

Smartcom Business Communications Pty Ltd (Smartcom) ABN: 43 119 984 977, sells telecommunications and cloud services, including; software, hardware, telephony including phone numbers, voice carriage and electronic messaging. Any of these services are referred to as; the 'Service', regardless of whether all, or parts of the services are supplied to the Client. Services are manufactured and/or supplied by Smartcom and third party providers.

In entering the Agreement, both Parties accept the content of the Agreement without exception and agree to meet their respective obligations in full. Further, the parties have agreed to trade under the Agreement which replaces all other prior agreements or statements oral or written in relation to the Service. Further, the Agreement shall prevail under any circumstance; notwithstanding any other document that is submitted by Smartcom or the Client of which neither party may assign such a contract unless mutually agreed upon in writing.

## 1. Background

- a. These terms apply to all Services provided by Smartcom to the Client under the Agreement.
- b. The provision of Services by Smartcom is upon the request of the Client.
- c. Smartcom agrees to provide Services upon the terms set out in the Agreement.

## 2. Agreement of Documents

The Client acknowledges that the Service Agreement, and these Terms and Conditions and its Schedules; any application or 'order form' for Services which we notify you of our acceptance, form the whole 'Agreement' between Smartcom and the Client.

## 3. Service Description

3.1 Inbound Numbers refers to Australian phone numbers with prefixes such as; 13, 1300, 1800 (AUS) and 0800 (NZ). Clients incur Charges from Smartcom for; Set-up & Activation; Monthly Rental and inbound calls made to these services.

### 3.2 Supply of Services

- a. Smartcom agrees to supply the Services on the terms and conditions set out in the Agreement for the Term
- b. Services will be supplied to the Client through the carriers or networks (Carriers). The Client agrees that Smartcom:
  - i. may change Carriers without reference to the Client and at any time;
  - ii. and has the Client's express authorisation to notify any relevant Carrier in respect of and to effect any such change.
- c. As the Services are supplied through the Carriers, Smartcom does not warrant that it will be able to supply the Services and will not be liable for any failure to provide all or part of any of the Services where the Services provided by the Carriers is interrupted for any reason.
- d. Smartcom will provide the Services to the extent and to the standard that Carriers provide Services to Smartcom. When the Client's connection is disrupted whether caused by the carrier or for any other reason, Smartcom will use its best endeavours to reinstate the Services to the Client.
- e. When using the Services, the Client agrees to:
  - i. comply with all statutes, regulations, by-laws or license conditions of any government body; and
  - ii. not breach any person's rights or otherwise cause Smartcom or a Carrier loss, liability or expense.

## 4. Charges, Invoicing and Payment

### 4.1 Charges

The Client agrees to pay all Charges in connection with the Services.

### 4.2 Invoicing and Payment

- a. Recurring Charges are invoiced in advance and usage based Charges are invoiced in arrears, subject to Smartcom agreeing to provide credit terms. Smartcom may invoice and require payment of Charges for any additional Services before provision of those Services.
- b. Smartcom will send a monthly invoice for the Charges to the Client's address by email. Smartcom aims to include all charges relating to the current billing period on the invoice but Smartcom may invoice the

Client for a Charge which has not been previously billed or which has been previously understated to the Client if Supplier provides the Client details of the Charge by way of a record of the Charge.

