



Standard Terms and Conditions

Talking Business Co
www.talkingbusiness.com.au
1300 666 765
Revision 17.07.1
1 July 2017

Recitals

- A. Taipan Group Pty Ltd trading as Talking Business Co - ABN 56 054 780 317 (“**Talking Business**”) is a telecommunications provider and supplies telecommunications products and services using a combination of other carrier network facilities (“**Services**”).
- B. You (“**Customer**”) are a user of the services provided by Talking Business.
- C. Customer has agreed to purchase from Talking Business telecommunications services as per the terms of this **Agreement**.

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1. The Parties Agree As Follows:

- 1.1. Service shall mean the service(s), and any related goods, provided by Talking Business, and/or its agents and suppliers, to Customer pursuant to this Agreement which is more particularly described in the specific Product Schedule 4 ("PS4") or Service Request Form ("SRF").
- 1.2. Provided that Customer is not in default of its obligations, Talking Business will use reasonable efforts to supply Customer with the Service pursuant to the terms and conditions set out in this Agreement, or as modified in any SRF, for the Term. The initial Term shall be set out in PS4, and may be modified in any additional SRF.
- 1.3. At any time, Customer may request revised Services from Talking Business by completing an additional SRF and providing it to Talking Business.
- 1.4. On acceptance of the additional SRF by Talking Business, the additional SRF will be deemed incorporated into this Agreement. Talking Business reserves the right not to accept any SRF for any reason.
- 1.5. Customer agrees and acknowledges that the Services may be revised at any time to comply with any lawful order, direction, consent, specification, designation or determination any regulatory body with jurisdiction over Talking Business or the Services. Talking Business will work with Customer to implement any revisions to the Services that may be required by any such requirements. Customer agrees to promptly and effectively implement any service modifications required pursuant to this section.
- 1.6. Talking Business agrees that the Services will at all times be provided in a manner consistent with regulatory and industry obligations that are imposed from time to time. Talking Business agree to promptly implement all modifications to the Service required to assure Talking Business continued compliance with all such regulations.
- 1.7. Customer agrees that it :
 - 1.7.1. will not use the Services for any improper or unlawful purpose, or allow others to do so; and
 - 1.7.2. will comply with all reasonable instructions issued by Talking Business which concern the use of the Services, including, but not limited to, the Excessive Usage Policy, Number Conditioning and Requirement for Traffic Routing set out in this Agreement; and
 - 1.7.3. will, at all times during the Term, comply with all licence requirements imposed on the Customer in relation to the provision of the Services and hold any appropriate licences Customer requires to lawfully operate the Services that are the subject of this Agreement and/or which are to be connected to Customer or its End Users by virtue of the Services.

2. Term

- 2.1. This Agreement shall be in force for the Initial Term set out in PS4, or as revised in any SRF, or as otherwise agreed in writing by the parties or as terminated as set out in this Agreement. Subject to any other rights granted by law or pursuant to this Agreement, this agreement shall continue for the Initial Term; following expiration of the Initial Term, the Agreement shall continue in force unless and until terminated by either party giving to the other at least thirty (30) days' notice in writing.
- 2.2. Notwithstanding the forgoing, Talking Business may terminate this Agreement at any time due to Customer default of its obligations set out in this Agreement.
- 2.3. Talking Business may vary this Agreement on 30 days' notice.

3. Fees, Billing and Payment

- 3.1. Customer agrees to pay the rates set out in PS4, and in any SRF, for the Services.
- 3.2. Talking Business will invoice for the fees set out in this Agreement as set out in PS4 and/or in any SRF. Payment is due fourteen (14) days from the receipt of any invoice ('Due Date'). If full payment is not received by Talking Business by the Due Date, Talking Business may, without prejudice to its rights and remedies, and with regard to the Financial Hardship Policy (Schedule 2), immediately suspend the Services until full payment is received.

