

## Terms & Conditions for Telephone Service

We, Tekworx Australia Pty. Ltd. ABN 34 094 201 671 of 3/79 High Street, Belmont, VIC, 3216 (“Tekworx Telecommunications”), will provide you, the Customer, with Services in accordance with these terms and conditions and other provisions of the Agreement.

### 1 Definitions

Undefined or un-interpreted words used in this Agreement shall have the same meaning as in the Telecommunications Act 1997 (Cth).

#### **1.1 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 are attached.

Airtime Services means the time you utilise our services.

Agreement means the agreement between us and you for the provision of Services comprising these terms and condition the Account Application once accepted by us and our current Tariff Schedule. Act) business and other technical information relating to the Services.

Credit means the deduction of a payment made by us for services provided to you.

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

Current Supplier means a Carrier who supplies Telecommunications Services to you at the time of you signing the Agreement.

Customer means the customer identified in the Account Application also referred to as ‘You’. CST has the same meaning as in the GST Act.

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

Monthly Call Credit means a monthly deduction of a required payment for airtime services provided to you by us.

Other Supplier means a Carrier other than Tekworx Telecommunications, who supplies Telecommunications Services.

Person means “entity” as that term is defined in section 64A of the Corporations Act 2001. Rate Type has the same meaning as in the Tariff Schedule.

Rental Agreement means the agreement between us or our related body corporate (as defined in the Corporations Act) (as agent or principal) and you for the rental of telephony equipment dated on or about the date of this Agreement and Telecommunications Services, agreed between us and you from time to time.

Settlement Date means the date of commencement of the Rental Agreement of otherwise the date of commencement of the Services.

Tariff Schedule means our tariff schedule (excluding GST) as at the date of the Agreement accompanying to these terms and conditions as replaced from time to time in accordance with clause 34.

Total Call Credits means the initial amount of call credits provided to you by us at time of signing the Agreement.

Total Call Credits Available means the amount of call credits available to you at a point in time.

Transferred Services means the Telecommunications Services transferred to us from you Current Supplier.

#### **1.2 Interpretation**

(a) The expressions “we”, “our”, and “us” refer to Tekworx Telecommunications; and

(b) The expressions “you”, “I”, “me”, “my” and “your” refer to the Customer.

### **1.3 Inconsistency**

If these terms and conditions are inconsistent with any other document forming part of the Agreement then these terms and conditions shall prevail to the extent of any inconsistency.

## **2 Provision of Services**

### **2.1 Provision of Services to You:**

We will provide you with our Services at a practical time after commencement of the Agreement.

## **3 Billing**

### **3.1 Invoicing:**

We will usually invoice you monthly for the Services in accordance with the Tariff Schedule, plus GST, which may change from time to time in accordance with the Agreement. 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 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 data recorded and supplied to us by the Carrier and shall not be calculated by reference to any data recorded by the Customer.

### **3.3 Time for Payment:**

All bills must be paid within 14 days of the date of invoice.

### **3.4 Changes to Charges:**

Subject to Clause 3.5 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 month’s notice in writing to you of the new Tariff Schedule.

### **3.5 Other Suppliers’ Charges:**

Our charges to you may include charges which Other Suppliers’ charge to us in relation to your account (including increases or special one-off charges) from time to time without notice.

### **3.6 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.

### **3.7 Overdue Amounts:**

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. 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. 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 or electronic debits.

### **3.8 Disputed Amounts:**

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

**3.9** Your obligations under this Agreement, including the obligation to pay the charges referred to in this clause 3, are several and independent from your or our obligations under any other agreement you may have with us or our related bodies corporate, including the Standard Rental Agreement dated on or about the date of this Agreement.

**3.10** We reserve the right to reduce any available call credits if you are found in breach of this agreement.

## **4 Period of Agreement**

### **4.1 Commencement and Term:**

The Agreement commences on the date the Account Application is signed by both parties, and, unless the term is specified elsewhere in the Agreement.

### **4.2 Commencement of Service:**

The provisions of Services commences when the Transferred Services account, are transferred from your Current Supplier to our nominated Carrier 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 Transfer of Your Account from your Current Supplier**

Transfer to us:

By signing the Agreement

- (a) 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 will immediately pay 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, as referred to in Clause 5.2(c) then you will reimburse us for that amount.

### **5.2 Re-Issued Bills:**

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

## **6 Transfer of Your Account from Us to Other Supplier**

### **6.1 Transfer:**

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.

### **6.2 Termination of Services:**

Our obligations to provide the Services cease when we transfer those accounts to any Other Supplier.

**6.3** 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.

## **7 Variations to the Agreement**

### **7.1 Without Notice:**

We may from time to time vary the Agreement without notice: (a) by changing the Other Supplier or the Other Suppliers' product; (b) by reducing your obligations under the Agreement (including all charges).

### **7.2 With Notice:**

We may otherwise vary the Agreement by one month's notice in writing to you.

## **8 Credit Checks & Other Checks**

**8.1** Terms used in this Clause 8 which may have a defined meaning under the Privacy Act 1988 (Cth) have the same meaning in this Clause 8.

**8.2** Personal information in the possession of us and relating to you may be disclosed by us to a Credit Reporting Agency, and you hereby consent to such disclosure.

