

TERMS AND CONDITIONS FOR INDIVIDUAL 7 DAY TRAIL FAX2EMAIL

1. The following terms will have the meanings assigned to them hereunder, namely:
 - 1.1 **AGREED PERIOD**
means the period of 7 days which the customer has free use of the Fax2Email service.
 - 1.2 **FONEWORX**
means FoneWorx (Pty) Limited, registration no 1997/014426/07
 - 1.3 **CUSTOMER**
means the party who has subscribed for Fax2Email and whose details appear in the Fax2Email application to which these terms and conditions are attached.
 - 1.4 **EFFECTIVE DATE**
means, notwithstanding the date of signature of the application or the date on which the Fax2Email service is applied for, the date of registration of the customer for the relevant service, irrespective of whether or not the customer has activated and/or commenced using the service in question.
 - 1.5 **TRIAL PERIOD**
The 7 day period for which the customer can use the Fax2Email service.
 - 1.6 **FAX2EMAIL SERVICE**
means the FoneWorx Individual Fax2Email service.
 - 1.7 **TAX**
means taxes on sales or similar taxes in the country where the service is provided and as defined in the taxation laws in respect of the sale of goods and services of the country.
 - 1.8 **PSTN**
means the Public Switched Telecommunications Network which provide services in the country.
 - 1.9 **NON-PREMIUM RATED NUMBER**
means a standard fixed line network number commencing with the area code prefix for the area in which the customer intends using the service.
 - 1.10 **INDIVIDUAL SERVICE**
means a FAX2EMAIL service where the recipient (customer) pays to receive a fax electronically and where the sender pays standard network rates when transmitting faxes.
 - 1.11 **COST SCHEDULE**
means the schedule of usage costs as reflected on the website www.foneworx.co.zm as amended from time to time.
2. **COMMENCEMENT AND DURATION OF SERVICE AGREEMENT**
 - 2.1 The agreement will commence the effective date on which the first service is provided to the customer and will continue for 7 days.
 - 2.2 At the end of the trial period and should the customer want to continue using the service, the customer will be required to enter into Fax2Email agreement for the agreed period.
 - 2.3 If, at the end of the trail period, the customer does not enter into a Fax2Email agreement for the agreed period then all faxes and documents received on the number during the trial period will be automatically deleted.
3. **FAIR USE POLICY**

3.1 The service is subject to a fair use policy in terms of which the customer agrees that:

3.1.1 No more than 100 (one hundred) faxes per number will be received in any 30 (thirty) day period.

3.1.2 An amount equivalent to 1 percent extra of the annual subscription fee will be charged for each fax received where limit of 100 faxes is exceeded. This amount will be charged in addition to the annual subscription fee.

4. ALLOCATION OF TELEPHONE NUMBER

4.1 FoneWorx will allocate a range numbers to the customer for FAX2Email and will ensure (subject to network provider maintenance and operational requirements) that the telephone numbers and service are operational. Where applicable (depending on the nature of the service) FoneWorx will map the allocated number to the customer's supplied e-mail address.

5. SURGES

5.1 The customer accepts that there is a likelihood of an increased volume of telephone calls at certain times in a 24-hour cycle and to the extent that there are such increases an engaged tone will result and in such circumstances FoneWorx cannot be held responsible for customers being unable to successfully dial into the customer's service provided by FoneWorx. The customer or user will re-dial the service a few minutes later.

6. CUSTOMER'S OBLIGATIONS

6.1 The customer may not at any time use the service provided by FoneWorx in contravention of any law.

6.2 The customer will not commit or attempt to commit any act or omission which directly or indirectly in any way damages the FoneWorx technical infrastructure or impairs or precludes FoneWorx from being able to provide the service in a reasonable and professional manner.

6.3 The customer may not sell or otherwise deal with the service of FoneWorx in any manner whatsoever without obtaining the prior written consent of FoneWorx.

6.4 The customer may not, under any circumstances, resile from this service agreement or withhold or defer payment or be entitled to a reduction in any of the charges pursuant to this agreement if FoneWorx interrupts the service to the customer for any reason whatsoever.

7. WARRANTY

7.1 FoneWorx does not make any representations nor does it warrant or guarantee in any way whatsoever the services that FoneWorx will offer to the customer and all warranties which are implied at common law are hereby expressly excluded.

7.2 FoneWorx does not warrant or guarantee that the content, data or information transmitted by any of the customers using the service will be preserved or sustained in its entirety or be delivered to any or all of the intended recipients or will be suitable for any purpose.

7.3 FoneWorx does not warrant or guarantee that the content, information or data transmitted using the service will be free of inaccuracies or defects or bugs or viruses of any kind or will be secured against intrusion by unauthorized third parties.