- 3.3. Unless otherwise indicated in PS4 or in any SRF, Talking Business will invoice for fees as follows:
 - 3.3.1. Recurring charges will accrue from the date the Service is connected and will be invoiced to Customer monthly in advance; and
 - 3.3.2. Usage-based charges will accrue from the date the Service is connected and will be invoiced to Customer monthly in arrears; and
 - 3.3.3. One time or set-up charges will accrue from acceptance of a PS4 or SRF and will be invoiced to Customer promptly thereafter; and
 - 3.3.4. Equipment charges will be invoiced to Customer upon shipment.
- 3.4. Talking Business, at its sole discretion, may modify at any time its fees that are set out in PS4 by giving written notice to Customer. Unless a longer period is stipulated in such notice, such modified fees shall take effect thirty (30) days from the date of such notice.
- 3.5. Notwithstanding the foregoing, international billing tariffs are regularly revised on a monthly basis.
- 3.6. Fees for Voice Services shall be on a "per call" basis with fees for each call rounded up to the next highest billing increment (both time and monetary). Timed Calls are billed at one-second minimum per call with one-second increments, rounded up to the nearest cent.
- 3.7. Fees for the Services shall be calculated by Talking Business in accordance with the rates set out in PS4, and Talking Business shall issue an invoice on a monthly basis unless otherwise agreed.
- 3.8. Special Service Numbers are those types of calls that may not be specifically detailed in PS4 and may include 13x and 1900x in Australia and their equivalents in foreign countries.
- 3.9. The charges specified in this Agreement are exclusive of all government taxes, fees and other charges including but not limited to Goods and Services Tax (GST), and which, if due and owing, shall be added to Customer's invoice and charged at the prevailing rate.
- 3.10. Customer shall be liable in full for all charges relating to its use of the Services, without deduction for any reason; including without limitation any alleged unauthorised or fraudulent use of the Services.

4. Disputes

- 4.1. The Parties shall co-operate to investigate promptly any dispute concerning the accuracy of any billing data, any amount payable, or any other issue arising pursuant to this Agreement.
- 4.2. In the event of a dispute as to fees charges by Talking Business, Customer shall notify Talking Business of any such dispute in writing no later than seven (7) Business Days after the receipt of the relevant invoice, providing sufficient information to identify the invoice in question and the grounds of the dispute. Failure to make such a notification within the time frame shall be deemed to be a waiver of Customer's rights to dispute the relevant invoice.
- 4.3. On receipt of Notice of disputing fees, both parties shall discuss dispute and shall provide all written information required by the other party to adequately investigate and resolve the dispute. During this period of dispute resolution, the parties agree that disputed portion of the invoice need not be paid. All fees not in dispute shall be paid by the Due Date as set out in the relevant invoice.
- 4.4. In the event the parties are unable to resolve the dispute pursuant to method set out sections 4.1 to 4.3 of this Agreement, within fifteen (15) Business Days of a commencement of discussion set out in 4.3, each party shall internally escalate to an executive of the party with authority to negotiate and settle the dispute. Such executives shall within ten (10) business days attempt to resolve and settle the dispute. If such executives are unable to meet, or if after such meeting the dispute is unresolved, either party may (on given written notice to the other to such effect) commence legal proceedings.
- 4.5. Nothing in this section shall modify or amend any rights a party may have under law as to resolution of billing disputes related to the Services.
- 4.6. For the purposes of this section a "Business Day" shall mean any day other than Saturday, Sunday or public holidays in Sydney New South Wales, Australia and "Business Hours" shall mean 9:00am to 5:30pm on a Business Day.

5. Operations and Maintenance

- 5.1. Talking Business shall comply with all codes of practice applicable to Australian Telecommunications operators including but not limited to obligations in respect of Calling Line Identification ('CLI') and as may be agreed in writing between the parties from time to time.
- 5.2. Customer shall make any Talking Business supplied equipment accessible to Talking Business or its agent at reasonable notice for any maintenance or other support services. At no time shall maintenance or provisioning activity be carried out by one party on any equipment provided, owned and operated by either party without the party's prior consent.
- 5.3. Customer shall revise its use of the Services on receipt of written Notice from Talking Business that Customer's use of the Services violates or damages any of Talking Business service providers for the Services.

