

STANDARD FORM OF AGREEMENT GENERAL TERMS

1. Defined Terms

In these terms and conditions unless the context otherwise requires:

Act means the Telecommunications Act 1997 (Commonwealth).

Additional Fee means (if applicable) the additional fee charged by TexcelTel from time to time.

Agreement means this Standard Form of Agreement formulated in accordance with section 479 of the Act and consists of the:

- (1) General Terms;
- (2) Schedule 1- Schedule of Charges; and
- (3) Schedule 2- Package Purchase (if applicable).

Application means the application for Services, prescribed by TexcelTel from time to time, to be completed by the Customer prior to TexcelTel commencing any work.

Authorities mean any government or law enforcement authority.

Business Customer means any customer who carries on a business indicative by:

- (1) an individual whose White Pages entry incorporates a business reference;
- (2) registration under the Corporations Act and having an ACN and/or ARBN/ABN; or
- (3) presents as an association or club (whether incorporated under Incorporated Associations legislation or not) that is a non-profit organisation

Cancellation of Services Fee means the fees incurred in relation to the performance of the cancelled Services.

Carrier means a 'carrier' or 'carrier service provider' as defined under the Act.

Charitable Organisation means an organisation that is endorsed by the Commissioner of Taxation as a deductible gift recipient under Subdivision 30-BA by reason of being a public benevolent institution under item 4.1.1. of the table in section 30-45 of the Income Tax Assessment Act 1997.

Customer means a person or entity that contracts with TexcelTel for the Services and, where this Agreement permits, includes any person appropriately authorised by the Customer.

Customer Debt Account means the account maintained by TexcelTel recording the debts owed by the Customer to TexcelTel.

Customer Service Guarantee means the [Legislated Customer Service Guarantee](#) established by the Australian Communications and Media Authority (ACMA) to protect home and small business customers against poor Services and to

provide financial compensations where standards not meet.

Debt Collection Fees any other costs and expenses incurred by TexcelTel as a consequence of the Customers breach of this Agreement (including legal costs on a full indemnity basis).

Delayed Payment Fee means collectively amount of the Late Fee, Interest and Debt Collection Fees.

Defect means a defect in the performance of the Equipment and/or Services.

Dishonour Fee means the dishonour fee charged by TexcelTel from time to time.

Equipment means the equipment purchased from TexcelTel by the Customer in accordance with the terms of this Agreement.

Fees mean any fees payable under this Agreement.

Force Majeure Event means anything outside the reasonable control of a party including, but not limited to, acts of God, fire, storm, flood, earthquake, explosion, accidents, acts of public enemy, terrorism, war, rebellion, insurrection, sabotage, epidemic, quarantine restriction, strikes, transportation, tsunami, embargo and failure of or delay in transportation.

General Terms means these general terms that form part of the Agreement as amended from time to time.

Government Customer means any federal, state, territory or local government department, authority, agency and business.

GST means the tax imposed by A New Tax System (Goods and Services Tax) Act 1999 and the related imposition acts of the Commonwealth.

Individual Service Purchase means (if applicable) a purchase by the Customer in accordance with Texcel's individual service purchase terms to the Customer set out on the Schedule of Charges.

Information means any personal or credit information.

Interest means the interest rate charged by TexcelTel from time to time.

Late Fee means the late fee charged by TexcelTel from time to time.

Legislation means A New Tax System (Goods and Services Tax) Act 1999

Network means 'telecommunications network' as defined by the Act.

Non-profit Organisation means an organisation that does not operate for profit but is not a Government Customer.

Normal Fee means the normal fee charged by TexcelTel from time to time.

STANDARD FORM OF AGREEMENT GENERAL TERMS

Package Purchase means (if applicable) a purchase by the Customer in accordance with Texcel's package purchase terms to the Customer set out on the Schedule 2.

Payment Processing Fee means the payment processing fee that may be incurred by TexcelTel with respect to credit card payment by the Customer.

PIN means the personal identification number for the Customer telephone number.

Premises means the premises on which the Equipment is located and/or at which Services have been performed.

Privacy Policy means the privacy policy adopted by TexcelTel from time to time.

Reconnection Fee means the reconnection fee charged by TexcelTel from time to time.

