

Terms & Conditions

Effective 1 March 2023

1. Your Agreement

- 1.1 These Terms and Conditions (**T&Cs**) apply to the supply of services by Fone Dynamics Pty Ltd (ABN 68 166 195 946) (**we, us, our**) to you as a user and customer. They should be read in conjunction with your Service Order.
- 1.2 Your agreement with us (**Agreement**) is made up of:
 - (a) your Service Order;
 - (b) these T&Cs;
 - (c) the Service Terms;
 - (d) our [Acceptable Use Policy](#); and
 - (e) our [Privacy Policy](#).

2. Term and Services

Term

- 2.1 Your Agreement commences when the Service Order has been signed by both parties (**Commencement Date**). Your Service will commence on the date on which you are notified that your Service has been provisioned (**Effective Date**), or if you are not notified of an Effective Date, your Services will commence on the date the Service Order commences, and continues for the term listed in your Service Order (**Term**).
- 2.2 From the Commencement Date, we agree to supply the Services to you for the Term, on the terms and conditions set out in this Agreement.
- 2.3 At the end of the Term, your Agreement will automatically continue unless you give us written notice of termination at least 30 days before the end of the Term. If the Term has ended and the Agreement is continuing, you may terminate your Agreement at any time by giving us at least 30 days written notice of termination.

Use of the Services

- 2.4 You agree:
 - (a) to use the Services in accordance with the terms of this Agreement and in a manner which does not breach any person's rights or otherwise cause Loss to us;
 - (b) to provide any information reasonably requested by us in connection with providing the Services; and
 - (c) to keep account details secure for all activity that occurs on your account (including without limitation, all use of the Services).

Representation and Warranty

- 2.5 You represent and warrant to us that:
 - (a) you have the power, capacity and authority to enter the Agreement;
 - (b) all information provided by you regarding a request for Services is accurate, truthful and correct;

- (c) you will inform us in writing of any changes which are relevant to the Services or your account (including administrative and financial details, such as your address, telephone number or any details provided in relation to making payments for the Services);
- (d) the Authorised Contact is authorised to act on your behalf and exercise your rights under this Agreement; and
- (e) your use of the Services will comply with all applicable laws, industry codes and regulations.

3. Fees, Invoicing and Payment

Fees, invoicing and payment

- 3.1 You agree to pay the amount specified in the Service Order as the Minimum Monthly Fees for each month during the Term. If your actual Fees exceeds the Minimum Monthly Fees for a given month, you will pay such Fees (determined in accordance with the Rate Schedule) in lieu of the Minimum Monthly Fees.
- 3.2 We will invoice you for the Fees, together with any applicable taxes relating to the Services. Invoices will be sent to your email address specified in the Service Order, or another email address that you notify to us.
- 3.3 We typically invoice recurring Fees in advance and usage-based Fees in arrears, however may invoice and require upfront payment of Fees before provisioning a particular Service.
- 3.4 Unless otherwise stated in the Service Order, you agree to pay all other Fees incurred in connection with the Services within 14 days of invoice.
- 3.5 We aim to include all Fees relating to the current billing period on the invoice but may invoice for Fees which have not been previously billed or which have been previously understated to the Customer (for which details will be provided by way of a record of the Fees).
- 3.6 You agree that credit terms and credit limits are subject to our approval and may be rescinded at any time by us, at our absolute discretion. If we, acting reasonably, becomes concerned about your ability to pay the Fees, we may vary the payment terms, decline to extend further credit or vary your credit limit and any related conditions. If you fail to pay any amount when due (other than where such amount is subject to a genuine billing dispute), we may cancel your credit account without prior notice and all balances owing will become immediately due and payable. You consent to us performing credit checks and monitoring which we may determine necessary.
- 3.7 You must not set off or deduct any amount from payments you owe to us.

Disputed invoices

- 3.8 If you reasonably consider there is an inaccuracy, omission or error in relation to a charge on an invoice, you must provide written notice to us prior to the due date for payment of the invoice. The notice must, at minimum, include the invoice date and number, itemised details of the Services in dispute, detailed reasons for the billing dispute and supporting documentation to enable us to investigate.
- 3.9 We may reject a billing dispute if:
 - (a) the billing dispute notice does not contain the required minimum information or is received after the invoice due date;
 - (b) you do not, within five (5) business days of a request, provide such additional information and documentation as reasonably requested by us to investigate the billing dispute; or
 - (c) in our reasonable opinion, the billing dispute is not genuine.

