

TELSTRA BRANDED CARDS, PHONE BUNDLES, STARTER PACKS AND PRE-PAID MOBILE SALES AGREEMENT / APPLICATION FORM

Please complete this form if you wish to sell Telstra branded products.

RETAILER DETAILS	
Company or Business Name	
Contact Person	
A.B.N.	
Core Business (E.g. Photo Shop, Copy Centre, Auto Shop, Stationery, Phone/Communications, Convenience, Petrol Station)	
Delivery Address	State: _____ Postcode: _____
Billing Address	State: _____ Postcode: _____
Private Address	State: _____ Postcode: _____
Phone (Business)	Phone (Mobile)
Email	Fax

Direct Debit Facility: Yes [] No [] (if yes, please complete a payment authority form)

ORDERS	NOTICES
Fax: 1300 785 505	Technologica Pty Ltd
Phone: 1300 785 506	PO Box 2074
Email: sales@technologica.com.au	IVANHOE EAST VIC 3079

DECLARATION	
I agree to purchase and retail Telstra Products under terms and conditions provided with this application form	
Name	Position
Signature	Date

OFFICE USE ONLY
Signed on behalf of Technologica Pty Ltd
Name: Position: Date:

TERMS AND CONDITIONS

These are the terms and conditions on which Technologica Pty Ltd will provide Retailers with Telstra branded cards, Starter Packs, Phone Bundles and Pre-Paid mobiles. If you place an order you will be deemed to have accepted these conditions.

COMMENCEMENT: This agreement begins on the date you sign the application form or when you order the products, whichever occurs first.

ORDERS: To obtain Telstra products, place your order, preferably by Email to sales@technologica.com.au or by Fax to 1300 785 505. We will indicate our acceptance of the order by issuing an invoice and delivering the products to your delivery address as indicated on the application form. We will use our best endeavours to meet your orders and delivery dates. If any products are damaged or missing, you must notify Technologica within 48 hours of receipt and return any damaged products to us immediately. Each order remains our property until you pay for it in full.

PAYMENTS: If you select the direct debit option, payments for the cards will be debited 21 days after the date of the invoice. If you choose the pay on invoice option you must pay for delivery within 7 days of the date of invoice. You may elect to open a "COD/Credit Card" account, in which case we will supply your order, and charge your credit card with no fee. The price payable for the products is the face value of the products ordered less the prevailing commissions. We may vary these commissions by giving you written notice.

CREDITWORTHINESS: We may obtain a credit report on you from a credit reporting agency or trade referee you have nominated. We may disclose information regarding your creditworthiness to other credit providers.

MINIMUM ORDERS: Products must be ordered in pack quantities. Minimum order values apply for free delivery, as indicated on Technologica order forms. Orders under these values will incur a delivery and handling fee of up to \$15. We reserve the right to vary this fee according to costs associated with delivery.

YOUR OTHER OBLIGATIONS: You agree to promote and sell the Cards, Starter Packs, Phone Bundles and Pre-Paid mobiles. You agree to utilise such point of sales display materials as are provided. You agree to make available to customers any Conditions of Use information for all Telstra products. You will use your best endeavours to sell each card within a reasonable period before the expiry date of that card. Where a customer claims a card is faulty; You will provide a faulty-card form or advise customers to call the customer service number on the back of the Card. You must NOT: Incur liability on our behalf or that of Telstra. Modify or tamper with the product. Promote or sell a competitor's product as a Telstra product. Represent to any third party that you are an agent, employee or servant or representative of Telstra or of Technologica P/L.

MERCHANDISING: Technologica Pty Ltd will Supply you with promotional material (e.g. literature, signage and other display materials) as agreed from time to time.

REPRESENTATIONS AND WARRANTIES: You must not make any warranty, representation or statement to any product or service of Telstra, its suitability for any particular use, compatibility with any equipment, its characteristics performance or otherwise that is inconsistent with, differs from, is misleading or deceptive as to the express terms of any warranty or guarantee given by Telstra or any written specifications provided by Telstra for the purpose of being passed onto customers. All implied conditions and warranties are excluded from this agreement except those which cannot be lawfully excluded.

REFUNDS OR REPLACING CARDS: Unless otherwise agreed to by us in writing, we will not replace any Cards delivered to you or refund any money for Cards (including but not limited to Cards that have expired) unless required to do so by law, or as otherwise expressly agreed to in this agreement.

