

# motion telecom SFOA

1300 13 33 99 - [www.motiontelecom.com.au](http://www.motiontelecom.com.au)

Motion Telecom Pty Limited (ABN 34 002 600 876), will provide You with Service in accordance with this SFOA. This is a summary and abbreviation of this Agreement. A copy of the full SFOA can be found at [www.motiontelecom.com.au](http://www.motiontelecom.com.au) or by phoning us on 1300 13 33 99.

## 1. Definitions

In the General Terms of Our SFOA, the following words and abbreviations have the following meanings and apply to Our Mobile Terms and Internet Terms:

**1.1 Application Form** means a Motion Telecom application for Services whereby You have either: signed a form; given a verbal voice recording; registered online; or subscribed to Our Services by any other means that We may provide to You for that purpose, from time to time.

**Business Customer** means any Customer who We reasonably believe carries on a business, and includes: (a) a company incorporated under the Corporations Act 2001 (Cth) or any other body corporate; partnership or legal entity, which has an ACN or an ARBN/ABN to which We agree to supply Services; and (b) an association or club (whether incorporated or unincorporated) that is not a Non-Profit Organisation or Charitable Organisation.

**Charge** means a charge related to a Service as referred to in the General Terms, Telephone Terms, Mobile Terms, Internet Terms or set out in the Schedule of Charges, terms of a Plan or terms of an Offer.

**Customer** means a Person who enters into Our SFOA for a Service (including for supply of that service to another Person) or who otherwise acquires a Service from Us.

**Direct Debit** means the regular payments that You authorise to be debited (withdrawn) directly from Your bank account or may be the regular payments that You authorise to be directly debited on Your Credit Card.

**Equipment** means any equipment that You use that is necessary for the use of a Service.

**Fixed Line Services** means a landline telephone service that enables a Customer to make local and/or long distance calls.

**Interpretation** - "We, Us and Our" means Motion Telecom Pty Limited ABN (18 056 755 385); "You and Your" means You the Customer who subscribes to Our Service.

**Notice** in relation to Us providing You with the relevant information means: (a) delivering the information to You in person; (b) sending the information by pre-paid post to the address listed in Our records for You; (c) transmitting the information to Your email address if You: (i) have an email address; and (ii) have given Us Your consent to send information to that address; (d) including the information on, in or with Your bill (for example a newsletter), including a bill made available to You online via Our Website, provided You have consented to receiving the bill in that format; or (e) in the case of pre-paid telecommunications Services, any of the above means or by making the information available to You by means such as through Our Website, or at a retail outlet, and informing You how You can obtain the information by means of a recorded message or text message or in writing. If You have agreed to receive Your bill online at a stated email address, that agreement will be deemed to be consent to receive Notices from Us at that same email address, including any messages or Notices We send You regarding Your credit with Us.

**Notice** in relation to You providing Us with notice means: (a) delivering the information to Us in person; (b) sending the information by post to an address stated by Us; or (c) telephoning Us with the information, provided We give Our consent that this constitutes notice.

**Offer** means a special service offering that We may make available from time to time to eligible Customers.

**Premises** means any land, building, structure, vehicle or vessel, whether owned, leased or occupied by You, containing Equipment or a Service, or to which a Service is supplied.

**Privacy Policy** means Our privacy policy, which sets out how We collect and use Your personal information. You can access Our privacy policy by visiting Our Website [www.motiontelecom.com.au](http://www.motiontelecom.com.au) or You can receive a hard copy by calling Us on 1300 13 33 99.

**Schedule of charges** means the Schedule of Charges annexed to this SFOA. You can access Our Schedule of Charges on the Motion Telecom Website or You can receive a hard copy by calling Us on 1300 13 33 99.

**Service or Services** means any Motion Telecom telecommunication service subscribed for by a Customer and includes any goods or Equipment provided in connection with a Service.

**SFOA** means this Standard Form of Agreement, which includes the General Terms and the Mobile Terms and/or the Internet Terms depending on which Services You have subscribed to.

## 2. Our Partnership with You

**2.1** This Agreement is binding once We have accepted Your request for a Service and We shall connect Your Service after You have provided Us with valid and correct user details or the time and day You begin using Our services, which ever comes first.