- (i) Where we reject a billing dispute under this clause 0, you must pay all unpaid Fees under the invoice by the due date, or if the due date has passed, immediately.

Failure to pay

- 3.10 If you fail to pay the Fees in accordance with the Agreement, we may do any of the following:
- (a) charge 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;
 - (b) charge you for any costs of recovering the outstanding amount (including interest and other fees), including reasonable debt recovery agent costs and legal costs (if any);
 - (c) suspend the performance of the Services (without any liability to you for not performing the Services); and
 - (d) terminate any Service(s) or the Agreement where you fail to pay the overdue amount within ten (10) days of being asked to do so.

GST, other taxes or charges

- 3.11 If we must pay GST (as that term is defined in *A New Tax System (Goods and Services Tax) Act 1999* (Cth)) on a supply made in connection with this Agreement, then you must pay to us an amount additional amount equal to that GST. We will provide you with a tax invoice.
- 3.12 If a payment is dishonoured by the bank or credit or charge card issuer, we may charge a dishonour fee equal to the dishonoured fee charged by our bank and an administration fee to cover costs incurred in relation to that dishonour. Where you make payment using a credit card, we may charge a credit card fee (as set out on each invoice and which may be varied from time to time).

4. Privacy and Data Retention

Privacy

- 4.1 Each party agrees to handle Personal Information obtained from the other party in accordance with the *Privacy Act 1988* (Cth) and, in our case, in accordance with our Privacy Policy.
- 4.2 By providing your Personal Information or of your users to us, you acknowledge and consent to the collection, use, storage and disclosure of all such Personal Information:
- (a) for purposes relating to the supply of the Services (including by Carriers); and
 - (b) otherwise in accordance with our Privacy Policy.

Data Retention

- 4.3 You acknowledge and agree expressly that:
- (a) We are under obligations pursuant to the *Telecommunications Act 1997* (Cth), and at the direction of law enforcement agencies pursuant to various Commonwealth and State or Territory laws to retain data, and we may, in particular circumstances, be required to provide data to law enforcement agencies, relating to any Service provided by us under this Agreement.
 - (b) We may, from time to time, in order to maintain our compliance with any relevant law or regulation, and to comply with any request by any appropriately authorised law enforcement agency or other relevant authority, report on service usage in relation to the Services.

5. Confidentiality

- 5.1 The parties agree to keep confidential, and not to use or disclose, other than as permitted by this Agreement, any confidential information of the other party provided to or obtained by the other party before or after entry into this Agreement.
- 5.2 The obligations of confidence do not apply to confidential information that is required to be disclosed by applicable law, by a court or government agency, or by the rules of any stock exchange, as long as the party:
- (a) discloses only the minimum amount of confidential information required to satisfy the law or rules; and
 - (b) before disclosing any information, unless otherwise legally prevented, gives all available written notice to the other party and takes all available steps (whether required by the other party or not) to maintain such confidential information in confidence.
- 5.3 Except as provided in clause 5.2(a), no public announcements or communications relating to the existence, subject matter or terms of this Agreement may be made or authorised without our prior written approval. You consent to our use of your logo(s) and image(s) for marketing purposes.

6. Integrated Public Number Database Privacy Policy

- 6.1 The Integrated Public Number Database (IPND) is a collection of information - including telephone numbers, names and addresses - about all telephone services in Australia. Information about every phone service in Australia (fixed, mobile, and others) is stored in the IPND.
- 6.2 As a mandatory requirement of being a service provider under the Telecommunications Act 1997 (Cth), we must provide accurate data to the IPND. Access to the information contained in the IPND is regulated strictly by legislation including the Privacy Act 1988 (Cth).
- 6.3 IPND data is used for the following:
- (a) Emergency Services (for example, when you dial 000);
 - (b) Directory Publishers for public and not for unlisted numbers;
 - (c) Location Dependent Services such as law enforcement agencies.
- 6.4 If we provide a telephone number to you as part of the Services, you expressly acknowledge and agree that:
- (a) we will provide to the IPND information about you as we are required to do so by government regulatory authority; and
 - (b) in order to ensure that the data provided to the IPND about you is correct, you will regularly ensure that the information you have provided to us about you is correct, and where necessary you will update that information by contacting our Customer Service team (support@fonedynamics.com.au , 1300 000 FDX).
- 6.5 The IPND stores the following information:
- (a) Your name;
 - (b) Your telephone number;
 - (c) Your address.
 - (d) Your nominated preference for a publicly listed, suppressed or unlisted telephone number