CONFIDENTIAL INFORMATION & TRADE MARKS: You must protect our confidential information, in particular you must not use or disclose our business information except as provided by this agreement. You may not use Technologica Pty Ltd's trademarks or logo without our express permission.

PRIVACY: You must comply with all Privacy Laws in relation to Personal Information whether or not you are an organisation bound by the Privacy Act. You must use the Personal Information only for the Permitted Purposes. You must not disclose Personal Information except to the extent necessary for the Permitted Purposes.

CANCELLATION: Either of us can cancel this agreement by giving 30 days written notice. In addition we can cancel this agreement immediately by giving notice if: (i) You become insolvent, or bankrupt if an individual, (ii) You do not pay money owed within our agreed credit terms, (iii) You breach this agreement and do not remedy the breach within 7 days of being notified of it, (iv) You bring either our name or that of Telstra into disrepute. Cancellation of this agreement does not affect any existing rights and obligations at the time of cancellation including those covered by Confidential Information, Privacy, Trademarks & Logos Limitation of Liability or Indemnity.

INDEMNITY: You agree to indemnify Technologica against loss or damage we suffer because you breach any of the terms of this agreement or because of any other negligent or wrongful act or omission on your part.

GENERAL: You may not assign your rights under this agreement to any other party without our permission. This Application and these Terms and Conditions form the entire agreement between us.

RETAILER TERMS

Retailer acknowledges that Technologica is an authorised distributor of Telstra (and acts as Telstra's agent for the sole purpose of supplying Products to Retailers).

Retailer agrees that Technologica holds the benefit of any promises made by Retailer in respect of matters involving Telstra under this agreement on trust for Telstra.

1 POINT OF SALE MATERIAL

1.1 Telstra may prepare point of sale material such as leaflets, forms and posters ("Point of Sale Material").

1.2 Technologica will deliver all Point of Sale Material to the Retailer's nominated address.

1.3 Retailer must not produce, distribute or display any Point of Sale Material relating in any way to the Products, or which refers to Telstra, without obtaining Telstra's prior written consent.

1.4 Retailers must publicly display at each place where Products are available for retail sale any Point of Sale Material (including, without limitation, the Conditions of Use) provided to Retailer by Technologica.

1.5 Retailers must make available a copy of the Conditions of Use for the Products to each customer who requests a copy at any point of sale.

2 PROMOTION AND ADVERTISING

2.1 Each Product Promotion will commence on the commencement date specified in each Product Promotion Schedule and will continue until further notice from Telstra.

2.2 Retailer **must**:

(a) follow all Telstra's written instructions from time to time in respect of the sale, sales promotion and advertising of any Product Promotion;

(b) use its best endeavours to promote, market and procure Customers to acquire the Products;

(c) not do anything to damage the reputation of Telstra or the Products;

(d) comply with its obligations under clause 6.5 in relation to a Product Promotion;

(e) comply with all laws and current industry guidelines and codes of conduct applicable to Retailer;

(f) use reasonable endeavours to accurately inform Customers of (where applicable to a Product):

(i) the extent of the Product's geographical coverage:

(A) in Australia; and

(B) in any particular area identified by the Customer as an area in which Customer intends to use the Product;

(ii) the limitations of the Product and associated telecommunications technology;

(iii) the key features of the Product;

(iv) any applicable customer support telephone number; and

(v) such other additional information as Telstra or the distributor specifies by notice to the Retailer from time to time; and

(g) inform each Customer that the sale of Products:

(i) is made between Telstra and the Customer; and

(ii) is subject to such terms and conditions as directed by Telstra to the Retailer in writing (directly or through Technologica).

(h) not modify a Product in any way.

2.3 Retailer must not advertise or promote any Product Promotion in any way until Telstra notifies Retailer in writing (directly or through Technologica) that it has approved Retailer's participation in the relevant Product Promotion and in any event not before the commencement date relevant to that Product Promotion.

2.4 Retailer must not (and must not engage or assist any third party to):

(a) engage in any marketing or advertising campaign targeted at the customers of Telstra, whether by direct marketing, telemarketing or otherwise; or
(b) contact by means of telemarketing any person that Retailer knows, or should reasonably have known, is a customer of Telstra, for the purpose or with the effect of encouraging customers of Telstra to connect to a telecommunications service which is not provided by Telstra.

2.5 Telstra may from time to time provide Technologica with merchandising material to promote the Products to distribute to Retailer. The merchandising material always remains the property of Telstra. Retailer must not change Point of Sale Material or merchandising material without Telstra's written consent.