6. Provision of Information and confidentiality

- 6.1. Each party undertakes to the other that it will treat as confidential, and will use its reasonable endeavours to procure that its directors, employees, professional advisors and agents will treat as confidential, the terms and conditions of this Agreement as well as any and all data, summaries, rates, reports including but not limited to credit reports and other commercial credit information, or information of all kinds as well as all other information whether of a technical or business nature or otherwise relating in any manner to the business or affairs of the other party which it may receive in connection with this Agreement and which is marked as "Confidential" or would be assumed to be confidential by a reasonable business person, and each party further agrees that it will not (and still use its reasonable endeavours to procure that its directors, employees, professional advisors and agents will not) disclose such information other than strictly for the purposes of this Agreement.
- 6.2. Confidential Information shall not apply to information held by a party which:
 - 6.2.1. is in, or comes into, the public domain other than by breach of this Agreement; or
 - 6.2.2. is obtained by that party from a third party who has the right to disclose it; or
 - 6.2.3. is, or has been, independently generated by that party (but not including data generated by that party about calls delivered by the other party which is Confidential); or
 - 6.2.4. is in the possession of, or is known to that party prior to the date of this agreement, to the extent that party is not bound by confidentiality obligations in respect of such information to the party.
- 6.3. The following shall not be deemed to be a breach of this Section 6:
 - 6.3.1. A disclosure of information necessary to comply with any law or the valid order of a court or competent jurisdiction or any ruling, regulation or request of any governmental or other regulatory authority or agency provided that the parties disclosing the information shall make reasonable efforts to notify the other party promptly of any such order or request and (if possible prior to making the disclosure) shall request confidential treatment of such information by the third party to which it is disclosed;
 - 6.3.2. A disclosure of information to a party's auditors and/or other professional advisors or as part of its normal reporting, fund raising or other review procedure for its parent or affiliated companies, members or partners as the case may be, provided that the party disclosing the information will endeavour to procure that its auditors, professional advisors, parent company members and partners will also treat such information as confidential;
 - 6.3.3. A disclosure of information made in order to enforce its rights under this Agreement.
- 6.4. On termination of the Agreement for whatever reason, the recipient party shall return to the disclosing party (or, at the discretion of the disclosing party, destroy) all copies of Confidential Information of the other party, which it has in its possession. The provisions of the Confidentiality clause shall survive the termination or expiry of this Agreement for any reason whatsoever indefinitely.

7. Termination

- 7.1. Talking Business may, at its option, (without prejudice to any of its other rights) either suspend service or terminate this Agreement with immediate effect at any time by giving written notice to Customer if Customer:

- 7.1.1. Has failed to make payment for Services by the Due date; or
- 7.1.2. Has breached Customer's other obligations contained in clause 1.8; or
- 7.1.3. Has committed any other material breach of any of its obligations hereunder, and has not remedied the breach within fourteen (14) days of written notice to do so; or
- 7.1.4. Fails to maintain in effect a valid licence to operate or use its system, which affects the exercise of rights or performance of obligations under this Agreement; or
- 7.1.5. Makes an arrangement of composition with its creditors generally or makes an application to a court of competent jurisdiction for protection from its creditors generally or a bankruptcy order is made against such other party or a resolution is passed by it for its winding up, a court or competent jurisdiction makes an order winding up or dissolution, an administration order is made in relation to it or a receiver is appointed over (or an encumbrancer takes possession of or sells) and of its assets; or
- 7.1.6. Fails to use the Services as set out in this Agreement for a period of three (3) consecutive months; or
- 7.1.7. Fails to pay Talking Business fees as they fall due; or
- 7.1.8. Talking Business reasonably suspects fraud or other misuse by Customer or any other person in connection with Customer with either the Service; or
- 7.1.9. Talking Business reasonably determines that there has been an unusually high use of the Service, or if Customer significantly changes any traffic profile or forecast given to Talking Business; or
- 7.1.10. Defaults under clauses 8.1, 8.2 or 9.1.
- 7.2. Customer may (without prejudice to its other rights) either suspend service or terminate this agreement at any time by giving notice in writing to Talking Business if Talking Business:
 - 7.2.1. Fails to maintain in effect a valid licence to operate or to use its system, which affects the exercise of rights of performance under this Agreement; or
 - 7.2.2. Fails to provide the Service for a period of thirty (30) days; or
 - 7.2.3. Makes an arrangement to composition with its creditors generally or makes an application to a court of competent jurisdiction for protection from its creditors generally or a bankruptcy order is made against such other party or a resolution is passed by it for its winding up, a court or competent jurisdiction makes an order winding up or dissolution, an administration order is made in relation to it or a receiver is appointed over (or an encumbrancer takes possession of or sells) any of its assets.
- 7.3. In the event that this Agreement is terminated for any reason within the Initial Period, Customer shall be liable to Talking Business for all fees and charges due for Services supplied by Talking Business including but not limited to the Establishment Fee, Minimum Spend, all Usage and monthly charges for the Term of the Agreement.

8. Fair Use Policy

- 8.1. The Customer agrees to be bound by the Fair Use Policy at Schedule 1.

9. Requirement for Traffic Routing

- 9.1. As a requirement of the Legal Intercept Plan, no asymmetrical routing of traffic is permitted. Talking Business stipulates that for the services associated with the numbers routed by Talking Business to Customer, Customer cannot (except in the situation of failure of the service offered by Talking Business) route outbound voice traffic via a third party carrier.