7. Intellectual Property

- 7.1 Any Intellectual Property owned by either party prior to entry into this Agreement, or developed independently of this Agreement by either party, will continue to be owned by that party.
- 7.2 We either own the Intellectual Property in the Services provided to you or, where we use any Intellectual Property belonging to a third party, we have a licence to do so.
- 7.3 None of our Intellectual Property will transfer to you and, unless specifically authorised by this Agreement, you must not use or reproduce such Intellectual Property for any purpose outside of this Agreement.
- 7.4 You agree that in using the Services, you will not use any of our logos or trade marks, business names or trading names or copyright material (or any entity related to us in any of the ways specified in section 50 of the *Corporations Act 2001* (Cth)) in a way that is likely or intended to cause confusion about the owner or authorised user of such mark, name or material.
- 7.5 All Intellectual Property in any improvements or changes to any Service devised or made by anyone during the Term of this Agreement will belong to us.

8. Termination

Termination by either party

- 8.1 Either party may terminate this Agreement with immediate effect by giving notice to the other party if:
- (a) the other party breaches this Agreement and does not, within twenty (20) calendar days (or in respect of a payment breach by the Customer, the period specified in clause 3.10 above) of being requested to do so by written notice, remedy that breach; or
 - (b) the other party commits or is involved in an act of insolvency, and the other party's financiers do not, within one (1) business day of being requested to do so by notice, cause that other party's obligations to continue to be performed.

Termination by Customer

- 8.2 Unless otherwise expressly permitted by the terms of this Agreement, you may not terminate a Service before the end of the Term. If you cancel this Agreement during the Term other than under clause 8.1, we may charge you a cancellation fee equal to 50% of the Minimum Monthly Fee multiplied by the number of months remaining in the Term.

Termination by Fone Dynamics

- 8.3 In addition to clause 8.1, we may terminate any Service or the Agreement with immediate effect:
- (a) by giving thirty (30) days' notice after the Term or within the thirty (30) days preceding expiry of the Term;
 - (b) if you breach any legislative requirement;
 - (c) if you are subject to a change in control (as that term is defined in section 50AA of the *Corporations Act 2001* (Cth)) by a party who, in our reasonable opinion, is a competitor; or
 - (d) if we determine (at our sole discretion) that it may not be feasible to supply the Service to you, for technical, operational, legal or commercial reasons.

Suspension and cancellation of Services

- 8.4 We may suspend any Services, without liability, for reasons caused by you including:
- (a) failure to pay an invoice for the Services by the date due for payment (subject to clause 3.8, where applicable);

- (b) you are in breach of this Agreement or the Acceptable Use Policy; or
 - (c) any threat or risk to the quality or security of the Services or our network or platform has occurred, which we reasonably suspect is linked to or caused by you, your employees, contractors or someone who you have given permission or implied permission to use the Services.
- 8.5 We may suspend or cancel any Services, without liability, for reasons not caused by you including if:
- (a) we are required to suspend the Services by law or by order of police, emergency services or any other authorised agency;
 - (b) a threat or risk to the quality or security of the Services or our network or platform occurs, or an emergency situation arises; or
 - (c) our supplier (including a Carrier) ceases to supply services to us and we, using commercially reasonable efforts, cannot find an alternative supplier to continue providing the Service.
- 8.6 We will endeavour to provide reasonable prior notice of suspension, depending on the situation. We will provide prior notice of any Service cancellation under clause 8.5. During any period of suspension, the Fees will remain payable by the Customer for that suspended Service unless we have suspended the Service under clause 8.5.

9. Force Majeure

- 9.1 If a party (**Affected Party**) is wholly or partially unable to perform its obligations under this Agreement (other than an obligation to pay Fees) because of a Force Majeure Event, then:
- (a) as soon as reasonably practicable after the Force Majeure Event arises, the Affected Party must notify the other party of the extent to which the Affected Party is unable to perform its obligations; and
 - (b) to the extent that the Affected Party is unable to perform its obligations as a result of the Force Majeure Event, those obligations are suspended for the duration of the delay arising directly out of the Force Majeure Event.
- 9.2 If a Force Majeure Event continues for longer than 60 days, either party may terminate this Agreement by written notice to the other party.
- 9.3 An Affected Party will not be liable for failing to comply with any of its obligations under this Agreement (other than an obligation to pay Fees) where a Force Majeure Event has occurred, which has prevented the Affected Party from performing those obligations.