3 TITLE

3.1 Retailer acknowledges and agrees that in respect of all Products which are the property of Telstra whether as a result of a customer returning a Product or otherwise ("Promotion Stock"), until Retailer disposes of the Promotion Stock to a customer or, in the case of Products returned by a customer, to Telstra, Retailer will:

- (a) store the Promotion Stock separately so that it is clearly identifiable; and
- (b) ensure that the Promotion Stock is stored free and clear of any incursions, interferences or contamination (including but not limited to fire, storm, flood, explosion, dirt and water); and
- (c) keep the Promotion Stock safe and secure at all times and inaccessible to any unauthorised person and complete as supplied by the manufacturer; and
- (d) permit Telstra to have free and unhindered access to the Promotion Stock upon demand.

4 INTELLECTUAL PROPERTY AND TRADEMARKS

4.1 Retailer must not use the Intellectual Property of Telstra or our licensors unless allowed to under this agreement.

4.2 Retailer acknowledges that the Intellectual Property is the exclusive property of Telstra or our licensors and that Retailer has no interest in it or the goodwill arising from its use.

4.3 Retailer may only use the trademarks in a way that Telstra has approved in writing.

4.4 Retailer **must not**:

- (a) attempt to register or reserve for registration any trademarks similar to trademarks registered, reserved for registration, or owned by Telstra or our licensors; or
- (b) alter, remove or tamper with any Trademark, number or other means of identification Telstra uses on or in relation to goods or services; or
- (c) use any trademark (including registered and unregistered trademarks and trade names) of Telstra other than the Trademarks; or
- (d) dispute Telstra's, or our licensors', ownership of the Trademarks or other intellectual property; or reduce the value of the goodwill attached to the Trademarks or other intellectual property; or
- (e) incorporate part of the Trademarks into any of Retailer trademarks, corporate, business or domain name or trading name; or
- (f) use or display the Trademarks with goods or services which are not associated with Telstra; or
- (g) use the Trademarks in any way not specified in this agreement or in other written notices from us; or assist or permit anyone else to do any of (a)-(h).

4.5 Retailer must:

- (a) ensure that the use of the Trademarks in any advertising or promotional copy has been approved in writing by Telstra before printing or publication; and
- (b) immediately cease any use of any Trademarks in accordance with Telstra's instructions.

4.6 The licences granted to the Retailer under this clause 6 are personal to the Retailer. The Retailer may not assign, license or otherwise deal with the licences granted to it under this clause 6 without the prior written consent of Telstra and must not in any way whatsoever purport to permit any other person to use or enjoy any of the rights granted to it.

5 CONFIDENTIAL INFORMATION

5.1 Retailer must treat as Confidential Information the terms of this agreement and all information relating to Telstra's business or customers which is disclosed by Telstra or acquired by Retailer in connection with this agreement. This does not apply to information in the public domain.

5.2 Retailer must not use Telstra's Confidential Information without Telstra's written consent except: (a) to perform or enforce this agreement; or

- (a) to obtain legal advice in relation to matters arising out of this agreement; or
- (b) as authorised or required by law.

5.3 Retailer must not disclose Telstra's Confidential Information except to Retailer's representatives for any of the purposes in clause 7.2.

5.4 Retailer must return any Confidential Information Telstra gives Retailer if asked.

5.5 Retailer must ensure that Retailer's representatives comply with these obligations on Confidential Information.

5.6 These obligations continue after this agreement terminates or ends.

6 PRIVACY

6.1 Retailer must comply with Privacy Laws in relation to Personal Information, whether or not Retailer is an organisation bound by Privacy Act 1988 (Cth).

6.2 Retailer must:

- (a) not do anything or omit to do anything with the Personal Information that will cause Telstra to breach any Privacy Law;
- (b) take all reasonable steps to ensure that the Personal Information is protected against any interference, misuse, loss, unauthorised access, modification or disclosure;
- (c) ensure that Retailer and any representatives complete such privacy training as may be required to ensure Retailer's compliance with this clause 8; and
- (d) notify Telstra if Retailer becomes aware of any breach or alleged breach of the obligations under this clause and comply with any reasonable direction from Telstra related to that breach or alleged breach.

6.3 When collecting Personal Information from or about an individual which will be disclosed to Telstra, Retailer must provide the person with a copy of Telstra's privacy collection statement, as supplied by Telstra from time to time.