**8.3** You agree 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 overdue payments in respect to commercial credit provided to you buy us.

**8.4** You 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 any of the following purposes:

- (a) The assessment by us or the other credit provider of your credit worthiness.
- (b) The collections by us or the other credit provider of payments that are overdue, or
- (c) The exchange of information between us and the other credit provider for the purposes referred to in sub paragraphs (a) and (b).

## **9 Your Compliance**

### **9.1 Your Compliance:**

You will ensure that you comply at all times with all laws and obligations, including licence conditions, applicable to the Services and their use.

## 10 Your Assistance

**10.1 Installation and Programming of Equipment:** You will assist us in ensuring that any equipment necessary for you to receive the Services and access our network is installed and programmed so that calls to destinations nominated by us from time to time are, as far as possible, carried by our preferred Switched Services Network.

## 11 Relationships

**11.1** By signing the Agreement you are entering into a direct relationship with us and not your Current Supplier.

**11.2** If you currently have a discount plan with a Carrier it will cease to apply when you switch to us.

## 12 Termination

### **12.1 Termination:**

Either party may terminate this Agreement by giving 30 days written notice.

### **12.2 Immediate Termination:**

We, may terminate the Agreement immediately at any time by notice, if

- (a) You have breached the Agreement, or
- (b) A liquidator, 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 or
- (c) Payment is not received 30 days after the due date.

### **12.3 Term Contracts:**

If we have agreed to provide a Service for a set term, then the amount payable for the whole of that term is a debt owing to us at the time of entering into the Agreement for which we may bill you even if you cancel the Service or terminate the Agreement before the term ends.

### **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.

### **12.5 No Termination of Rental Agreement:**

If you terminate this Agreement under this Clause 12, such termination does not permit or result in the termination or cancellation of the Rental Agreement.

## 13 Limitation of Liability

### **13.1 Performance:**

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.

**13.2** Subject to Clause 13.3, all terms, conditions, warranties, undertakings, inducement, 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.

**13.3** To the extent permitted by law, where any applicable legislation implies any term, condition, warranty remedy into the Agreement our relationship with you, which may not be excluded but which may be limited, our liability for any breach of such implied term, condition warranty or under such remedy will be limited, at our option, to:

- (a) Where the breach is related to goods;
  - (i) The replacement of the goods or supply of equivalent goods, or
  - (ii) The repair of the goods, or
  - (iii) The payment of the cost of replacing the goods or acquiring the good,
  - (iv) The cost of having those goods repaired; and
- (b) If the breach relates to services
  - (i) Supply of those services again, or
  - (ii) Payment of the cost of having those services supplied again.

**13.4** We have no liability to you or any other person for:

- (a) Act defaults of Other Suppliers, or
- (b) Faults or defects in services which are caused to any material extent by your own conduct or misuse or
- (c) 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 service.

**13.5** We have no liability under the Rental Agreement.

## **14 Confidentiality**

**14.1** We retain all intellectual property rights in the Confidential Information.

**14.2** You will keep the Confidential Information confidential, and will allow any written or electronic recorded material Confidential Information to be copied.

**14.3** On the termination of the Agreement for any reason, you return all physical records of Confidential Information to us. If you have destroyed Confidential Information you will have to give written declaration stating the circumstances in which the Confidential Information was destroyed.

**14.4** You will not use Confidential Information which you acquire from us for any purpose unless authorised in writing by us. You acknowledge that any disclosure of Confidential Information by you which is not authorised by us in accordance with Clause 14.4 may cause us loss, whether by way of damage to our reputation, financial loss, or otherwise.

## 15 Force Majeure

**15.1** We are not liable for:

- (a) Any delay in Service;
- (b) Delay in correcting any fault in any Service,
- (c) Failure or incorrect operation of any Service, and/or
- (d) 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 an Other Supplier.

## 16 Assignment

**16.1** You will not assign, charge or otherwise deal with your rights under this Agreement except with our prior written consent.

**16.2** We may assign the Agreement without requiring your consent.

## 17 Indemnity

**17.1** You

- (a) 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 by us or on our behalf not expressly set in the Agreement, and
- (b) accordingly release us and each of our officers, agents and advisers from all claims and demands of any kind (including negligence) arising from the relationship of the concerned in the Agreement before it was signed, and from negotiations leading to signing of the Agreement.

## 18 Remedy

**18.1** The failure by either party to exercise any right or remedy under Agreement in a timely manner, does not constitute acceptance of the matter which gave rise to the right remedy.

## 19 Suspension

**19.1** If a Service is cancelled, suspended or disconnected, you remain liable for any liabilities incurred before the cancellation, suspension or disconnection.

## 20 General Information

**20.1** We may give to and receive from Other Suppliers information about your account including particulars of calls and call charges.

**20.2** The Agreement is governed by the laws of Victoria.

**20.3** The Agreement contains the whole understanding of the parties the exclusion of any prior agreement or understanding of any kind to the Services.

**20.4** The Customer may not transfer legal responsibility for a Service without our written consent.

**20.5** We may vary or cancel the Agreement in accordance with the Act.

**20.6** If any of these terms and conditions (or part of them) is void or unenforceable, it is taken to be removed.