10. Liability and Indemnity

Indemnity

- 10.1 You indemnify us against any Loss suffered or incurred by us in connection with your breach of this Agreement, subject to clauses 10.4 and 10.5.

No implied terms

- 10.2 We do not exclude or limit the application of any provision of any statute (including the *Competition and Consumer Act 2010* (Cth)) where to do so would:
- (a) contravene that statute; or
 - (b) cause any part of this clause to be void.
- 10.3 Except to the extent clause 10.2 applies, we exclude all:

- (a) statutory liability;
- (b) tortious liability (except to the extent that loss or damage is a consequence of our gross negligence in which event the aggregate amount claimed must not exceed the value of the Services provided relating to that loss or damage); and
- (c) conditions, warranties or guarantees implied by custom, the general law or statute, arising out of, or relating to the Services, any failure to supply or delay in supplying the Services or this Agreement.

10.4 Where legislation implies into this Agreement any condition, warranty or guarantee that cannot be excluded, but we are permitted to limit liability for such a breach, then to the extent permitted by law, our liability for any breach of such condition, warranty or guarantee is limited, at our option, to refunding the price of the goods or services in respect of which the breach occurred or to providing, replacing or repairing those goods or providing those services again.

Limitation of Liability

10.5 To the extent permitted by law, our maximum aggregate liability in respect of all Loss arising out of or in connection with this Agreement or otherwise in respect of the provision of the Services is limited to:

- (a) where the Loss is in connection with a failure to meet any service level specified in the Service Terms for which a service level rebate applies, the amount of the service level rebate; or
- (b) otherwise, the lesser of five times (5x) the average monthly fee payable by the Customer and the amount of \$10,000.

10.6 The limitation of liability in clause 10.5 does not limit our liability for death or personal injury caused by our negligent act or omission or by wilful misconduct.

No Consequential Loss

10.7 Despite any other term in this Agreement, neither party is liable to the other party for any Consequential Loss.

Contributory Liability

10.8 Despite any other provision in this Agreement, a party will not be liable to the other party (**second party**) for any Loss to the extent that such Loss was caused, or contributed to, by the second party's wilful default, fraudulent or negligent acts or omissions or breach of the Agreement.

Liability of Suppliers

10.9 Customer acknowledges that, to the extent permitted by law, any of our suppliers are expressly excluded from all liability to the Customer in relation to any of the Services we provided to the Customer.

11. Dispute Resolution

No arbitration or court proceedings

11.1 If a dispute arises out of or in connection with this Agreement or the performance, validity or enforceability of it (**Dispute**), a party must comply with this clause 11 before commencing legal proceedings (except proceedings for interlocutory relief).

Notice of Dispute

11.2 A party claiming a Dispute has arisen must give the other party to the Dispute notice setting out details of the Dispute.

Resolving the Dispute

- 11.3 During the ten (10) business days after a notice is given under clause 0 (or longer period if the parties to the Dispute agree in writing), each party to the Dispute must use its reasonable efforts to resolve the Dispute.
- 11.4 If the parties cannot resolve the Dispute within the applicable period under clause 0, or such extended time as the parties may agree in writing before the expiration of that applicable period, either party may commence legal proceedings.

12. General

Assignment, novation or transfer

- 12.1 You may not assign, novate, transfer its rights and or obligations under this Agreement without our prior written consent, other than to a person who is purchasing your business. We may assign, novate or transfer its rights and or obligations under this Agreement by providing written notice to you of such assignment, novation or transfer.

Notices

- 12.2 Notice shall be effective if the notice is in writing and is delivered to the other party. Notice can be delivered to a party:
- (a) by hand to an officer of the party, and in the case of the Customer, to the Authorised Contact;
 - (b) by registered post, to us at Level 10, 500 Queen Street, Brisbane QLD 4000 Australia, or to the Customer at the Customer's address in the Agreement Details, its registered office or last known place of business. Notice by post is deemed to be received at the time at which the letter would be delivered in the ordinary course of post;
 - (c) by email transmission to legal@unitigrouplimited.com (in our case) or to the Authorised Contact (in the case of the Customer). Notice by email is deemed to be received when the sending computer confirms that the email containing the notice has been dispatched.

No Implied Terms

- 12.3 The Agreement supersedes any prior agreements, undertakings or representations between the parties, and constitutes the whole agreement between the parties about the matters it deals with, in particular the Services.
- 12.4 Terms which are implied by mandatory operation of law are not excluded and are included in the Agreement.