Schedules means collectively the:

- (a) Schedule of Charges; and
- (b) Package Purchase (if applicable).

Schedule of Charges means the rates set out in Schedule 1.

Security Bond means (if applicable) the amount charged by TexcelTel from time to time from which overdue accounts or fees owed by the Customer to TexcelTel are deducted from time to time.

Services mean the provision of the Equipment and telecommunication services to the Customer, such services to include the installation of the Equipment.

Service Fees means collectively any Normal or Additional Fees that may be due from time to time.

Supplier Network means a Network not owned or operated by TexcelTel.

Telecommunications Number Plan means 'telecommunications number plan' as defined by the Act.

TexcelTel means Texcel Communications Pty Limited and where the context permits includes any employees, agents and contractors.

Third Party means a Business Customer, Government Customer, Charitable Organisation or Non-Profit Organisation.

TexcelTel Network means the network owned and operated by TexcelTel.

Use and Care Instructions means the use and care instructions provided to the Customer from Texcel from time to time to ensure the Equipment is properly maintained.

2. Standard Form of Agreement

- (1) The Agreement is the 'Standard Form of Agreement' as defined by the Act.

- (2) If there is any inconsistency between the General Terms and the Schedules then the Schedules are to apply to the extent of any inconsistency.

- (3) TexcelTel may change, without the Customer's prior approval, the terms of the Agreement. The Act prescribes that TexcelTel must only notify the Customer, by letter or advertisement, of the proposed change/s to the terms of the Agreement if those changes are detrimental to the Customer.

3. Agreement and Term

- (1) TexcelTel agrees to provide the Services provided that the:

- (a) Customer has completed and submitted an Application that has been approved by TexcelTel;
- (b) Services are available in the requested location;
- (c) Customer is eligible to apply for the Services; and
- (d) credit requirements have been met by the Customer.

- (2) The Services may be purchased by the Customer as:

- (a) an Individual Service Purchase; or
- (b) a Package Purchase

- (3) TexcelTel may terminate the Agreement at any time, without reason, upon giving 7 days notice in writing to the Customer.

4. Billing

- (1) TexcelTel will issue the Customer with accounts in accordance with;

- (a) the Schedule of Charges as amended from time to time;
- (b) the Legislation; and
- (c) its billing protocol for different Services from time to time

- (2) The Service Fees are;

- (a) fees for the Services requested and provided to the Customer;
- (b) based on the billing information generated by TexcelTel or its suppliers;
- (c) correct at the time of billing; and
- (d) calculated, where applicable and reasonable to do so, to the nearest cent.

- (3) Unless otherwise specified or agreed the;

- (a) Normal Fee is billed on a monthly basis; and
- (b) Additional Fee is billed in accordance with the terms and conditions of the Services requested and provided by TexcelTel.

- (4) Each issued bill will include fees with respect to the current billing period. Where this is not possible the unbilled items will be included and

STANDARD FORM OF AGREEMENT GENERAL TERMS

specified in the bill in the following billing period.

- (5) Where there is an error to a bill TexcelTel may reissue the bill to the Customer with an explanation. If the erroneous bill has been paid TexcelTel will refund the Customer any overpayment provided that the Customer does not have any outstanding debts on the Customer Debt Account.

5. Payment of Fees

- (1) The Customer must pay the following fees (whichever applicable) to TexcelTel:
- (a) Service Fees in accordance with the Schedule of Charges within 7 days of the date of the issue of an invoice (unless otherwise agreed);
 - (b) Security Bond (if requested);
 - (c) Payment Processing Fee;
 - (d) Cancellation of Services Fee where:
 - (i) the Customer provides instructions for the performance of Services;
 - (ii) TexcelTel acts on those instructions;and
 - (iii) the Customer subsequently cancels the instructions or request for Services;such liability to be calculated by reference to the outstanding Service Fees.
 - (e) Delayed Payment Fee where the Customer has not paid an invoice within 14 days of the date of that invoice. TexcelTel, after reasonable request for payment the Delayed Payment Fee, may suspend or cancel the Customer's access to the Services and charge a Reconnection Fee if the Customer wishes to be reconnected to the Services; and
 - (f) Dishonour Fee where payment is made using a:
 - (i) direct debit facility;
 - (ii) credit card; or
 - (iii) cheque;and the payment is not approved by the nominated financial institution or dishonoured.
- (2) TexcelTel may pay the Customer any debt it owes the Customer by deducting those amounts from the Customer Debt Account. The Customer, however, must pay Texcel without any set-off, counter-claim or deduction.
- (3) If TexcelTel enters into arrangements with other service providers it may charge the Customer an excess fee in addition to the Service Fees if:
- (a) the fee from the other service provider is greater than the Service Fees; and