**2.2** We shall open the account in Your name and then You shall be responsible for all charges incurred as a result of the Service. This also includes charges on Your Service, which may or may not have been incurred by You personally.

**2.3** Our partnership with You shall incorporate any terms and conditions applying to Our Service that must be included by any laws, industry standards and codes.

**2.4** We will provide the Service for You until the end of the term permitting the terms outlined in this Agreement are followed.

**2.5** We may vary, alter, replace or revoke any part of this contract (including Our fees) at any time. You will be provided with the changes in writing either by mail or on our website at [www.motiontelecom.com.au](http://www.motiontelecom.com.au).

## 3. Our Service to You

**3.1** We will make Our best efforts to offer the Service to You at all times, but please be aware that the Service is not free from faults and or interruptions. These can be due to factors outside of Our control, such as Weather and faults in phone networks. You acknowledge that We'll only be able to supply the services to the extent and to the standard Our Carriers provide Service to Us.

**3.2** Our Service is only available to You, if You:

- (a) Do not become involved in or try to use the Service in a manner that is deemed to be improper, immoral, unauthorised or unlawful;
- (b) Provide Us with all information and co-operation that We may need in relation to the provisioning of any Service;
- (c) Abide by the terms and conditions in this SFOA.

## 4. What We ask of You

**4.1** As the Customer, You must:

- (a) Acknowledge that all Motion Telecom property provided to you is the property of Motion Telecom, unless otherwise stated and You must return all property back to Motion Telecom if You are asked;
- (b) Provide Motion Telecom all information and co-operation it may require in relation to the Services;
- (c) Notify Us immediately if You change Your details;
- (d) Comply with all terms and laws for the use of Our Services.

**4.2** As the Customer You must not:

- (a) Disclose any confidential information or security number such as Your enquiry password or personal identification number;
- (b) Use the CLI information derived from the CLI except in accordance with the Act;
- (c) Not sell or redistribute any part of this Service.

**4.3** Transferring Your Service to Us:

- (a) If You transfer Your Services to Us from another Supplier, We may need to change any arrangements You have with that Supplier;
- (b) It is Your responsibility to check the terms and conditions of any contract You have entered into with another Supplier and to check for any consequences of transferring Your Service from them to Us;
- (c) When You agree to transfer Services to Us, You immediately authorise Us to act on Your behalf with Your current Supplier so We can successfully transfer any of those Services;
- (d) It is Your responsibility to pay Your current Supplier any outstanding amounts owed to them under the contract You had with them. We are not responsible for any outstanding amounts You owe to Your current Supplier or for any credit amounts owed to You by Your Supplier.

**4.4** Transferring Your Service away from Us:

- (a) If at any time You transfer Your Service away from Us then, at the time You terminate Your Services, You are liable to pay Us any amounts that You owe Us (for example, this may include all call charges, access fees and termination fees) by the due date shown on the appropriate bill. In addition, You are still responsible for meeting Your obligations under Our SFOA relating to liability and indemnity;
- (b) After You have transferred Your Service away from Us, We may need to issue You with an additional bill for any outstanding Charges due and payable to Us and You will be obliged to pay that bill.

## 5. Billing

**5.1** We will usually invoice You in advance for periodic charges relating to Telephone, Data & Internet Services and in arrears for other periodic charges, connection and service fees (where applicable) and usage charges, unless expressly stated to the contrary or We expressly agree in writing otherwise. We will endeavour to bill You within the next normal billing period for charges billed in arrears, but We reserve the right to bill You for those charges in later billing periods (for example, if charges made by a Supplier are not received by Us until a later billing period). We will endeavour to not bill You more than three months in arrears.

**5.2** All charges are due and payable by the due date shown on the invoice ("Due Date"). Payment must be made by the Due Date in full by cheque, credit card, direct debit or any other method permitted by Us.

**5.3** If an invoice is paid by cheque and that cheque is dishonoured, cancelled or otherwise fails, You will be liable for a charge which will be added to Your next invoice.

**5.4** Supplier charges:

- (a) Our charges to You may pass on any charges another Supplier charges to Us (including increases and special or one-off charges);
- (b) You will pay Us any charge which any other Supplier or other person renders to Us:
  - (i) If You approach that other Supplier or person directly, or otherwise than through Us; or
  - (ii) For connection or initiation of any service or for cancellation of any service.