Set-off

- 12.5 We can set off any amount due which the Customer or any of its related bodies corporate (as that term is defined in the *Corporations Act 2001* (Cth)) owe to us under this or any other agreement, against any amount which we owe to the Customer or any of its related bodies corporate (whether under this Agreement or otherwise).

Counterparts

- 12.6 This Agreement may consist of a number of counterparts and, if so, the counterparts taken together constitute one document. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or by PDF file will be effective as delivery or a manually executed counterpart of this Agreement.

Governing law

12.7 This Agreement is governed by the laws of Victoria, Australia.

Illegality and severability

12.8 If a clause or part of a clause of this Agreement is or becomes illegal or unenforceable, that clause is to be severed from this Agreement and the remaining clauses or parts of the clause of this Agreement continue in force.

13. Defined terms & interpretation

13.1 Defined terms

The following definitions apply in these General Terms:

Acceptable Use Policy means the policy which is located at <https://www.fonedynamics.com/acceptableuse>.

Authorised Contact means the person specified by the Customer as its authorised contact in the Service Order, or another person nominated by the Customer in writing from time to time.

Carrier means any third party carrier or service provider used by us either directly or indirectly to provide the Services.

Consequential Loss means any indirect, consequential or special damage or loss, however caused, in connection with or related to this Agreement or in respect of the Services.

Fees means any fees for the Services as specified in the Service Order or Rate Schedule.

Force Majeure Event means an event, circumstance or condition that is outside the reasonable control of the party and makes it impossible for the party to perform an obligation of this Agreement, including:

- (a) a Carrier used by us to provide the Services ceasing to provide the relevant services without notifying us;
- (b) outbreak of disease, epidemic or pandemic, plague or quarantine (including where existing as at the date of this Agreement);
- (c) the actions of insects, pests, vermin, birds, rabbits or other animals;
- (d) a strike, lock-out, ban, boycott or other industrial disturbance or action;
- (e) malfunction, breakdown or other failure of plant or equipment or damage to plant or equipment;
- (f) any act or omission of a third party (including failure of a third party to comply with its obligations under any contract); or
- (g) a change in any applicable law or in the interpretation of that law, an order of any court or an order, act or omission of any government or any governmental authority or a failure to obtain any necessary governmental consent or approval.

Intellectual Property means any intellectual or industrial property anywhere in the world including, but not limited to, any registered or unregistered copyright, patent, trade mark, design rights, trade secret or confidential information relating to the Services or any licence or other right to use, or to be the registered proprietor of, any of the above.

Loss means any loss, claim, action, liability, damage, cost, charge, expense, outgoing, payment, diminution in value or deficiency of any kind (including legal costs on a full indemnity basis), but does not include Consequential Loss.

Personal Information has the meaning given to that term in the *Privacy Act 1988* (Cth).

Privacy Policy means the policy which describes how Fone Dynamics will collect and use personal information relating to the Services, and which is published at <https://www.fonedynamics.com/privacypolicy>.

Rate Schedule means the rate schedule set out in the Service Order, or if not specified in the Service order, the fees published at <https://www.fonedynamics.com/pricing-rates>;

Service Order means the order form which you have executed which sets out your Service Details and Fees and incorporates Account Plan Details and Porting Authority Form.

Service Terms means the terms and conditions that apply to specific Services.

Service means the services specified in the Service Order and any further services added to the Agreement by consent of the parties.

Service Order means the order form which you have executed which sets out your Service Details and Fees and incorporates Account Plan Details and Porting Authority Form.

Service Levels means the service levels applicable to a Service where specified in the Service Terms.

Term means the initial term specified in the Order Form.

13.2 Interpretation

In this Agreement, headings are for ease of reference only and do not affect the meaning of this Agreement and unless the contrary intention appears:

- (a) "we", "us" and "our" are references to Fone Dynamics Pty Ltd;
- (b) the singular includes the plural and vice versa and words importing a gender include other genders;
- (c) other grammatical forms of defined words or expressions have corresponding meanings;
- (d) a reference to a clause, paragraph, schedule, appendix or attachment is a reference to a clause or paragraph of, or schedule or appendix or attachment to, this Agreement and a reference to this Agreement includes any schedules and attachments;
- (e) a reference to a document or agreement, including this Agreement, includes a reference to that document or agreement as novated, altered or replaced from time to time;
- (f) a reference to **dollar** or **\$** is a reference to Australian currency, unless otherwise expressly stated;
- (g) a reference to a specific time for the performance of an obligation is a reference to that time in the state, territory, country or other place where that obligation is to be performed;
- (h) a reference to a person includes its successors and permitted assigns;
- (i) legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced;
- (j) words and expressions importing natural persons include partnerships, bodies corporate, associations, governments and governmental and local authorities and agencies;
- (k) no rule of construction will apply to the disadvantage of a party because that party drafted, put forward or would benefit from any term; and
- (l) **includes** means includes without limitation.