10. Limitation of Liability

- 10.1. Talking Business shall not be liable in any way for a suspension, interruption, degradation or other fault howsoever arising in connection with the provision of Services to Customer or to Customer's End Users.
- 10.2. Nothing in the Agreement shall exclude or restrict either party's liability set out under applicable statute or regulation.

- 10.3. Subject to the express terms of this Agreement, neither party shall be liable to the other party for any claim, proceedings or actions brought or made against that other party by the persons pursuant to a contractual relationship with the other party.

11. Force Majeure

- 11.1. Notwithstanding any provision of this Agreement, neither party shall be liable for its inability in performing any of its obligations hereunder (other than obligations to pay any sum to the other party) if such inability is caused by or arises as a result of circumstances beyond its reasonable control including, without limitation, inability or delay caused through force majeure including fire, flood, riot, industrial dispute of any kind, lightning, explosion civil commotion, malicious damage, storm, tempest, acts or omissions of other communications carriers, acts of government or other regulatory authority, acts of omissions of persons of persons bodies for whose the affected party is not responsible, and any circumstances beyond that party's reasonable control.

12. Warranties

- 12.1. The Service will comply with the performance levels set out in Schedule 3 attached and incorporated into this Agreement. Talking Business may at any time revise Schedule 3 by written notice to the Customer however, Talking Business shall at all times use reasonable efforts under the circumstances to maintain its overall service quality which will be consistent with industry standards, government regulations and sound business practices.
- 12.2. Talking Business makes no warranties as to supply of particular telephone numbers to Customer, their continued availability once supplied, or their transfer to third parties.
- 12.3. Except as required by law or regulation or as otherwise set out in this Agreement, or in any SRF, Talking Business expressly excludes all liability for all warranties, conditions and non-fraudulent representations, express or implied (status, common law or otherwise) concerning the Service, including but not limited to those relating to the availability, performance quality or fitness for a particular purpose of the Service.
- 12.4. Customer warrants that the use of Service by Customer and its End Users will not lead to any breach of the provisions of this Agreement.
- 12.5. Customer warrants that it will advise Talking Business of any issue which may affect Customer's ability to pay Talking Business invoices as required by this Agreement. This obligation includes but is not limited to authorising Talking Business to obtain on an ongoing basis during the Term Customer's financial and credit information, and Customer's End User's payment obligations.

13. Assignment

- 13.1. Customer may not assign or transfer or purport to assign or transfer any or its rights or obligations under this Agreement without the prior written consent of Talking Business, which consent shall not be unreasonably withheld.
- 13.2. To the extent they are assignable; Talking Business may at any time assign some or all of its rights under the Agreement to another company in connection with a sale, corporate reorganisation of all or a portion of Talking Business's assets.

14. No Waiver

- 14.1. The failure to exercise or delay in exercising a right or remedy under this Agreement shall not constitute a waiver of the right or remedy or a waiver of any other right or remedy and no single or partial exercise of any right or remedy under this Agreement shall prevent any further exercise of the right or remedy or the exercise of any other right or remedy in respect of the same or any other breach.

15. Intellectual Property Rights

- 15.1. Except as may be expressly agreed in writing between parties (under such express terms as are agreed), all trade and service marks, inventions, patents, copyrights, registered designs, design rights and all other intellectual property and intellectual property rights shall be and remain in the ownership of the relevant party.
- 15.2. Nothing herein shall confer or be deemed to confer on either party expressly, impliedly or otherwise, any right or licences in the intellectual property of the other, including marketing materials and sales materials created by Talking Business on behalf of Customer. All Talking Business trade and service marks shall remain at all times the sole property of Talking Business
- 15.3. For the Term of this Agreement, Talking Business grants to Customer a limited right to use Talking Business trade and service marks, subject to all trade and service mark use restriction supplied by Talking Business to Customer from time to time, and subject to Talking Business's right to approve all Customer use of Talking Business's trade and service marks. Customer agrees that its use of Talking Business trade and service marks shall be solely for marketing and publicity purposes related to this agreement.

