3(a) above (**Notice**), we will bill you for the full cost of Eligible Calls and other Services you use from the date of the Notice, up to and including the final day of the 30 day period.

5.4 Termination by You - Fixed Period Contract

- (a) If we provide you with Services pursuant to a Fixed Period Contract, then the period of operation of the Agreement is specified in the Account Application. You agree that you will continue to acquire Services from us throughout the period of operation of the Agreement as specified in the Account Application.

- (b) We have calculated rates for Services as specified in the Rate Card in the expectation that you will continue to acquire Services from us throughout the period of operation of the Agreement as specified in the Account Application. Accordingly, an early termination payment is due and payable by you if you purport to terminate this Agreement (which you are not entitled to do) within that period. You agree that the early termination payment is to compensate us for lost anticipated revenue over the balance of the period of intended operation of this Agreement and our costs of terminating your account. The early termination payment payable by you will be worked out like this: we calculate your average monthly spend on Services over each calendar month that the agreement has operated, and we charge you an amount calculated as the total of (1) that average monthly spend multiplied over the number of months that the Agreement would have continued to operate were it not for your purported termination of the Agreement, plus (2) that average monthly spend multiplied by 3, plus GST.

6. TRANSFER OF YOUR ACCOUNT FROM YOUR CURRENT SUPPLIER

6.1 Transfer to Us

- (a) By signing the Account Application, you authorise us to sign on your behalf and in your name forms of authority to your Current Supplier as are necessary to transfer the Transferred Services accounts as we direct.
- (b) If we request, you will yourself give written instructions to your Current Supplier to transfer the Transferred Services accounts from your name to ours.
- (c) You must immediately pay to your Current Supplier all amounts owing to it for the Transferred Services up to the time of transfer of those accounts.
- (d) If we, in our absolute discretion, make any payment on your behalf to your Current Supplier, then you will reimburse us for that amount.

6.2 Indemnity

We will not accept any liability for any amounts owing by you to your Current Supplier for services which your Current Supplier provided to you prior to the commencement of the Services. You indemnify us against any claims made by your Current Supplier against us in relation to any such amounts.

7. TRANSFER OF YOUR SERVICES FROM US TO ANOTHER SUPPLIER

- (a) If in the future you request us to transfer any of the Services to any Other Supplier, then you remain responsible to us for the amount payable for the Services up to the time when we transfer those accounts to the Other Supplier and you will pay us that amount in accordance with clause 3.
- (b) Our obligations to provide the Services cease when we transfer those accounts to any Other Supplier.
- (c) We will bill you for the Services up to and including the date they are transferred to the Other Supplier and for all other charges you are liable for under the Agreement in accordance with clause 3.

8. VARIATIONS TO THE AGREEMENT

We may from time to time vary the Agreement without notice to you by reducing your obligations under the Agreement (including all charges), or otherwise by one month's notice in writing to you.

9. CONSENT TO CREDIT CHECK

9.1 If you are a company, please note that we will be performing credit checks on you.

9.2 If you are a natural person, you:

- (a) understand that the Privacy Act allows us to give a Credit Reporting Agency certain personal information about you. The information we disclose to a Credit Reporting Agency includes permitted information which will allow you to be identified, the fact that you have applied for credit and the amount and the fact that we are a current credit provider to you;
- (b) agree that we may obtain a credit report relating to you from a Credit Reporting Agency for the purpose of either processing your application to us for commercial credit, or for collecting over due payments in respect of commercial credit provided to you by us;
- (c) agree that we may disclose a credit report or other report relating to you or any other personal information derived from that credit report or other report to any other credit provider for the purpose of:
 - (i) assessing your Application;
 - (ii) notifying a default by you;
 - (iii) allowing another credit provider to ascertain the status of your arrangements with us where you are in default with one or more other credit providers; and
 - (iv) generally assessing your credit worthiness; and
- (d) understand that the information exchanged can include any information about your personal and/or commercial credit worthiness, credit history or credit capacity which the Privacy Act allows credit providers to give to or receive from each other.

10. YOUR OBLIGATIONS

- (a) You must ensure that you comply at all times with all laws and obligations, including any licence conditions applicable to the Services and their use.
- (b) You must assist us in ensuring that any equipment necessary for you to receive the Services is installed and programmed appropriately.
- (c) You must not resupply the Services to anyone else without our prior written consent, which we may withhold in our absolute discretion.
- (d) You are liable to us for all charges in relation to the Services whether or not you authorised the use of that Service by another person.

11. RELATIONSHIPS

- (a) By signing this agreement you are entering into a direct relationship with us and not your Current Supplier.
- (b) If you currently have a discount plan with your Current Supplier it will cease to apply when we provide you with the Services.

12. TERMINATION AND SUSPENSION

12.1 Mutual Termination Right

Either party may terminate this Agreement by providing the other party 30 days' written notice of its intention to do so.