(c) If You use an override code to access services offered by another Supplier, You will be billed by that Supplier for charges You incur unless We have a separate arrangement in place for the Supplier to charge Us directly, in which case We will pass on the charges to You in accordance with this Clause 5.4.

**5.5** If You are a company, We may impose a default charge on any part of the charges not paid to Us by the Due Date. That charge will be calculated daily on each outstanding amount from the Due Date for payment of that amount until the date that amount is paid in full. At any time the charge will be a rate per annum determined by Us to be 3% above the National Australia Bank's corporate overdraft reference rate at that time.

**5.6** If We incur costs in recovering overdue amounts from You, including (without limitation) mercantile agents' costs, disconnection of services costs, costs incurred in commencing legal action such as service fees

and search fees, We may recover these amounts from You in addition to the overdue amounts.

- 5.7** Unless expressly stated otherwise, charges for the Services or the Package are exclusive of government taxes, duties (including stamp duty), imposts or levies, which will be Your responsibility and will be itemised on Your invoice. Unless expressly stated otherwise, all fees, charges and other amounts payable (and all quotes given) under or in accordance with the terms of this SFOA (including charges for Services or the Package, repair fees, late payment charges, Services Early Termination Charge, reconnection fees, installation costs) are exclusive of GST and You must pay to Us in addition to the charges an amount equal to any GST payable on the supply of the Services or the Package. That additional amount is payable at the same time as any part of the charges for the Services or the Package is payable. We will issue a tax invoice to You for the supply of those Services or the Package at or before that time.
- 5.8** You must pay all charges without any set off, counter claim or deduction. We may set off any amount payable to You against any amount payable by You to Us.
- 5.9** Your invoice will be calculated with reference to data recorded by Us and Our Suppliers. Our records are sufficient evidence of amounts payable by You unless shown to be incorrect.

## 6. Liability

- 6.1** We are not liable to You for any breach of any express or implied terms, conditions or warranties of Our contract, including the non-provisioning of Our pricing brochure at any time.
- 6.2** We are not liable to You for any loss of income, interest, business, or profits, or for any indirect, incidental or consequential loss or damage.
- 6.3** Where We cannot by law exclude such liability, Our liability for such breaches will be limited, at Our choice to, if the breach relates to goods, the replacement or repair of the goods or, if the breaches relate to Services, the supplying of those Services or the payment of the cost of having those Services supplied again.
- 6.4** As the customer You are liable for all costs incurred when porting any telecommunications service from Your current provider to Us, this includes but is not limited to: contract termination charges and porting fees.

## 7. Assignment

- 7.1** As the Customer You may not transfer or assign any rights and obligations under this Agreement without the prior written permission of Motion Telecom.
- 7.2** We reserve right to and may without notice assign or novate all rights and obligations under the contract to Our nominee or Related Body Corporate. We may also require You to novate this Agreement in favour of Motion Telecom's nominee. All such novations to be on terms no less favourable than the terms of the contract in existence immediately prior to the novation.

## 8. Suspension or disconnection of Your Service

- 8.1** Your use of the Service may be temporarily suspended or we may permanently disconnect any part of the Service and cancel this Agreement without warning, if:
- The network needs maintenance or upgrading;
  - The use of the Service by any person may damage the network;
  - You do not use the Service for a period of 12 months;
  - We are instructed by a regulatory body such as the ACA;
  - Our Agreement with the carrier has ended or the carrier has ceased to exist;
  - Any of Your assets come under the control of another person such as a receiver;
  - You do not pay Your bill by the required due date in Clause 5.

## 9. Period of Agreement

- 9.1** Commencement and Term: The Agreement commences on the date the Account Application is signed by both parties, and, unless the term is specified elsewhere in the Agreement, continues indefinitely.
- 9.2** Commencement of Service: The provision of Services commences when the Transferred Service accounts are transferred from Your Current Supplier to Our nominated Carrier by Your Current Supplier and upon completion of installation of any necessary equipment and any other arrangements with any Other Supplier for the provision of the Services.