Service Terms

1. Call Recording Services

Our Obligations

- 1.1 You acknowledge that call recording services may not be available at all times, however, we will use best endeavours to:
- (a) record all inbound calls as requested by you;
 - (b) provide access to recordings to your delegated staff;
 - (c) store recordings until such time as this Agreement ends or is terminated; and
 - (d) upon request, securely remove all or any recordings as identified by you.

No Liability

- 1.2 We will not be liable for any costs, damages, penalties, fines or other losses as a result of:
- (a) Our enabling recording or accessing stored recordings for your telephone calls;
 - (b) You or your staff, agents, contractors or associates accessing recordings stored on your behalf; or
 - (c) any formal legal action taken against you by participants to recorded calls.
- 1.3 We reserve the right to:
- (a) disable the call recording services where it is deemed in our interests to do so; and
 - (b) perform maintenance on our recording systems, cause interruption to call recording or remove recordings from our systems.

No Guarantee

- 1.4 You acknowledge that we do not guarantee compliance of call recording services to any industry standard governing information security, financial information or personal information.

Your Obligations

- 1.5 You must comply with all regulatory, local, state and federal laws regarding call recording and the fair use of personal information and warrant that you have:
- (a) informed all your staff, agents, contractors or associates, by a method which is formal and recorded, that calls to applicable numbers and services will be recorded; and
 - (b) Informed all callers to applicable numbers and services that calls may be recorded.
 - (c) You indemnify us against any liabilities, costs, losses, expenses and claims that may arise as a consequence of a failure by you to comply with its obligation under these Call Recording Terms.

Termination of Services

- 1.6 You may cancel the call recording services aspect to this Agreement upon 30 days' notice.
- 1.7 You expressly agrees that these Call Recording Terms remain applicable and active until all recordings are securely removed from our systems.
- 1.8 Information and call recordings held in our systems will be available to you only during the term of this Agreement and will be archived following termination of this Agreement and no longer available.

2. Phoneword and Licensed Number

If Customer acquires a Phoneword or Licensed Number (**Phoneword**), the following terms apply.

Usage of Phoneword

- 2.1 You may only use the Phoneword:
- (a) in the form set out in your Service Order, as a telephone number and not as a trade mark;
 - (b) in conjunction with the type of goods or services associated with the Phoneword.
- 2.2 You must not sublicense your right to use the Phoneword to any person without our written permission.
- 2.3 If requested by us, you must provide us with samples of how the Phoneword is used, including its use on documents, labels, artwork, advertising and other materials.

Call Services

- 2.4 If you acquire a Phoneword with no Call Services:
- (a) you are responsible for acquiring the telecommunication service (call services) to be used with the Phoneword and must tell us of the details of the service within 14 days of connection;
 - (b) you must connect the telecommunication service within 35 days of the Commencement Date or we may terminate this Agreement and license the Phoneword to another party;
 - (c) you may change your telecommunication service at any time but must provide us with updated details of the new service within 14 days.
- 2.5 If you acquire a Phoneword with Call Services:
- (a) We will supply the Call Services in accordance with our practices and procedures. We may vary those practices and procedures from time to time, including the selection of our suppliers. We will endeavour to advise you of any changes that are likely to materially affect your use of the Call Services.
 - (b) The plans and features available in relation to the Call Service are specified in your Service Order. Contact us if you want to change your selected plan or features. Your Fees will vary from the date the requested change takes effect, provided that you cannot reduce your Fees during the Initial Term. A reconfiguration fee of \$45 per 15 minutes or part thereof applies to implement any change.
 - (c) Call charges are calculated per call in accordance with your Call Rate, rounded up to the nearest cent ex GST. The Call Rate and billing increment is specified in your Account Plan and rounded to two decimal places.

Trade marks

- 2.6 You agree and acknowledge that:
- (a) you have no rights to any trade mark that incorporates the Phoneword and you must not register a trade mark, domain name, company name, business name or other trading name that incorporates the Phoneword.
 - (b) we may license the Phoneword to others after the Term and you must not challenge our rights or future licensee's rights in relation to the Phoneword or any trademark, company name, business name, domain name or other trading name that incorporates the Phoneword.
 - (c) third parties may own or use names, trademarks, brands or telephone numbers similar to the Phoneword.
- 2.7 You should notify us if you become aware of any third party using any trademark, company name, business name, domain name or other trading name that incorporates the Phoneword (as applicable).