12.2 Immediate Termination and Suspension

We may terminate this Agreement, or suspend or cancel the provision of Services to you immediately, at any time, and without notice if:

- (a) you have breached this Agreement;
- (b) a liquidator, receiver, receiver and manager, official manager, trustee, administrator or similar official of your business or association is appointed or you enter into any composition with your creditors;
- (c) we do not receive payment of an invoice within 30 days after the due date;
- (d) we are unable to supply or continue to supply you with the Services due to the cancellation, suspension or termination of any agreement with our Suppliers, for whatever reason;
- (e) we are unable to supply or continue to supply you with the Service due to geographical coverage, capacity or technical capability limitations;
- (f) we reasonably determine that you have failed our credit check requirements or that you are no longer credit worthy; or
- (g) we are permitted to do so by law or requested or required to do so by any regulatory authority or law enforcement agency.

12.3 Payment after termination

For the avoidance of doubt, your obligation to pay amounts in respect of the Services, as set out in clause 5.3, will apply to a termination of this Agreement by either party, or the suspension or cancellation of the Services by us, under this clause 12.1

12.4 Removable Discount

If we provide a Service at a discount on payment over a set term and you cancel the Service or terminate the Agreement before that term ends, then you will be liable to pay the full undiscounted amount for the Service for the period prior to cancellation and termination. We will bill you for the amount of the discount allowed to you during the elapsed period on your next bill.

13. LIMITATION OF LIABILITY

- (a) We do not warrant that the Services will be free of blockages, delays or other related faults and we will not be responsible for loss or damage to you or your business which may result.
- (b) Subject to clause 13(c) all terms, conditions, warranties, undertakings, inducements and representations, whether express or implied, statutory or otherwise, relating to the provision of Services by us are excluded, and we will not be responsible for any loss or damage (including loss of income, loss of profit or consequential loss or damage) however caused (whether by negligence or otherwise) which may be suffered or incurred or which may arise directly or indirectly in respect of the Services.
- (c) To the extent permitted by law, where any applicable legislation implies any term, condition, warranty or remedy into the Agreement or our relationship with you, which may not be excluded but which may be limited, our liability for any breach of such implied term, conditions, warranty or under such remedy will be limited, at our option to:
 - (i) if the breach is in relation to goods:
 - A. the replacement of the goods or supply of equivalent goods; or
 - B. the repair of the goods; or
 - C. the cost of replacing the goods or acquiring the goods; or
 - D. the cost of having the goods repaired; and
 - (ii) if the breach is in relation to services:
 - A. supply of those services again; or
 - B. payment of the cost of having those services supplied again.
- (d) We have no liability to you or any other Person for:
 - (i) acts or defaults of Other Suppliers; or
 - (ii) faults or defects in the Services which are caused to any material extent by your own conduct or use; or
 - (iii) faults or defects that arise in telecommunications services not provided under the Agreement (even if they are connected with the Services provided under the Agreement) which are due to incompatibility with the Services.
- (e) We have no liability under the Rental Agreement.

14. YOUR INDEMNITY

- (a) You acknowledge that you enter into the Agreement entirely as a result of your own enquiries and that you do not rely on any statement, representation or promise made by us or on our behalf not expressly set out in the Agreement.

- (b) You release us and each of our officers, agents and advisors from all claims and demands of any kind (including negligence) arising from the relationship of the concerned party in the Agreement before it was signed, and from negotiations leading to signing of the Agreement.
- (c) You indemnify us and will keep us, and our Related Bodies Corporate, indemnified against any loss, cost, expense, damage or other liability (including legal costs on a solicitor/client basis) arising out of:
 - (i) your breach of this Agreement;
 - (ii) any claim or demand against us (including negligence) which you or any other person make against any of our Suppliers which arises from or is connected with our supply of the Services;
 - (iii) any damage which you or your employees, agents or contractors cause to our, or our Supplier's, network, equipment or other property.

15. CONFIDENTIALITY

- (a) We retain all intellectual property rights in all information relating to our business and the businesses of our Related Bodies Corporate, the Services, the design or operation of our network and other technical information relating to the provision of the Services (**Confidential Information**).
- (b) You will keep the Confidential Information confidential, and will not allow any written or electronically recorded Confidential Information to be copied.
- (c) On the termination of the Agreement for any reason, you must return all Confidential Information to us. If you have destroyed the Confidential Information you must provide a written declaration stating the circumstances in which the Confidential Information was destroyed.
- (d) You must not use the Confidential Information for any purpose unless authorised in writing by us or in any manner which may cause us loss, whether by way of damage to our reputation, financial loss or otherwise.