- c. The Client must pay each invoice within the agreement term set-out in the Agreement. (The standard payment terms is seven (7) days of the date of the invoice).
  - i. If Smartcom identifies an error in an invoice, it will apply an adjustment to the Client's account which will appear on the next invoice. Any overpayment will be credited to the Client's account and the Client must pay Smartcom for any underpayment.
  - ii. If a Client payment is dishonoured by the bank or credit or charge card issuer, Smartcom may charge the Client a dishonour fee equal to the greater of \$5 or 5% of the amount of the dishonoured payment.
  - iii. Where the Client makes a payment using a credit card, Smartcom may charge a credit card fee. Smartcom's current credit card fees will be set out on each invoice, and may vary from time to time.
  - iv. The Client acknowledges and agrees that any credit terms and credit limit are subject to approval by Smartcom at its absolute discretion. If at any time Smartcom, acting reasonably, becomes concerned about the Client's ability to pay the Charges, Smartcom may vary the payment terms, decline to extend further credit or vary the Client's credit limit and any related conditions. If the Client fails to pay any amount when due or otherwise breaches the Agreement, becomes bankrupt or insolvent, or if Smartcom, acting reasonably, suspects any of those things might occur, Smartcom may cancel the Client's credit account without prior notice and all balances owing will become immediately due and payable.
  - v. The Client must not set off or deduct any amount from payments it owes Smartcom. Smartcom may set off or deduct any amount it owes to the Client.

#### 4.3 Failure to Pay

If the Client fails to pay the Charges in accordance with clause 4.2(c), Smartcom may:

- a. suspend the Services in accordance;
- b. terminate the Services;
- c. charge the Client interest on any overdue amount from the due date until the date payment is received, at a rate of 2% per annum above the Reserve Bank of Australia Cash Rate calculated daily on the unpaid balance; and
- d. charge the Client \$25 per month while there are any overdue amounts; plus Smartcom's costs of recovering payment for outstanding charges, including debt recovery agent costs and legal costs.

## 5. Dispute Resolution

### 5.1 Dispute resolution process

At the Client's request, Smartcom agrees to review any dispute under the Agreement in accordance with the processes put forward in Telecommunications Act 1997 and inform the Client of the outcome of that review within fourteen (14) days.

### 5.2 Billing disputes

- a. If, in the Client's reasonable opinion, there is an inaccuracy, omission or error in relation to a charge on an invoice, the Client may, before the due date for payment of the invoice, dispute the invoice by giving notice to Smartcom. The notice must, as a minimum, include the date and number of the disputed invoice, itemised details of the charges in dispute, detailed reasons for dispute and any documentation sufficient to support the Client's claim and to enable Smartcom to investigate.
- b. The Client must pay any undisputed amount by the invoice due date.
- c. Smartcom may, at any time, reject a billing dispute if:
  - i. it receives the notice after the due date for payment of the invoice;
  - ii. the notice does not contain the minimum information required by clause 5.2(a);
  - iii. the Client does not, within 5 Business Days of Smartcom's request, provide such additional information and documentation as Smartcom may reasonably request to enable Smartcom to investigate the billing dispute; or
  - iv. in Smartcom's reasonable opinion, the billing dispute is not genuine.

- d. If Smartcom rejects a billing dispute for any reason under clause 5.2(c), the Client must pay the whole of the invoice (disputed and undisputed amounts) by the due date, or if the due date has passed, immediately.
- e. Where the Client gives Smartcom a notice in accordance with clause 5.2(a) and promptly provides such other information and documentation as Smartcom may reasonably request, Smartcom will:
  - i. investigate the dispute within a reasonable period and notify the Client of its determination and reasons; and
  - ii. not take any legal or recovery action in relation to the disputed amount until a determination has been made.

## 5.3 Disconnection, restriction and suspension

Notwithstanding any other clause in the Agreement, Smartcom will give the Client a notice regarding its decision to restrict, suspend or disconnect their Service due to a breach of the Agreement or a Service Agreement.

## 6. GST

Any terms capitalised in this clause and not defined in the Agreement have the same meaning given to those terms in the GST Act. The consideration for supply made under or in connection with the Agreement does not include GST.

## 7. Mutual Confidentiality

### 7.1 Parties obligations

The Parties agree to keep confidential, and not to use or disclose, other than as permitted by the Agreement, any Confidential Information of the other party provided to or obtained by the other party before or after entry into the Agreement.