Cancellation fee

- 2.8 If the Phoneword service is terminated other than as a result of our fault, we may charge you a cancellation fee equal 50% of the Minimum Monthly Fees due for the remainder of the Term. The above fee is a genuine pre-estimate of the loss we will incur from early termination.

Consequences of termination or expiration

- 2.9 Upon termination of this agreement, you will:
- (a) cease using the Services immediately;
 - (b) not use '1300', '1800' or '13' as part of a trademark, company name, business name or domain name;
 - (c) transfer to us or cancel, at our option, any trademark application or registration, domain name, company name, or business name that incorporates the Phoneword;
 - (d) take reasonable steps to inform your customers and other interested persons that you can no longer be contacted using the Licensed Number or Phoneword; and
 - (e) execute all documents and do all things to give effect to the above.

3. FoneDynamics Integration Suite

If Customer uses the FoneDynamics Integration Suite (**Suite**), in addition to the General Terms and Acceptable Use Policy, these additional terms will apply.

Credentials and Access

- 3.1 Customer will maintain the confidentiality and security of log-ins to the Suite and will notify us immediately if any of the credentials are compromised or improperly disclosed. We may terminate or suspend a customer's access to the Suite without notice if we reasonably believe that Customer or its authorised user has violated these terms.

Applicable Data and Privacy

- 3.2 Any content, data, information or material provided or submitted by Customer in the course of using the Suite or generated by the use of the Suite that result from queries, will remain the sole and exclusive property of Customer. Customer acknowledges that the Suite is hosted by a third party provider which may be removed or updated at any time. Our third party supplier may collect and aggregate data derived from the operation of the Suite to use such data for the purposes of operating its business, monitoring performance and/or improving its services. The use of such aggregated data will not reveal any of Customer confidential information or personally identifiable information.

Service Levels

- 3.3 The Suite will be available and operational 99.8% of the time each month (**Uptime Percentage**), not including scheduled downtime. The Uptime Percentage is calculated by subtracting from 100% the percentage of 1-minute periods (or any portion thereof) during any calendar month in which the Suite is not available out of the total number of minutes in that calendar month. The monthly Uptime Percentage will be measured based on the industry standard monitoring and testing tools utilised by our third party supplier.
- 3.4 Any availability issues resulting from any of the following will be excluded from Uptime Percentage calculations:
- (a) Regularly scheduled maintenance;
 - (b) Any problems arising outside of our control including faults in computing or networking hardware, Customer's equipment or software, the internet, other issues with electronic

communications, or events of force majeure such as natural disaster, war, acts of terror, actions of authorities or civil unrest;

- (c) Problems arising from Customer's internet or internet service providers, VPN issues, DNS availability or other similar issues;
- (d) Authentication issues;
- (e) Any changes, restrictions, discontinuations or other issues related to any third party API;
- (f) Customer's failure to purchase adequate capacity of these services.

4. SMS Services

4.1 When we issue you a number to use with your service, you become the rights of use holder of that number. A rights of use holder may port the number to another service provider if the service number has been declared as portable by the applicable regulator.

Conditions of Use

4.2 You must not use SMS Services:

- (a) in contravention of the Spam Act 2003 (Cth)
- (b) to transmit any defamatory, offensive, abusive, indecent, menacing or harassing material
- (c) in any manner which constitutes a violation or an infringement of a contractual obligation, or any intellectual property rights owned or licensed by a third party;
- (d) in connection with the commission of an illegal offence;
- (e) to impair or cause network interference to the normal operation of the SMS Services platform or the telecommunications network or equipment of any third party.

4.3 You can use SMS Services for:

- (a) telemetry, messaging and control functions
- (b) the provision of permission based information, personal communications, social media or entertainment
- (c) person to person communication
- (d) the promotion of products and services.

4.4 You acknowledge that:

- (a) SMS is not necessarily a secure and confidential method of communication and you transmit material via SMS at your own risk;
- (b) we cannot be responsible for ensuring that any material sent or received by means of the SMS Services is sent or received correctly;
- (c) messages sent via SMS Services to others will provide delivery details to the extent made available by the network provider of other end users;
- (d) the provision of SMS Services may not be continuous or fault free, and may not successfully terminate, or terminate in a timely manner on all devices.