16. FORCE MAJEURE

We are not liable for:

- (a) any delay in Service;
- (b) any delay in correcting any fault in any Service;
- (c) failure or incorrect operation of any Service;
- (d) Service outages; or
- (e) any other default in performance under the Agreement,

if it is caused by any event reasonably beyond our control, including but not limited to war, accident, act of god, industrial action, embargo and delay or failure or default by any Other Supplier.

17. GENERAL

17.1 Assignment

- (a) You must not assign, transfer or otherwise deal with any of your rights or obligations under this Agreement, except with our prior written consent.
- (b) We may assign, transfer, sell or otherwise deal with our rights under this Agreement without obtaining your consent.

17.2 Entire Agreement

This Agreement contains the whole understanding between us and supersedes all prior arrangements and understanding between us in connection with it.

17.3 No waiver

The failure by either party to exercise any right or remedy under this Agreement in a timely manner does not constitute acceptance of the matter which gave rise to the right or remedy, nor that party's waiver of such right or remedy.

17.4 Severability

If a provision of this Agreement is void or voidable or unenforceable, it is taken to be removed and no longer forms part of the Agreement. The remainder of the Agreement will remain in full force and effect.

17.5 Disputes

- (a) You may lodge a complaint regarding the Services by calling our customer service number 1300 738 002, or in writing to PO Box 7866, Baulkham Hills BC, NSW, 2153.
- (b) If you are dissatisfied with our response, you may lodge a complaint with the Telecommunications Industry Ombudsman or the ACMA.

17.6 Notices

Subject to clause 4.2(f), any notice, demand, consent or other communication required to be given to either party must be delivered personally or sent by prepaid mail or by facsimile.

17.7 Governing law

This Agreement and the Application is governed by the laws of New South Wales. The parties to this Agreement and the Application hereby irrevocably submit to the non-exclusive jurisdiction of the Courts of New South Wales.

18. INTERPRETATION AND DEFINITIONS

18.1 Interpretation

- (a) Undefined or un-interpreted words used in this Agreement shall have the same meaning as in the Act.
- (b) Headings are for convenience only and do not affect interpretation. The following rules apply unless the context otherwise requires.
- (c) The singular includes the plural and conversely.
- (d) A gender includes all genders.
- (e) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (f) A reference to a person, corporations, trust, partnership, unincorporated body or other entity includes any of them.
- (g) A reference to a clause is a reference to a clause of this Agreement.
- (h) A reference to an agreement or document (including a reference to this Agreement) is to the agreement or document as amended, varied, supplemented, novated or replaced, except to the extent prohibited by this Agreement or that agreement or document.
- (i) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.

18.2 Definitions

Account Application means the account and telephone application forms headed “Application for Telephone Service” and “Application for Telephone Account” respectively, either or both of which are completed by you and to which these terms and conditions apply.

ACMA means the Australian Communications and Media Authority.

Act means the *Telecommunications Act 1997* (Cth).

Agreement means the agreement between you and us for the provision of Services comprising these standard terms and conditions, the Account Application once accepted by us and the applicable Rate Card.

Carriage Service Provider or **CSP** has the meaning given to that term in the Act.

Credit Reporting Agency means a credit reporting business as defined in the *Privacy Act 1988* (Cth).

Current Supplier means a CSP who supplies telecommunications services to you at the time you sign the Agreement.

Eligible Charges are charges for calls but does not include calls for which no charge is payable and other charges such as call connect, line rental, directory assistance, Yellow Pages, line hunt, virtual message bank, Centel, 131 numbers and other Telstra service charges.

Fixed Period Contract means the Agreement between you and us for the provision of Services for a certain period as specified in your Account Application.

GST has the same meaning as in the GST Act.

GST Act means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Maximum Monthly Call Credit Contract means the Agreement between you and us for the provision of Services, under which you receive a credit towards your bill each month, capped at a specified aggregate amount of call credit, as specified in your Account Application.

Other Supplier means a carriage service provider, other than Telecom Connect Pty Ltd, that supplies telecommunications services pursuant to this Agreement, such as a sub-contractor to Telecom Connect.

Privacy Act means the *Privacy Act 1988* (Cth).

Rate Card means the schedule of fees charged for the Services, as provided to you at the time of your Account Application and as updated and notified to you in accordance with this Agreement.

Related Body Corporate has the meaning given to it in section 50 of the *Corporations Act 2001* (Cth).

Rental Agreement means the agreement signed by you for the rental of telephony equipment dated on or about the date of your Account Application.

Services means the telecommunications services to be provided by us to you, as set out in your Account Application (or as we may agree with you to amend from time to time).

Transferred Services means the telecommunications services transferred to us from your Current Supplier.

We, Us means Telecom Connect Pty Ltd.

You means the customer, as specified in the Account Application, and any person for whom you are responsible (such as a user of any of the Services supplied by us to or from any telephone number specified in your Account Application).