8. QUALITY AND RESOLUTION

8.1 The customer acknowledges that where a document is faxed to or from FoneWorx, the quality and resolution of the document cannot be guaranteed by FoneWorx and FoneWorx will not be liable for any degradation or defects to the faxed document.

8.2 FoneWorx will not be liable for:

8.2.1 Any quality deterioration in fax transmission;

- 8.2.2 Any delays in transmission;
- 8.2.3 Variant transmission times, it being acknowledged that various factors such as: on-line noise, classes of fax machines, storms etc may impact on transmission times and quality;
- 8.2.4 The transmission being delivered to any or all the intended recipients;
- 8.2.5 Ensuring that the service is free from any defects, bugs or viruses or inaccuracies of any kind;
- 8.2.6 Ensuring that the service is secure against any intrusion by unauthorized third parties.

9. **BREACH**

- 9.1 If the customer breaches any of the terms or conditions of this agreement and fails to remedy such breach or pay any amount which is due within 7 (seven) days after receiving written notice from FoneWorx; or
 - 9.1.1 commits any act of insolvency; or
 - 9.1.2 endeavors to compromise any of its creditors; or
 - 9.1.3 causes anything to be done which may prejudice FoneWorx's rights in terms of this agreement; or
 - 9.1.4 is placed in liquidation or judicial management; or

then FoneWorx will have the right, without prejudice to any other of its rights, to:

- 9.1.5 suspend or terminate the service;
- 9.1.6 treat as immediately due and payable, all outstanding amounts which would otherwise become due and payable over the unexpired period of the agreement;
- 9.1.7 cancel this service agreement.
- 9.2 the above will, in any event, be without prejudice to FoneWorx's rights to claim damages.
- 9.3 In the event that FoneWorx is obliged to seek legal recovery of any outstanding amounts or the enforcement of any of FoneWorx rights in terms of this agreement, then the client will be liable for all costs including costs on an attorney and own client scale whether incurred prior to or during the institution of legal proceedings or judgement being granted.

10. **INTELLECTUAL PROPERTY AND PROTECTION OF INFORMATION**

All intellectual property relating to or used in connection with the FAX2Email service provided by FoneWorx in terms of this agreement belongs to FoneWorx. The customer undertakes that it will at no time expose any third party to the intellectual property of FoneWorx or copy, modify, tamper, decompile or reverse engineer any of the intellectual property owned by FoneWorx.

11. **INDEMNITY**

The customer hereby unconditionally and irrevocably indemnifies FoneWorx, its employees, directors or any of its agents, distributors, independent contractors or dealers, against any claims of whatsoever nature which may be brought against FoneWorx, its employees, directors, agents, distributors or independent contractors by any person of whatsoever nature arising out of connected with the provision of, or the failure to provide, the service as reflected in this agreement.

12. **CESSION**

The customer may not assign or cede any rights and/or obligations which it may have in terms of this agreement to any third party unless consented in writing by FoneWorx.

13. **GOVERNING LAW AND JURISDICTION**

This agreement will be governed by and construed in accordance with the laws of the Republic of South Africa and all disputes, actions and other matters relating thereto will be determined in accordance with South African law by a South African Court having jurisdiction.

14. **NON-VARIATION**

No variation, amendment or alteration to any of the terms and conditions of this agreement will be of any force or effect unless they have been reduced to writing and have been signed by the parties or by their duly authorized representatives. The parties agree that no other terms or conditions, whether oral or written, and whether express or implied, apply to this agreement.

15. **WAIVER**

No extension of time or waiver or relaxation of any of the provisions or terms of this agreement will be binding for any purpose unless expressed in writing and signed by the parties giving the same, and any such waiver will be effective only in a specific instance and for the purpose given. No failure or delay on the part of either party in exercising any rights, power or privilege will operate as a waiver, nor will any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof with the exercise of any other right, power or privilege.

16. **FORCE MAJEURE**

FoneWorx will not be liable for non-performance in terms of this agreement where that non-performance is caused by any event or condition beyond the control of FoneWorx. FoneWorx will not be able to supply the service in terms of this agreement in the event that there is any fault with the PSTN and/or any other of the mobile networks used by FoneWorx in the delivery of the service and/or any other Internet service provider used in the provision of this service. In particular, FoneWorx will be unable to deliver the service in the event that there is any act of sabotage, act of war, interruption of transport, lock-outs, floods, storm or fire.

17. **DOMICILIUM CITANDI ET EXECUTANDI**

For all purposes, including but not by way of limited, the giving of any notice, the making of any communication and the serving of any process, FoneWorx chooses its domicilium citandi et executandi ("domicilium") at FoneWorx House Cnr Bram Fischer Drive and Will Scarlet Road RANDBURG 2194. FoneWorx will be entitled, from time to time, to vary its domicilium. Any such change will be notified to the customer by notice on the FoneWorx website. Any notice given will be posted by prepaid registered post or hand delivered to FoneWorx's domicilium.