Wholesale Terms & Conditions

Where the Customer provides wholesale services, using the Services provided by Fone Dynamics, and the Customer supplies those Services to third party end users, then the following Wholesale Terms apply and are included in the Agreement:

1. Granting of Wholesale privileges:

- 1.1 We appoint the Customer as a non-exclusive authorised wholesaler of the Services and the Customer accepts the appointment pursuant to the terms of the Agreement.
- 1.2 The Customer may not appoint any distributors, resellers or third-party sales contractors in relation to the Services provided pursuant to the Agreement.
- 1.3 We offer retail and wholesale Services, to a broad range of customers, and the Customer acknowledges that we may also offer services which are similar to the Services and which directly compete with the Customer.

2. End user obligations

- 2.1 The Customer agrees to bind the Customer's end users to terms and conditions which are substantially the same as the terms and conditions of the Agreement, and the Customer indemnifies us against any loss, damage or other detrimental effect, if the Customer fail to ensure that such terms and conditions are in place with any of the Customer's end users and / or if any such terms and conditions are unenforceable for any reason as against the Customer's end users.
- 2.2 The Customer must not supply the Services to any person who has not agreed in writing to be bound by terms and conditions which are substantially the same as the terms and conditions of the Agreement.
- 2.3 The Customer warrants that it will comply with all laws, regulations, standards and codes applicable to the Customer's supply of the Services to its end users.
- 2.4 The Customer agrees to resupply the Services to its end users in accordance with the policies, procedures and guidelines issued by us from time to time.
- 2.5 The Customer agrees to supply us with any and all information requested to assist with the provision of the Services to the Customer and to its end users and within any reasonable timeframes which we may require.
- 2.6 The Customer must not represent to its end users, that the Customer is authorised to act on our behalf or any of our related bodies corporate; and the Customer must not do or omit to do, directly or indirectly, anything which may cause us to be in breach of or unable to comply with any law, regulation, standard, code or obligation.
- 2.7 The Customer must provide sufficient end user details to us to enable compliance with our IPND obligations as detailed in clause 6 the T&Cs.

3. Confidentiality and Intellectual Property

- 3.1 The Customer must not use or disclose our intellectual property or confidential information in promoting or supplying the Services, other than as approved by us in writing prior to any such disclosure.
- 3.2 The Customer consents to us providing and exchanging any details about the Customer with our Carrier/s for the purposes of providing the Services, or otherwise in relation to the Agreement.

- 3.3 The Customer agrees that we may transfer the supply of Services, in whole or in part, to one or more different Carriers as and when we may, in its absolute discretion, determine is necessary to maintain the continuity of the Services.

4. Breach and termination

- 4.1 The Customer acknowledge that if the Customer fails to adhere to the Payment Terms or is at any time in breach of the Agreement, then, without having to have recourse to either the Customer or the Customer's end users, we may:
- (a) refuse to activate any Service;
 - (b) deactivate any activated Service;
 - (c) suspend part or all of the Services including for a particular activated service;
 - (d) refuse to approve any service to be "ported" away from us;
 - (e) approach the Customer's end users and contract directly with them;
 - (f) issue adverse credit reports against the Customer; and
 - (g) take legal steps to recover outstanding debts owed to us by the Customer.
- 4.2 The Customer agrees that if the Customer becomes insolvent, enters administration or liquidation, such that the event causes interruption to the Customer's end users services, then we may approach the Customer's end users and contract directly with them so as to continue to provide the Services to any such end user as a contracted customer of ours.

5. System Maintenance

- 5.1 We will undertake work from time to time to reduce the incidents of fraud and perform system and network management and maintenance. We will provide reasonable notice for planned activities and minimise impact where possible for urgent activities. The Customer agrees that we have no liability in respect of any loss, damage, disruption to any Service, which may arise from us performing such necessary functions.
- 5.2 The Customer will establish and maintain all necessary business insurance/s required to protect us from any claims from the Customer or its end users which may arise pursuant to this.

6. Number Porting

- 6.1 In respect of any and all service numbers (Service Numbers) that the Customer requests us to port at any time, the Customer confirms that it is the legal lessee or CSI of the Service Numbers that it nominates for porting. Customer indemnifies us against any claim, including any third party claims, that it has acted without authority or has exceeded its authority when instructing Fone Dynamics to facilitate the porting of the Service Numbers from the current provider of those Service Numbers to Fone Dynamics, and of the cancellation of the Service Numbers with its current provider.