(b) in the reasonable opinion of TexcelTel it believes the Customer's use of the Services is excessive or unusual.

- (4) TexcelTel retains title in the Equipment until any amounts payable under (2) have been paid.
- (5) TexcelTel may at any time amend the Fees. A change to the Fees made by TexcelTel becomes effective 30 days after TexcelTel gives notice in writing to the Customer of the change to the Fees.

6. Obligations of TexcelTel

TexcelTel must:

- (1) If there is a Defect elect to do one of the following:
- (a) rectify the Defect in accordance with its obligations under the Customer Service Guarantee provided that the;
 - (i) fault is reported to TexcelTel's customer support centre without unreasonable delay; and
 - (ii) Customer allows TexcelTel's personnel/contractors reasonable access to the Premises for the purposes of investigating and rectifying the Defect;
 - (b) replace the defective Equipment;
 - (c) disengage the defective Equipment; or
 - (d) pay the Customer the reasonable costs of having a third party repair the Defect.
- (2) deliver the Equipment (or any part of it) to an address notified by the Customer provided that at least one business day's notice of the request for delivery is provided by the Customer;
- (3) keep confidential all information acquired by TexcelTel as a consequence of it providing the Services;
- (4) comply with the Privacy Policy;
- (5) exercise reasonable care in providing the Services to the Customer.

7. Obligations of the Customer

The Customer must:

- (1) co-operate with TexcelTel in providing the Equipment and Services to the Customer. This may include, but is not limited to;
- (a) allowing reasonable and safe entry into the Premises to TexcelTel and/or its contractors for the purposes of;
 - (i) installing equipment the Customer has requested;
 - (ii) inspecting, testing, repairing or replacing Equipment; and
 - (iii) recovering Equipment after the Services have been terminated for any reason under this Agreement; and

STANDARD FORM OF AGREEMENT GENERAL TERMS

- (b) providing, at its own cost, any additional equipment or trenching reasonably required by TexcelTel to install the cabling or supporting equipment to provide the Services;
- (2) take good care of Equipment, which is owned by TexcelTel, in accordance with TexcelTel's Use and Care Instructions;
- (3) maintain and repair any equipment not owned by TexcelTel which is used in the provision of the Services;
- (4) notify TexcelTel, without unreasonable delay, if the Equipment becomes lost, damaged or stolen;
- (5) make timely payments of accounts within the terms of this Agreement;
- (6) pay for any unauthorised use of the Services;
- (7) comply with TexcelTel's reasonable directions in relation to the use of the Equipment and Services;
- (8) pay for any electricity supply required for the Services;
- (9) connect only equipment that complies with the standards set by the Australian Communication Authority or any other relevant authority;
- (10) inform TexcelTel in relation to any changes to the Equipment or Services;
- (11) pay any GST in respect of any supply made under the Agreement; and
- (12) comply with the Telecommunications Number Plan.

8. Using the Services

TexcelTel will agree to provide the Services to the Customer on the conditions that the Customer:

- (1) complies with the laws and directions given by the Authorities or TexcelTel to ensure the Services are being used for lawful purposes;
- (2) does not break the law in utilising the Services to:
 - (a) harass, cause death, personal injury or loss of property to other people;
 - (b) transmit, publish or communicate offensive, indecent, harassing, unsolicited or pornographic materials; or
 - (c) use the Services for a purpose than otherwise disclosed in the Customer's Application;
- (3) (In the reasonable opinion of TexcelTel) Does not interfere with the provision of the Services or cause damage to equipment owned by TexcelTel; and
- (4) agrees that it will take responsibility for the Services and Equipment supplied to the Customer and for the use of the Services and Equipment by any unintended user, with or without the Customer's consent, within the term of the Agreement.