### 7.2 Exclusions

The obligations of confidence in clause 7.1 do not apply to Confidential Information:

- a. that is required to be disclosed by applicable law, or under compulsion of law by a court or government agency, as long as the Client:
  - i. discloses the minimum amount of Confidential Information required to satisfy the law or rules; and
  - ii. before disclosing any information, gives all available written notice to Smartcom and takes all available steps (whether required by Smartcom or not) to maintain such Confidential Information in confidence; or
- b. that is in the public domain otherwise than as a result of a breach of the Agreement or other obligation of confidence.

## 8. Indemnity

### 8.1 Parties Indemnities

The parties irrevocably and unconditionally indemnifies and must keep indemnified the other party and their Personnel, from and against all liability, damage, charges, Claims, demands, writs, summonses, suits, proceedings, judgements, orders, decrees, Costs, losses and expenses of any nature whatsoever which Smartcom or any of its Personnel may suffer or incur.

### 8.2 Compliance with Laws

The parties warrant that they will comply with all relevant laws in the provision of the Services, including without limitation, the Privacy Act 1988 (Cth) and the Spam Act 2010 (Cth)

## 9. Agreement Term

9.1 The Agreement term is detailed in the Service Agreement.

9.2 At the completion of the initial contract period; the Agreement will rollover for a further 12 months, and on an annual basis.

## 10. Termination

10.1 Either party may terminate the Agreement by providing the other party with sixty (60) days written notice prior to the end of each Agreement term.

10.2 The Agreement may be terminated immediately if:

- a. Smartcom notifies the Client that all Dedicated Numbers made available for use by the Client are no longer available;
- b. a receiver, liquidator, provisional liquidator or administrator is appointed over any of the Client's undertakings or assets, or if the Client enters into any arrangement with any creditors or any class creditors;
- c. Smartcom reasonably considers the Client as a credit risk.
- d. it becomes unlawful for the Client to perform its obligations under the Agreement, or the performance by a party of their obligations under the Agreement is in breach of a law;
- e. the Client sends Restricted Content to End Users;
- f. the Client threatens the operation, technical integrity or liability of Smartcom's Facilities in the reasonable opinion of Smartcom.
- g. Smartcom notifies the Client in writing of a breach of this Agreement and the Client fails to remedy the breach to the satisfaction of Smartcom within five (5) Business Days of notification.

10.3 In the event that the Client provides Smartcom written notice of termination of the Agreement within the Terms and Conditions of the Agreement or otherwise, the Client agrees to pay all monies owing to Smartcom at the termination date, including, but not limited to; outstanding invoices and amounts owing as a result of usage of the Service; in addition to the Client agrees to pay Smartcom an amount equal to the average of the last three months normal invoiced amounts multiplied by the number of months remaining in the Term.

10.4 Any termination is without prejudice to any rights, liabilities or obligations accruing as at such termination.

## 11. Amendments to Terms and Conditions

Smartcom may vary these Terms and Conditions at any time.

## 12. Liability

To the extent permitted by law, Smartcom excludes all liability to the Client (whether arising in Agreement or tort under statute or otherwise from any cause whatsoever) for any injury, loss, damage, cost or expense relating to or arising from the Agreement, including by the negligence of Smartcom.

## 13. Information

- a. The Client agrees to provide Smartcom with any information it requests in connection with providing the Services under the Agreement.
- b. The Client authorises and consents to the following:
  - i. Smartcom exchanging with carriers all information about the Client and the Services provided including, but not limited to the Client's name, billing address, street address, relevant telephone numbers, any information obtained for the purpose of the Client's application and the Agreement;
  - ii. the carrier exchanging with Smartcom any information in the carrier's possession or under its control in relation to the Services including, without limitation, all the Client's records and, in particular, exchange line details, account information, call charge records and call event records; and
  - iii. Smartcom's and the Carrier's use of the information referred to in paragraphs (ii) and (iii) of this clause.

## 14. Representations & Warranties

### 14.1 Client's Representation

The Client agrees and represents to Smartcom that it acknowledges that it is liable for all taxes, duties or government charges imposed or levied in Australia or overseas in connection with the Agreement; and all costs

and expenses which may be incurred by the Client as a result of the matters referred to, identified in, or to be reasonably inferred from, or contemplated by the Agreement.

