

TERMS AND CONDITIONS

These are the terms that apply to our supply of Phonewords. They should be read in conjunction with your Agreement.

1 Definitions and interpretation

1.1 Definitions

Unless the contrary intention appears:

The following capitalised terms are defined in your Agreement: **Fees, Initial Term, Licensed Number** and **Phoneword**.

Agreement means the **National Number Licence Agreement** you have entered into for the supply of Phonewords and includes any Special Terms in that Agreement.

Loss means any loss, liability, cost or expense (including legal expenses on a full indemnity basis).

Regulatory Event means an event that, in our reasonable opinion, prevents us from licensing the Licensed Number to you.

Term means the Initial Term and any renewals under clause 6.1.

1.2 Interpretation

Unless the contrary intention appears, a reference in this Agreement to (i) a document includes any variation or replacement of it; (ii) a statute or other law includes all instruments under it and all amendments, re-enactments or replacements of any of them; (iii) the singular includes the plural and vice versa; (iv) a “person” includes an individual, a body corporate, a partnership, an unincorporated association or a government agency; (v) a person, includes that person’s executors, administrators, successors, substitutes and assigns; and (vi) the words “include” or “including” are not used as words of limitation.

2 Phoneword and Licensed Number

2.1 Licence

- (a) You may use the Licensed Number and the Phoneword during the Term in accordance with this Agreement.
- (b) You may only use the Phoneword (i) as a telephone number and not as a trademark, (ii) in the form set out in your Agreement and (iii) with your company name, business name or house brand, which must not incorporate the Phoneword or any similar name.

2.2 Protection of our rights

- (a) You agree that you have no rights to any trademark that incorporates the Phoneword **and** you must not register a trademark, domain name, company name, business name or other trading name that incorporates the Phoneword.
- (b) You acknowledge that 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) You acknowledge that third parties may own or use names, trademarks, brands or telephone numbers similar to the Phoneword.
- (d) You must notify us of any third party using any trademark, company name, business name, domain name or other trading name that incorporates the Phoneword.

3 Telecommunication Services

- (a) You are responsible for acquiring the telecommunication service to be used with the Licensed Number 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 this agreement becoming effective 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.

4 Fees and payment

- (a) You must pay us the Fees monthly in advance for the Licenced Number.
- (b) If you do not pay the Fees when due, we can charge you a \$25 administrative fee and interest at the Reserve Bank of Australia's official cash rate plus 5% until it is paid in full.
- (c) You must pay us (i) any legal costs incurred by us on a solicitor/client basis, (ii) any court or service fees incurred by us and (iii) any fees paid to a debt collector or mercantile agent, in respect of any action or proceedings undertaken in relation to recovering monies you owe us.
- (d) If we must pay GST on a supply made in connection with this Agreement, then you must pay us an additional amount equal to that GST. We will provide you with a tax invoice. You must pay to us any taxes levied on or in relation to the Licensed Number or Phoneword.

5 Warranty, liability and indemnity

5.1 Our warranties

- (a) We warrant that we have the right to license the Licensed Number to you. You acknowledge that we may have obtained the right to license the Licensed Number from a third party.
- (b) We do not make any representations or warranties in relation to the Licensed Number or Phoneword other than the warranty in clause 5.1(a).
- (c) It is your responsibility to assess whether the Licensed Number and Phoneword meet the requirements of your business and to develop and implement marketing that complements the Phoneword.
- (d) You may have additional rights under the Competition and Consumer Act 2010 (Cth). Nothing in this Agreement excludes, restricts or modifies rights that a party may have under any legislation that cannot be lawfully excluded, restricted or modified.

5.2 Your warranties

- (a) You warrant that your use of the Phoneword (i) will comply with all laws, industry codes and regulations and (ii) will not infringe the rights of any person or be misleading or deceptive or constitute passing off.
- (b) If a third party claims that your use of the Phoneword infringes their rights or is misleading or deceptive or constitutes passing off, it is your responsibility to obtain legal advice and resolve the matter with the third party.
- (c) You indemnify us against any Loss suffered or incurred by us in connection with any breach by you of this agreement, including the above warranties.

5.3 Limitation of liability

- (a) Subject to clause 5.3(b), our aggregate liability for any Loss suffered by you during any year (from 1 July to 30 June) of the Term is limited to the total amount of Fees paid by you to us in that year.
- (b) Our liability for a breach of a consumer guarantee under the Competition and Consumer Act 2010 (Cth) is limited to, at our option, supplying equivalent goods or paying the cost of supplying equivalent goods or resupplying the services or paying the cost of resupplying the services (as applicable).

6 Term and termination

6.1 Term and auto-renewal

This Agreement commences when signed by both parties and continues for the Initial Term. Thereafter it automatically renews for 12-month terms unless you give us written notice of non-renewal at least 30 days before the end of the Initial Term or a subsequent 12-month term.

6.2 Termination

- (a) We may terminate this Agreement by written notice to you (i) if you fail to remedy a material breach of this Agreement within 30 days of being asked to do so, (ii) if you become subject to any form of external administration, fail to comply with a statutory demand, are unable to pay your debts when they fall due; or (iii) if a Regulatory Event occurs. Breach of clause 2.2(d) is not a material breach.
- (b) You may terminate this Agreement (i) by written notice if we breach this Agreement and do not rectify the breach within 30 days of being asked in writing to do so, or (ii) after the Initial Term, by providing 3 months' written notice.

6.3 Cancellation fee

If this Agreement is terminated other than under clause 6.2(b) we may charge you a cancellation fee equal to the Fees for the Licensed Number due for the remainder of the Initial Term, less a discount of:

- (a) 2.5% if less than 12 months remain,
- (b) 5.0% if 12 to 24 months (inclusive) remain or
- (c) 7.5% if more than 24 months remain,

provided that, if termination occurs after the Initial Term, the above fee must not exceed 3 months' Fees. The above fee is a genuine pre-estimate of the loss we will incur from early termination.

6.4 Consequences of termination or expiration

- (a) Upon termination or expiry of this agreement, you must (i) cease using the Licensed Number and the Phoneword, (ii) not use '1300', '1800' or '13' as part of a trademark, company name, business name or domain name, (iii) transfer to us or cancel, at our option, any trademark application or registration, domain name, company name, or business name that incorporates the Phoneword, (iv) 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 (v) execute all documents and do all things to give effect to the above.
- (b) Clauses 2.2, 4, 5.2, 5.3, 6.3, 6.4 and 7 (other than 7(d)) survive termination or expiration of this agreement.

7 General

- (a) We and You agree not to disclose information provided by the other under this agreement that is not publicly available (including the terms of this agreement) except to its officers, employees, advisers and auditors or as required by any law or stock exchange.
- (b) We may subcontract performance of this agreement.
- (c) You may not assign, transfer or encumber your rights or obligations under this agreement other than to a person who is purchasing your business.
- (d) You may sub-license your rights under this agreement provided (i) the sub-licence is consistent with this agreement, does not permit further sub-licensing and terminates on termination or expiry of this agreement and (ii) You indemnify us against any Loss suffered by us in connection with the sub-licensee's use of the Phoneword.
- (e) The indemnities in this agreement are independent and continuing obligations and continue after this agreement ends. It is not necessary to incur expense or make payment before enforcing a right of indemnity.
- (f) We may use any of your logo(s) and image(s) for marketing and advertising activities.
- (g) This agreement is governed by the law of Victoria, Australia. Each party submits to the exclusive jurisdiction of the courts of Victoria, Australia.