16. Notices

- 16.1. All notices, consents, waivers or other communications given hereunder shall be in writing, shall be delivered by hand, registered or recorded post (return receipt requested) or sent by facsimile, and shall be deemed received upon actual delivery. All notices shall be directed as follows with a copy to such other person as either party may from time to time nominate:

To: Talking Business Co
Attention: Accounts Department
PO Box 789
Buderim QLD 4556
Fax: (07)5322 5300
Email: accounts@talkingbusiness.com.au

To: Customer
Address as set out in PS4

- 16.2. Either party may vary its address, designated representative or facsimile for notices by giving notice in accordance with this clause.
- 16.3. Notice given by hand, registered or recorded post (return receipt requested) shall be deemed to have been received at the time of actual delivery. Notice given by facsimile shall be deemed to be received when transmitted provided that the sender shall have received a transmission report indicating that all pages of the notice have been transmitted with the correct facsimile number, provided that if the transmission of such facsimile does not occur on a Business Day with Business Hours the notice shall be deemed received on the next following Business Day. For these purposes, "Business Day" shall mean any day other than Saturday, Sunday or public holidays in Sydney New South Wales, Australia and "Business Hours" shall mean 9:00am to 5:30pm on a Business Day.

17. Interpretation

- 17.1. Agreement means the terms and conditions of this document including any Schedules and Attachments.
- 17.2. Capitalised words in a clause of this Agreement have the meaning given in the clause where they first appear.
- 17.3. This Agreement is interpreted according to the rules of interpretation listed below:
 - 17.3.1. Headings are for convenience only and do not affect interpretation;
 - 17.3.2. The expressions 'Talking Business' or 'Customer' will include their respective successors and permitted assigns and novatees.
 - 17.3.3. A reference to a person includes a reference to a person, firm, corporation or other legal entity.
 - 17.3.4. A reference to a clause or schedule is to a clause or schedule to this Agreement;

- 17.3.5. A term which is defined in any part of the Agreement has the same meaning in every other part of the Agreement.
- 17.3.6. The singular includes the plural and vice versa.
- 17.3.7. Different grammatical forms of the same word have the corresponding meaning.
- 17.3.8. Examples or words of inclusion are illustrative only and do not limit the generality of the relevant subject.

18. No Partnership

- 18.1. Nothing in this Agreement shall be construed as creating a partnership or joint venture between the parties or as constituting either party as the agent to the other party for any purpose whatsoever and neither party shall have the authority or power to bind the other party or to contract in the name of or create a liability against the other party in any way or for any purpose.

19. Severability

- 19.1. If any one or more of the provisions of this Agreement shall be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions of the agreement shall not in any way be affected or impaired and thus shall be valid and enforceable to the fullest extent permissible by law.

20. Governing Law

- 20.1. This Agreement shall be construed in accordance with, and governed in all respects by, Australian Law and the parties submit to the exclusive jurisdiction of the courts of New South Wales in respect of all legal proceedings which may arise in any way whatsoever out of this agreement.

21. Entire Agreement

- 21.1. This Agreement, together with all the schedules and annexes incorporated herein specifically by reference, represents the entire agreement and understanding between the parties in relation to the subject matter hereof and supersedes all other agreements and representations made by either party, whether oral or written. This Agreement may only be modified if such modification is in writing and signed by a duly authorised representative of each party.

22. Prohibition and Enforceability

- 22.1. Any provision of, or the application of any provision of, this Agreement or the exercise of any right which is prohibited in any jurisdiction is, in that jurisdiction, ineffective only to the extent of that prohibition.
- 22.2. Any provision of, or the application of any provision of, this Agreement which is void, illegal or unenforceable in any jurisdiction does not affect the validity, legality or enforceability of that provision in any other jurisdiction or the remaining provisions in that or any other jurisdiction.

Schedule 1 - Fair Use Policy

This Fair Use Policy applies to all services that you purchase from Talking Business.
This Fair Use Policy should be read in conjunction with any product/service specific Terms and Conditions.

General

- 1.1. This policy is designed to ensure that your use of Services does not break any laws, hinder the efficient operation of our network, interfere with the rights of other customers, or interfere more generally with the rights of end users.
- 1.2. You are responsible for ensuring that use of the service complies with this policy. You are also responsible for any use of the service by any user, including an End User to whom you supply the service.
- 1.3. "You" means you, an employee of your company, or the End User to whom you supply the service, or any other user.
- 1.4. "service/services" means any service you obtain from Talking Business.
- 1.5. You should consult this policy regularly to ensure that your activities conform to the most recent version.
- 1.6. If there is an inconsistency between the Terms and Conditions of the Service, and this policy, this policy will apply.
- 1.7. If you become aware of any violations of this policy by other users you should contact us.