## 10. Termination

- 10.1** Either of Us may terminate a Service provided under this SFOA without cause, by giving the other party not less than 30 days Notice unless it is a term agreement.
- 10.2** You may terminate a Service provided under this SFOA immediately if You are transferring that Service away from Us to another Supplier or You vacate Your Premises where You had a fixed Service and do not wish to, or We are not able to, transfer that Service to other Premises.
- 10.3** Subject to any other express rights or obligations either of Us may have under this SFOA, either of Us may terminate a Service provided under this SFOA immediately on giving the other party Notice, if the other party materially breaches this SFOA.
- 10.4** If a Service provided under this SFOA is terminated, You must pay all outstanding Charges, including any early termination fees, which are payable in accordance with the terms of this SFOA for supply of the relevant Service. If You validly terminate a Service for Our material breach: We will refund any network access Charges which You have paid in advance for that Service, pro rated from the date You terminate the Service;

- 10.5** If You terminate a Service provided under this SFOA after the required statutory "cooling off period" but before We have provided You with the Service, then We may charge You for any reasonable costs We have incurred in preparing to provide You with the Service. For example, Our costs may include the costs of professionally installing broadband.
- 10.6** If a Service provided under this SFOA is terminated for any reason, including by You, You will be required to pay the following Charges: usage and network access Charges incurred up to the date the Service was terminated; and any outstanding amounts that cover installation costs or Equipment as stated in the relevant Plan or Offer (for example, any outstanding payments for Your mobile handset), provided that if You terminate in accordance with Clause 10.1, You will only be required to pay the outstanding amounts for Equipment We have provided or installed if that Equipment may be used by You to obtain services from another service provider (for example, if You are able to use Your mobile handset to obtain a service from another service provider).
- 10.7** If You and We have agreed that You will acquire a Service from Us for a minimum term (for example, 12 months), and You terminate that Service without cause, or We terminate that Service for cause in accordance with Our termination rights under this SFOA due to acts or omissions by You, You will be liable for:
- the Charges set out in Our Schedule of fees; and
  - the network access Charges (if applicable) for the remaining months of the minimum term; and
- an early termination fee to cover Our administrative costs (if such a fee was stated as part of the Plan or Offer).
- 10.8** If You are required to pay an outstanding amount for any Equipment and withheld monies owed to Us we will:
- We terminate a Service due to Your breach of the terms of this SFOA; or
  - You terminate a Service without cause, then You must pay the outstanding amount by the due date shown on the appropriate bill.
- 10.9** If a Service provided under this SFOA is terminated as listed in Clause 10.1, and You are required to pay an outstanding amount for any Equipment, You may, at Your option, either pay the entire outstanding amount within 30 days of termination or continue to pay in instalments in accordance with Your existing instalment plan. However, if at any time after termination, You fail to pay any amount due under any instalment plan by the due date, Motion Telecom reserves the right to require You to pay all outstanding amounts within 30 days of the missed due date.
- 10.10** If all Your Services provided under this SFOA are terminated, then this SFOA will also terminate on the date of termination of those Services.

## 11. Privacy

- 11.1** Motion Telecom, like other companies operating in Australia, is bound by the National Privacy Principles as set out in the Privacy Act 1988 (Cth) and the Privacy Amendment (Private Sector) Act 2000.
- 11.2** We will provide You with access to Your account information in accordance with the Privacy Act 1988 (Cth);
- 11.3** We may receive and disclose personal information or documents about You to or from credit reference agencies to help Us make credit decisions or for fraud protection purposes. You consent Us, Our agents, suppliers, and other carriers, using and disclosing personal information about You in credit related matters in accordance with the Privacy Act 1988 (Cth).
- 11.4** We reserve the right to exchange Your personal information with Our reputable credit providers in a consumer credit report issued by a credit reporting agency for the following purposes:
- to assess an application by You for credit;
  - to notify other credit providers of a default by You;
  - to exchange information with other credit providers as to the status of this loan where You are in default with other credit providers;
  - to assess Your credit worthiness.
- 11.5** We may also be ask to co-operate with any law enforcement agencies to use personal information to assist them with the prevention of criminal activities.

## 12. Miscellaneous

- 12.1** This contract is governed under the laws of New South Wales.
- 12.2** From time to time We have special offers and promotions available for users of the Service. Additional terms and conditions will apply to these offers, which You accept. All terms and conditions are available on request.
- 12.3** For avoidance of doubt all 1300/13 calls are charged at 27.5c (inc GST), unless specifically stated as being inclusive of the plan credits or a price other than 27.5c (inc GST).