6.4 Retailer must not transfer Personal Information outside Australia without our prior written consent.

7 REPRESENTATIONS AND WARRANTIES

7.1 Retailer must not make any warranty, representation or statement with respect to any product or service of Telstra, its suitability for any particular use, compatibility with any equipment, its characteristics, performance or otherwise, that is inconsistent with, differs from or is false, misleading or deceptive as to, the express terms of any warranty or guarantee given by Telstra or any written specifications provided by Telstra for the purpose of being passed on to customers.

8 APPOINTMENT AS AGENT

8.1 Technologica appoints Retailer as Telstra's agent to promote and sell the Products on behalf of Telstra. The Retailer acknowledges that:

- (a) sales of the Product by Technologica to the Retailer as Telstra's agent will be at the Retailer Buy Price. Retailer must pay the Retailer Buy Price to Technologica. Title in the Products passes to Retailer upon payment by the Retailer of the Retailer Buy Price;
- (b) the Retailer agrees that each Product is sold back to Telstra immediately before Retailer sells it to a Customer on Telstra's behalf. Title in the Products will pass to Telstra immediately prior to the sale of the Product to the Customer;
- (c) Telstra agrees to buy the Product for an amount that is equal to the Retailer Buy Price; and
- (d) sales of the Product to a Customer by the Retailer as Telstra's agent must be at the Customer Price or, if we so authorise, at a price determined by the Retailer that is between the Customer Price and the Floor Price. Title in the Products passes to the Retailer upon payment by the Retailer of the Retailer Buy Price. Retailer must collect the Customer Price or other amount from Customers (as the case may be) on our behalf.

8.2 Telstra may set off the amounts it owes to the Retailer under clause 10.1 and any remuneration payable to the Retailer for promoting and selling the Products against the Customer Price or other amount collected by the Retailer on Telstra's behalf.

9 REMUNERATION

9.1 Retailer agrees and acknowledges that Telstra, or Technologica on Telstra's behalf, may by prior notice change the type, level or amount of remuneration it pays to the Retailer for promoting and selling the Products.

10 GENERAL

10.1 The Retailer must:

- (a) not appoint any person to perform any of the Retailer's obligations under this agreement with Telstra's prior consent;
- (b) not purport to admit any liability on Telstra's behalf to any third party;
- (c) act loyally, in good faith and in the best interests of Telstra; and
- (d) not knowingly supply a Product for re-supply.

10.2 The Retailer must not make any representation concerning a Product that is inconsistent with the express terms of any warranty or guarantee given by Telstra or any written specifications provided by Telstra or Technologica for the purpose of being provided to Customers:

11 GST

11.1 Amounts are GST-exclusive

Unless expressly stated otherwise, all amounts payable under this agreement are exclusive of GST.

11.2 Imposition of GST

Subject to clause 13.3, where GST is imposed on any supply made under this agreement the recipient must in addition to and at the same time as the GST exclusive consideration is payable or to be provided, pay an additional amount to the supplier calculated by multiplying the value of that GST-exclusive consideration (without deduction or set-off) by the applicable GST rate.

11.3 Tax Invoice

The recipient is not required to pay any amount of GST to the supplier unless the supplier has issued a valid tax invoice to the recipient.

11.4 Adjustment of consideration for a supply

If the amount of GST recovered by the supplier from the recipient differs from the amount of GST payable at law by the supplier (or an entity grouped with the supplier for GST purposes) in respect of the supply, the amount payable by the recipient to the supplier will be adjusted accordingly.

11.5 Indemnity and reimbursement payments exclude input tax credits

Where this agreement requires one party to indemnify or reimburse another party for any cost, loss or expense incurred by the other party, the requirement to pay does not extend to any part of such cost, loss or expense that is recoverable by the payee (or an entity grouped with the payee for GST purposes) as an input

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Where this agreement requires one party to indemnify or reimburse another party for any cost, loss or expense incurred by the other party, the requirement to pay does not extend to any part of such cost, loss or expense that is recoverable by the payee (or an entity grouped with the payee for GST purposes) as an input tax credit, but will be subject to a GST gross-up under clause 13.2 if the payment constitutes consideration for a supply on which GST is imposed.