Illegal Activity

- 1.8. You must not use the service for any activity that breaches any law or violates any local, state, federal or international law, order, regulation or industry code of practice.
- 1.9. Prohibited activities include (but are not limited to):
 - 1.9.1. posting, disseminating, or in some cases accessing, content which is unlawful, including:
 - 1.9.1.1. content that is or would be classified by the Classification Board as RC rated or X rated and that is or would be classified by the Classification Board as R rated where a restricted access system is not in place,
 - 1.9.1.2. content which violates the copyright or other intellectual property rights of others. You assume all risks regarding the determination of whether material is in the public domain, or
 - 1.9.1.3. content that defames, harasses or abuses anyone or violates their privacy,
 - 1.9.1.4. pyramid or other illegal soliciting schemes, or
 - 1.9.1.5. any fraudulent activities, including impersonating any person or entity or forging anyone else's digital or manual signature.

Security

- 1.10. You are responsible for any misuse of a service; this includes paying any costs (including call costs) associated with the misuse of a service.
- 1.11. Where Talking Business incurs costs associated with a misuse of any service, you may be liable for the payment of these costs.
- 1.12. You agree to indemnify Talking Business against the consequences of any misuse of a service by you.
- 1.13. You must take all practical steps to ensure that others do not gain unauthorised access to any service.
- 1.14. The service must not be used to obtain or attempt to obtain unauthorised access to any computer, system or network. If you do not have authorisation, prohibited activities include (but are not limited to):

- 1.14.1. accessing, monitoring or using any data, systems or networks,
 - 1.14.2. probing, scanning or testing the vulnerability of a system or network,
 - 1.14.3. breaching any security or authentication measures for a system or network,
 - 1.14.4. accessing the account or private information of any other person or entity,
 - 1.14.5. accessing any server in violation of any acceptable use policy of that server, including any attempt to do any of the things mentioned in paragraphs (i) to (iv) above.
- 1.15. You must not:
- 1.15.1. use (or attempt to use) or distribute tools designed for compromising security including, but not limited to, password guessing programs, cracking tools, packet sniffers or network probing tools,
 - 1.15.2. knowingly transmit or disseminate any information or software, which contains a virus or other harmful feature,
 - 1.15.3. use (or attempt to use) the service in a manner that may interfere with the technical operation of the service or any other computer, system, network or telecommunications services, including (but not limited to) denial of service attacks, flooding of a network, overloading a service, improper seizing and abuse of operator privileges and attempts to 'crash' a host, or
 - 1.15.4. interfere (or attempt to interfere) with the regular workings of our systems or network connections.
- 1.16. You are solely responsible for the security of any device you choose to connect to the service, including any data stored on that device.
- 1.17. We recommend against enabling file or printer sharing of any sort. We recommend that any files or services you do choose to make available for remote access be protected with a password or other appropriate measures to prevent unauthorised access.
- 1.18. You must notify us immediately of any unauthorised or attempted unauthorised use of your service and any other breach or attempted breach of security.

Risks of the Internet

- 1.19. Some activities that you can perform when accessing the Internet may be harmful or cause loss to you, other people that may access your service, or your equipment. Typical activities include (but are not limited to):
- 1.19.1. downloading content (including receiving emails) from the Internet which may introduce viruses or other harmful features to your computer,
 - 1.19.2. purchasing goods or services using the Internet,
 - 1.19.3. transmitting confidential information over the Internet (such as your credit card number or other personal information), or
 - 1.19.4. accessing and viewing content on the Internet or otherwise available through the service that may be offensive to some individuals, or inappropriate for children (for example, it is possible to obtain access to content that is pornographic, offensive and/or unsuitable for children).
- 1.20. You bear all risk associated with the activities referred to above, and we do not have any liability for any claims, losses, actions, damages, suits or proceedings arising out of or otherwise relating to such activities.
- 1.21. You may minimise the risk of accessing illegal or offensive content as well as managing use of the Internet by using a filtering solution. We will provide access to one or more of these filtering solutions at a reasonable cost to you as part of the service.
- 1.22. You have the right to make complaints to the Australian Communications and Media Authority about Internet content which is or would be classified by the Classification Board as X rated, RC rated, or R rated and does not have a restricted access system in place.

Content Publishing

- 1.23. You are solely responsible for any content that you publish via websites, email, newsgroups, online forums or other publishing mediums accessed via the service.
- 1.24. You must not publish material that is or would be classified by the Classification Board as RC rated or X rated via websites, email, newsgroups or other publishing mediums accessible via the service.
- 1.25. You must take appropriate precautions to prevent minors from accessing or receiving any content you have published that may be inappropriate for them. This includes implementing a restricted access system on content that is or would be classified by the Classification Board as R rated. We also encourage you to use appropriate warnings

Automated Applications

- 1.26. If automated programs or programs that maintain a persistent connection to a remote service are used, they must only be used when you are physically present at the computer. These activities include (but are not limited to) automated file downloading, IRC 'bots', continuous streaming media and peer-to-peer file sharing applications.