## 14.2 General warranties and representations as to capacity

- a. Each party warrants and represents to the other party that:
- b. it has full authority and all necessary consents to enter into and perform the Agreement;
- c. the Agreement and all other agreements contemplated by the Agreement will, when executed by it, constitute binding obligations of it in accordance with their respective terms;
- d. the execution, delivery and performance by it of the Agreement will not:
  - i. result in a breach of any provision of its constitution;
  - ii. result in a breach of, or constitute a default under, any instrument to which it is a party or by which it is bound and which is material in the context of the transactions contemplated by this document; or
  - iii. result in a breach of any order, judgment or decree of any court or authority to which it is a party or by which it is bound and which is material in the context of the transactions contemplated by this document.

## 15. General

### 15.1 Counterparts

The Agreement may be signed in any number of counterparts. All counterparts together make one instrument.

### 15.2 Governing law

The Agreement is governed by the laws of Queensland.

### 15.3 Illegality and severability

- a. If a clause or part of a clause of the Agreement is inconsistent with Smartcom's obligations under the Telecommunications Act, that clause ceases to operate to the extent necessary to comply with the Telecommunications Act, and the remaining clauses or parts of the clause continue in force.
- b. A clause or part of a clause of the Agreement that is illegal or unenforceable may be severed from the Agreement and the remaining clauses or parts of the clause of the Agreement continue in force.
- c. If any provision is or becomes illegal, unenforceable or invalid in any jurisdiction, it is to be treated as being severed from the Agreement in the relevant jurisdiction, but the rest of the Agreement will not be affected.

### 15.4. Survival

Clauses 8,9,12 and 14 survive termination or expiration of the Agreement.

## 16. Network Maintenance

Smartcom and its suppliers may perform maintenance, upgrade and repair works at any time on Smartcom's network and other networks, equipment, facilities and infrastructure used in connection with providing the Services from time to time. Smartcom will use its best endeavours to ensure such works have minimal or no disruption to the Services.

## Defined Terms

In the Agreement, the terms set out below have the following defined meaning:

- "\$" means Australian dollar, unless otherwise specified.
- "Agreement" means this document and any other documents that form part of the Agreement pursuant to clause 2 of this document.
- "Business Day" means a day that is not a Saturday, Sunday or public holiday in Brisbane, Queensland.
- "Charges" means the fees set out the Price Schedule (as that term is defined under the Service Agreements).
- "Claim" means any claim, action, proceeding or demand, however it arises and whether it is present or future, fixed or unascertained, actual or contingent.
- "Effective Date" means the date set out in the Agreement documents.
- "Confidential Information" means any information:

- i. relating to the business and affairs of the parties;
  - ii. relating to the Clients, clients, employees, or other persons doing business with the parties;
  - iii. which is by its nature confidential;
  - iv. which is designated as confidential by the parties; or
  - v. which the parties know or ought to know, is confidential, and includes all trade secrets, knowhow, financial information and other commercially valuable information of the parties.
- "Control" includes the ability to appoint or direct the board, trustee, or executive management.
  - "Client" means the person of entity identified as the "Client" on the first page of the Agreement.
  - "Insolvency Event" means any of the following events concerning the Client:
  - if an administrator, liquidator, receiver, receiver and manager or other controller (as defined in the Corporations Act 2001 (Cth)) is appointed to, or over, any of the property or undertaking of the party;
    - I. if the party is unable to pay its debts when they become due and payable;
    - II. if the party ceases to carry on business; or
    - III. if any event happens in Australia or any other country or territory in respect of a party that is similar to any of the events or circumstances referred to in this definition.
  - "Personnel" means any officer, employee, agent of a party.
  - "Services" means the services set out in Service Agreements.
  - "Smartcom" means the supplier of Services listed on the first page of Agreements.
  - "Telecommunications Act" means the Telecommunications Act 1997 (Cth) and all regulations, codes and other delegated legislation under the Telecommunications Act 1997 (Cth) as may be in force from time to time.