9. Warranties from the Customer

The Customer warrants that:

- (1) the Customer is authorised to request the Equipment and/or Services for the Premises;
- (2) unless disclosed to TexcelTel in writing the Premises do not contain any materials which are or may become of a dangerous, corrosive, highly combustible, explosive, damaging or noxious nature not likely to encourage any vermin or pest; and
- (3) if it is not the owner of the Premises the Customer has nevertheless obtained any necessary approval for TexcelTel to access and install the Equipment on the Premises..

10. Limitation of TexcelTel liability

- (1) The level of service performance may be affected by the Customer's level of use, the levels of use amongst TexcelTel users or factors beyond the control of TexcelTel. TexcelTel does not warrant that the Services will be provided free of blockage, delay or faults.
- (2) TexcelTel does not accept any responsibility for:
 - (a) maintaining or repairing any Equipment owned by the Customer. TexcelTel will only be able to maintain or rectify any defects to the Equipment not caused by TexcelTel if the Customer agrees to pay its reasonable call out and services fees;
 - (b) defects to the Equipment caused by a Supplier Network or for facilities beyond the boundary of the TexcelTel Network;
 - (c) acts of default by other suppliers;
 - (d) faults or defects that may arise in telecommunication services provided to the Customer by other telecommunication providers (even if they are connected with TexcelTel's consent) which results in incompatible services;
 - (e) any Force Majeure Event that prevents TexcelTel from satisfying its obligations under this Agreement;
 - (f) any consequential losses arising, either directly or indirectly, as a result of the acts described in (a)-(e).
- (3) TexcelTel will determine the appropriate remedy in relation to any breach of TexcelTel's obligations under this Agreement including, but not limited to, resupplying, repairing or replacing equipment.
- (4) The total liability of TexcelTel to the Customer is limited to the lesser of the following two amounts:
 - (a) the value of the Equipment; and

STANDARD FORM OF AGREEMENT GENERAL TERMS

(b) the amount of all Fees paid by the Customer in the preceding 12 month period.

Agreement, where such action is taken as a consequence of the Customer's breach.

11. Default

- (1) The Customer breaches this Agreement if the Customer:
 - (a) breaches a term of this Agreement;
 - (b) becomes insolvent or subject to external administration; or
 - (c) becomes subject to a resolution or order for it to be wound up or deregistered.
- (2) Where the Customer is in breach of this Agreement:
 - (a) the Customer must:
 - (i) pay all amounts owed to TexcelTel in accordance with this Agreement; and
 - (ii) return all unpaid Equipment, at its own cost, to TexcelTel without delay.
 - (b) TexcelTel may, at its absolute discretion:
 - (i) terminate this Agreement by serving notice in writing on the Customer requesting the Customer to rectify the breach within 7 days; and
 - (ii) suspend performance of the Services.
- (3) Where TexcelTel terminates this Agreement:
 - (a) In the case of insolvency of termination pursuant to paragraphs (1)(b) and (1)(c) – TexcelTel may deliver the Equipment to the receiver, administrator or liquidator of the Customer at TexcelTel's scheduled rates and charges applicable from time to time;
 - (b) The Customer may request delivery of the Equipment but TexcelTel is not required to comply with such request until the Customer has paid the amounts set out in paragraph (c); and
 - (c) TexcelTel may recover from the Customer:
 - (i) the Fee for the balance of the Term;
 - (ii) Interest on any unpaid Fee;
 - (iii) the Late Fee; and
 - (iv) Debt Collection Fees.
- (4) Where TexcelTel exercises the rights set out in paragraph (3) above TexcelTel is to have no liability to the Customer in respect of theft, loss, damage or destruction of the Equipment once it has been delivered to the appropriate address.
- (5) Notwithstanding any other term of this Agreement the Customer indemnifies TexcelTel against all loss, costs, expenses, claims, demand or liability of any nature arising as a consequence of:
 - (a) the Customer's breach of any term of this Agreement; and
 - (b) any action taken by TexcelTel in accordance with the terms of this

12. Customer Acknowledgements

The Customer acknowledges:

- (1) Entry into this Agreement is entirely as a result of the Customer's own enquiries;
- (2) TexcelTel need not respond to requests from anyone other than the nominated contacts and will not be liable for any loss or damage as a consequence;
- (3) TexcelTel may pay a commission to its personnel for referral or for their services under this Agreement; and
- (4) Unless otherwise agreed, title to the Equipment will not pass to the Customer unless the Customer has completely paid for the Equipment. The associated risks of the Equipment will pass to the Customer upon delivery of the Equipment.
- (5) TexcelTel is not obliged to monitor the Services for excessive or unusual use. TexcelTel may, however, suspend or cancel the Services if it reasonably believes that the Services are used in an excessive or unusual manner. The Customer must pay for any charges incurred in relation to the use of the Services in an unusual or excessive manner;
- (6) That it may only continue to use any telephone number issued by TexcelTel unless the Telecommunications Number Plan allows TexcelTel to recover the number from the Customer;
- (7) That it cannot transfer or assign any telephone number issued by TexcelTel without the prior written consent of TexcelTel;
- (8) TexcelTel may vary customer dialling codes used to access a service with PIN; and
- (9) That it does not ;
 - (a) own;
 - (b) have any legal interest or good will; in any telephone number or PIN issued by TexcelTel;

13. Privacy and Confidentiality

- (1) By providing the Information to TexcelTel and acquiring the Services, the Customer gives TexcelTel full permission to obtain, use, disclose and exchange the Information to and from credit agencies, suppliers and other telecommunication companies (whether or not related to TexcelTel), or Authorities for the purposes of:
 - (a) processing the Customer's application;
 - (b) supplying the Services;
 - (c) executing TexcelTel's obligations and rights under the Agreement;
 - (d) performing credit checks, including obtaining information on any overdue loan

STANDARD FORM OF AGREEMENT GENERAL TERMS

-
- repayments or serious credit infringements;
- (e) marketing TexcelTel's and other entities' Services and Equipment; and
- (f) complying with any laws or regulations, including the Privacy Act 1988 (Cth).
- (2) The parties acknowledge and agree that:
- (a) TexcelTel will take all reasonable means available to prevent any misuse of the Information provided but does not guarantee the security of the Information over the TexcelTel Network and will not be held liable for any loss or damages resulting from any diversion, publication, corruption, misuse or unlawful use of the Information to the Customer and/or any third party;
- (b) the Customer will be held accountable for the user identification or passwords created to enable secure transmission of information and are to implement adequate or appropriate measure to prevent unauthorised access or usage of the user-identification or passwords;
- (c) TexcelTel will not be held liable for any loss or damages caused as a result of the Customer's failure to perform its obligations under paragraph (b);
- (d) the Customer will be entitled to access the Information held by TexcelTel provided that:
- (i) the Customer is a natural person; and
- (ii) there are no legal restrictions imposed on TexcelTel to prohibit such access; and
- (e) they will keep each other's confidential information confidential at all times.
- agreements in relation to the subject matter are merged in and superseded by this Agreement.
- (6) This Agreement may be amended or varied by TexcelTel by giving notice in writing to the Customer.
- (7) Any notice required or permitted to be given under this Agreement must be in writing and may be delivered personally or by pre-paid post or by facsimile or by electronic mail. In the case of posting notices will be deemed to have been delivered on the day of receipt, unless receipt is at a time after 5pm or on a date which is not a business day. In which event the date of deliver will be the next business day.

14. Miscellaneous

- (1) This Agreement is governed by the laws of New South Wales. Each party submits to the exclusive jurisdiction of the Courts of New South Wales.
- (2) The rights contained in this Agreement are personal to the Customer and may not be assigned or transferred without the prior written consent of TexcelTel.
- (3) The Customer may, with the written consent of TexcelTel, appoint a Third Party to perform its obligations under this Agreement. TexcelTel is not to unreasonable withholding such consent.
- (4) The non exercise or delay in performance of a right under this Agreement does not constitute a waiver. A waiver of a right may only be made by notice in writing signed by the party waiving the right.
- (5) This Agreement is the entire agreement of the parties on the subject matter. All representations, communications and prior