Excessive Use Policy

- 1.27. In the event of Excessive Usage of the Service by the Customer, Talking Business may require Customer:
 - 1.27.1. To reduce the use of the Service, as in the case of untimed calls; and/or
 - 1.27.2. Pay additional charges to recover any costs or losses incurred by such excessive usage. Such charges shall be based on for example timed national call rate as per the then current pricing schedule; and/or
 - 1.27.3. Cancel the Service for Customer.
- 1.28. Customer agrees that Talking Business may republish/revise its Excessive Usage Policy at any time during the Term.
- 1.29. For the purposes of this Agreement "Excessive Usage" shall include, but is not limited to:
 - 1.29.1. Average call duration that exceeds 9 minutes where calls are untimed.
 - 1.29.2. An inbound to outbound ratio of calls that exceeds 3:1; and/or
 - 1.29.3. Any other metric that Talking Business informs Customer in writing.
- 1.30. As a requirement of the Legal Intercept Plan, no asymmetrical routing of traffic is permitted. Talking Business stipulates that for the services associated with the numbers routed by Talking Business to Customer, Customer cannot (except in the situation of failure of the service offered by Talking Business) route outbound voice traffic via a third party carrier.

Violation of Fair Use Policy

- 1.31. If you, or someone with access (including unauthorised access) to a service, use the service in a way that we reasonably believe violates this policy, we may take any responsive action we deem appropriate.
- 1.32. Such actions may include (but are not limited to) the immediate suspension or cancellation of all or any portion of the service.
- 1.33. We may take any other legal or technical action we deem appropriate, including taking action against offenders to recover the costs and expenses of identifying them. If your use of the service causes a loss to third parties and we are required to pay compensation, we require you to reimburse us.
- 1.34. We are not obligated to regularly monitor your usage of the service however we reserve the right to monitor your use of the service to identify violations of this policy, and to protect our network, the other users of this service, and other Internet users.
- 1.35. We reserve the right to investigate any use of a service that we reasonably suspect violates this policy, including the gathering of information from the user(s) involved and the complaining party, if any, and examination of

transmissions and material on our servers and network. During an investigation, we may suspend the services involved, and / or interrupt transmissions.

- 1.36. In order to enforce this policy, you authorise us (or our agents) to cooperate with:
 - 1.36.1. law enforcement authorities in the investigation of suspected criminal violations, and
 - 1.36.2. system administrators at other Internet service providers or other network or computing facilities.
 - 1.36.3. Such cooperation may include us providing, for example, the username, IP address or other identifying information about a user.
- 1.37. Any failure by us to enforce this policy, for whatever reason, shall not necessarily be construed as a waiver of any right to do so at any time.
- 1.38. You agree that, if any portion of this policy is held invalid or unenforceable, that portion will be construed consistent with applicable law as nearly as possible, and the remaining portions will remain in full force and effect.
- 1.39. This policy is governed by the laws of the Commonwealth of Australia and the laws of the state or territory in which you normally reside. You and we submit to the exclusive jurisdiction of the courts of the Commonwealth, and its states and territories.

Unreasonable Use

- 1.40. Talking Business's services are designed to meet the requirements of businesses, and we consider your use of the service to be unreasonable if:
 - 1.40.1. your usage of the service affects other customers' access to the network; or
 - 1.40.2. you set up switch devices which potentially keeping a session open for hours and limiting the ability for other customers to access the service; or
 - 1.40.3. we reasonably believe you have breached this Fair Use Policy.
- 1.41. If we consider, at our sole discretion, that you have made unreasonable use of the service, we may terminate the service, temporarily suspend the service, or ask you to change the way in which you use the service.
- 1.42. If we terminate the service, you are liable for any early termination payment to us.
- 1.43. If we block your service, you are not entitled to claim back any charges that may have levied for the period of the suspension.

Schedule 2 - Financial Hardship Policy

This policy outlines the financial hardship assistance options available to the Customer who is experiencing financial hardship and is unable to pay their invoice by the Due Date.

The Customer is responsible for contacting Talking Business Accounts (1300 666 765) when they become aware that they will be unable to pay their invoice by the Due Date.