11.6 If Retailer makes a supply as [Distributor's] or Telstra's agent

For the purpose of complying with the requirements of section 153-50 of the GST Act and any additional requirements as determined by the Commissioner of Taxation from time to time, where, under the terms of this agreement, Retailer makes a supply in your capacity as [Distributor's] or Telstra's agent, the following provisions will apply for GST purposes:

- (a) Retailer will be treated as making that supply to the Customer on its own account and not as [Distributor's] or Telstra's agent;
- (b) Technologica will be treated as making a corresponding taxable supply to Retailer;
- (c) Retailer will issue a valid tax invoice and any required adjustment note in respect of that taxable supply to the Customer in its own name if the supply is a taxable supply;
- (d) Technologica will not issue any tax invoice or adjustment note in respect of that supply to the Customer; and
- (e) the arrangement provided for in this clause 13.6 will terminate immediately if either of Retailer or Distributor ceases to be registered for GST purposes. Technologica may terminate the arrangement at any time by sixty (60) days' notice in writing to Retailer.

11.7 Arrangements for the supplies of 'Vouchers'

Notwithstanding anything to the contrary in this Agreement, if one party ("GST Intermediary") sells or makes available a Voucher under this Agreement to a third party as agent or intermediary of a second party ("GST Principal"):

- (a) the GST Intermediary and GST Principal understand and agree that any amount payable by the GST Principal to the GST Intermediary as a commission, margin or similar payment for the GST Intermediary providing the Voucher to the third party, is to be treated as if it were not for a taxable supply made by the GST Intermediary and, no GST will be payable by the GST Principal in respect of that supply in accordance with section 100-18 of the GST Act;
- (b) for the avoidance of doubt, the GST Intermediary must not issue a tax invoice to the GST Principal for the commission, margin or similar payment due for the supply of intermediary or agency services made in respect of the supplies of Vouchers to third parties under this Agreement;
- (c) for the avoidance of doubt, the GST Principal must not issue a recipient created tax invoice to the GST Intermediary for the commission, margin or similar payment due for the supply of intermediary or agency services made in respect of the supplies of Vouchers to third parties under this Agreement;
- (d) 'Vouchers' have the meaning provided for under Division 100 of the GST Act as being vouchers with a stated monetary value equal to or greater than their sale price covered by section 100-5 and section 100-25 of the GST Act (i.e. pre-paid recharge cards and EPINs and Starter Kits);

11.8 For the avoidance of doubt, GST is payable by the GST Principal to the GST Intermediary on any commission, margin or similar payment due for making the supply of a taxable non-Voucher (e.g. Telstra Prepaid phone and tablet packs, SIMs), to a third party.

12 DEFINITIONS

Access Pack means a Product which can be used to connect to Telstra services including a Product that consists of a certain amount of pre-paid value which may be used to acquire and connect to Telstra services.

Conditions of Use means the terms of use for the Telstra pre-paid products.

Confidential Information of a party means all information regardless of how the information is stored or delivered, exchanged between the parties before, or after the commencement of this agreement relating to the business, technology or other affairs of that party and includes the terms of this agreement.

Customer means the ultimate purchaser or acquirer of Product(s).

Customer Price means the listed price or denomination for each Product as advised by Telstra or Technologica on Telstra's behalf from time to time.

Floor Price means the floor price for a Product as advised by Telstra or Technologica on Telstra's behalf from time to time.

Intellectual Property includes all know-how, inventions, patents, designs, copyright, circuit-layouts, trade secrets, software, trademarks, trade names logos and get up of Telstra or its licensors.

Intellectual Property Rights means all our or our licensors' rights in the Intellectual Property at any time protected by statute or common law, including:

- (a) patents, copyright, rights in circuit layouts, registered designs, trademarks and any right to have confidential information kept confidential; and
- (b) any applications or right to apply for registration of any of the rights referred to in (a) above

Personal Information means information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not:

- (a) about an identified individual or an individual who is reasonably identifiable; or
- (b) about the affairs or personal particulars of a legal entity such as a company or a business.

Privacy Laws means:

- (a) the *Privacy Act 1988* (Cth) and the *Privacy Protection Policy* issued by us; and
- (b) any other legislation, principles, industry codes and policies relating to the collection, use, disclosure, storage or granting of access rights to Personal Information, which we notify you is Privacy Law for the purposes of this agreement.

Product means the physical Telstra pre-paid products (including pre-paid internet products) as advised by Telstra from time to time.

Product Promotion means a Telstra pre-pay product promotion.

Retailer Buy Price means the retailer buy price listed amount (inclusive of GST) for each Product as notified by Telstra, or by Technologica on Telstra's behalf from time to time.

Telstra means Telstra Corporation Limited ABN 33 051 775 556.

Trademarks means the Telstra logo, the Telstra PhoneAway logo, the Telstra Phonecard logo and any other logos or marks that are associated with a Product.