In the situation where Customer is experiencing genuine financial hardship, is willing to pay and is seeking financial assistance, Talking Business will work together with Customer to construct a suitable payment plan.

Talking Business may restrict access to certain services whilst a payment plan is in place and/or manage the relevant Customer's future spending by applying a credit limit.

Supporting documentation will be required to assist in ascertaining eligibility and in agreeing a reasonable payment arrangement.

Where Customer does not contact Talking Business before the Due Date, or is unwilling or unable to enter into a payment plan, a non-refundable Late Payment Fee of \$15 (excluding GST) or 5% (whichever is the higher rate) will be automatically applied on the first business day after the Due Date.

Where Customer's Services with Talking Business are suspended or terminated, Customer must pay a reconnection fee of \$250 to have Services reinstated.

Schedule 3 - Service Levels

This Schedule should be read in conjunction with any product/service specific Service Level Agreement.

Talking Business offers support services to its customers backed up by in-house service professionals and third-party partners. Support services come in various forms – telephone support, installation assistance, integration, training, consultancy etc.

Talking Business has well-equipped third-party support centres within Australia backed up with vendor support agreements, providing world-class, 24 x 7 coverage to its customers.

The support centres are staffed with highly trained Network Support engineers who adopt well-defined support procedures to expedite customers' technical issues.

Talking Business has defined the following severity levels for support issues:

Priority Level Urgent ("P1")

A P1 severity is caused by Service production network failure that results in a critical impact to business operations, and no viable workaround is known. With all Urgent Priority cases, confirmed by Talking Business, the Customer's technical staff and Talking Business shall form a team of dedicated technical resources to work on the issue(s) until the Service production network returns to stability and a resolution is found.

Priority Level High ("P2")

A case is logged as P2 by Talking Business where Talking Business determines that a critical production network service interruption or degradation has created "severe difficulty" in the execution of a network function that results in a persistent and significant loss in the availability of the service.

An example would be a loss of at least twenty (20) per cent or more communication capacity and/or voice degradation. For such high priority cases, Talking Business partners with Customer's technical resources shall work on the problem continuously during business hours or as otherwise agreed to resolve the problem.

Priority Level Medium ("P3")

A P3 severity issue is for system problems that are confirmed by Talking Business that prevent some Service network functions from meeting the product specification.

In P3 cases, some business operations are impaired but the Service network continues to function. Talking Business staff works on such medium priority cases during normal business hours.

Priority Level Low ("P4")

A low priority support issue is for a minor problem that either has low impact or for which a satisfactory workaround is in place.

Priority Level Long Term ("P5")

A long term priority support issue is for non-service impacting issues and customer enhancement requests which may require research or referral to third party vendors.

Support Request & Escalation Procedure

Customer Support Portal

Customers can lodge faults and requests using the Customer Contact page - www.talkingbusiness.com.au/contact-us. All faults should be lodged using this page. Urgent faults should also be raised using telephone support.

Telephone Support

Telephone support is available for non-urgent issues during Business Hours on 1300 666 765.

For after-hours emergency faults:

New South Wales	02 9125 0590
Queensland	07 3139 9090
Victoria	03 8681 3652

After-hours calls to 1300 666 765 number will answer with a voicemail service that will send an email to a support engineer who will then contact you directly.

Escalations

If you have not been contacted within 1 hour of your support request, please contact:

General Manager - Talking Business
Mobile: 0408 270 210

Talking Business Response Times

Unless otherwise specified in PS4 the standard Talking Business response levels are as follows

Priority Level	Category	Response Time	Target Service Restore Time
P1	Urgent	1 business hour	4 hours
P2	High	3 business hours	1 business day
P3	Medium	1 business day	3 business days
P4	Low	2 business days	10 business days
P5	Long Term	3 business days	30 business days

Talking Business Network Commitments

Service Availability

Talking Business commits to Service availability of 99.95%. Should availability fall below the 99.95% in any month the customer must request credit for any "Network Unavailability" in writing.

Network Unavailability consists of the number of minutes that the Talking Business Network was not available to Customer.

Outages will be counted as Network Unavailability only if the Customer opens a trouble ticket with Talking Business customer support and submits a Credit Request communication within fourteen (14) days of the outage.

Network Unavailability will not include scheduled maintenance, or any unavailability resulting from (a) any telephone company circuits, (b) Customer's applications, equipment, or facilities, (c) acts or omissions of Customer, or any use or user of the service authorised by Customer or (d) reasons of Force Majeure.

Service Availability Compensation

Where applicable refer to the PS4 for the specific service.