

1300 WORDS PTY LTD

PHONE WORD LICENCE STANDARD TERMS

Definitions

1. In this Agreement, the following terms have the following meanings: “**1300 Words**” means 1300 Words Pty Ltd and its permitted successors, assigns, administrators and substitutes; “**Agreement**” means the agreement between 1300 Words and the Licensee to License the Phone Word, which agreement comprises the terms contained in this document, a completed Application which has been accepted by 1300 Words and any other attachment accepted by 1300 Words; “**applicable regulation**” means any legal or regulatory requirement applicable to the Phone Word and/or the Carriage Services, including under the *Telecommunications Act 1997* (Cth) and including subordinate instruments and lawful directives and determinations of a regulator; “**Application**” means an application in a form approved by 1300 Words, made by the Licensee for a Licence; “**Area**” means one or more geographical areas (being Australia-wide or a State/Territory or a region) specified in the Application; “**Carriage Services**” means telecommunications services (including installation, connection, rental, calls and other carriage services) specified in the Application in relation to the Phone Word; “**Charges**” include: (a) any deposit for the Licence, as set out in the Application; (b) any and all charges for the Licence as set out in the Application; (c) where applicable, any and all charges for the Carriage Services as set out in the Application, as may be varied by 1300 Words in accordance with this Agreement; and (d) any other charges permitted under this Agreement, as may be varied by 1300 Words in accordance with this Agreement; “**Commencement Date**” means the date when 1300 Words accepts (in its sole discretion) either: (a) the Application; or (b) a deposit from the Licensee for the Phone Word, whichever occurs earlier; “**GST**” has the same meaning as in the *A New Tax System (Goods and Leases Tax) Act 1999* (Cth) and its related impositions; “**Initial Term**” means the period specified in the Application; “**Licence**” means the licence of the rights of use, as granted by 1300 Words to the Licensee pursuant to clause 8 of this Agreement; “**Licensee**” means the person nominated as the licensee on the Application; “**Licensee Equipment**” means any equipment, device or system owned, operated or controlled by the Licensee, which equipment, device or system is used for or in connection with the Phone Word or Carriage Services; “**Phone Word**” means one or more phone words as specified in the Application, each being a 1300, 1800 or 13 number which is either available or has been allocated in accordance with applicable regulations, other than a 1300, 1800 or 13 number which was allocated prior to 3 May 2004, or which has been allocated under applicable regulations by way of the administrative allocation process for randomly selected, non-patterned numbers, or which is otherwise not available or permitted for use as a phone word under applicable regulation.

Interpretation

2. In this Agreement, unless the context otherwise requires:
- headings are for convenience only and do not affect interpretation;
 - the singular includes the plural and vice versa;
 - no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this Agreement;
 - an agreement on the part of 2 or more persons binds them jointly and severally; and
 - a statement to the effect that a provision of this Agreement “includes” something (as well as the words “include”, “including” and “included”) shall be construed as meaning that the thing is included without limitation and shall not be construed as meaning that other things are excluded.

Condition Precedent

3. If 1300 Words is, at the Commencement Date, in the process of obtaining rights of use for the Phone Word:
- 1300 Words’ obligations under this Agreement shall be conditional upon 1300 Words being finally allocated rights of use for the Phone Word pursuant to and in accordance with applicable regulation; provided
 - 1300 Words shall refund any deposit paid by the Licensee in respect of the Licence (less costs directly incurred by 1300 Words) if such allocation is not made for any reason.

Term of Agreement

4. This Agreement commences on the Commencement Date and shall continue in force for the Initial Term. This clause 4 is subject to the remainder of this Agreement.
5. This Agreement shall automatically renew for additional periods of 1 year (“**Additional Term**”) for up to three years in total unless the Licensee notifies 1300 Words that the Licensee does not wish to renew this Agreement at least 30 days before the end of the Initial

Term or the previous Additional Term, as the case may be. At the end of the three year period referred to in this clause 5, the Licensee shall have a first right of refusal to enter into a new licence agreement for the Phone Word, subject to terms agreed by the parties.

6. 1300 Words shall be under no liability to the Licensee or any other person for any delay in the granting of a Licence for any reason.

Licence

7. The Licensee shall use 1300 Words as its only provider for the Phone Word.
8. Subject to the terms of this Agreement, 1300 Words grants to the Licensee an exclusive licence:
- to use the Phone Word;
 - within the Area; and
 - for the duration of this Agreement.
9. The Licence shall be personal to the Licensee and is not transferable. The Licensee must not permit any other person to use the Licence and must not transfer (whether by sub-licence, lease, trading, assignment, novation or any other means whatsoever) or purport to transfer the Licence or any right granted under this Agreement without the express written permission of 1300 Words.
10. The Licensee acknowledges that the granting of the Licence is not an implied endorsement by 1300 Words of any business or other conduct carried on by the Licensee. The Licensee must not represent that it has any special relationship or affiliation with, or endorsement from, 1300 Words.
11. For the purposes of this Agreement:
- any and all use of the Licence, whether by the Licensee or by any other person, shall be deemed to be use by the Licensee, even if the Licensee has not consented to such use by such other person; and
 - the Licensee shall be severally liable and responsible for any and all use of the Licence, whether by the Licensee or by any other person, even if the Licensee has not consented to such use by such other person.
12. 1300 Words may refuse to grant a Licence for any reason.

Associated Rights

13. The Licensee must use the Phone Word as a telephone number only and must not, either during Agreement or after the termination or expiry of the Licence, use the Phone Word as a trade mark, business name, company name, trading name, domain name or other identifier, without the express written permission of 1300 Words.
14. The Licensee acknowledges and agrees:
- 1300 Words retains all rights relating to all Phone Words, including all rights of use;
 - nothing in this Agreement grants or confers any proprietary right (including any intellectual property right) or interest in or over any Phone Word. The Licensee does not own or have any legal or beneficial interest or goodwill in anything concerning, connected with or arising out of any Phone Word;
 - other providers or other entities may already use or may have already provided or may make available phone words which are similar to the Phone Word and 1300 Words may not be able, and in any event is not required, to take any steps to become aware of this, attempt to prevent this, nor to give you notice of this, even it is aware or ought to be aware;
 - after termination or expiry of the Licence, 1300 Words may in its absolute discretion license the Phone Word to any other person;
 - it will not directly or indirectly assert any right (including intellectual property rights) in relation to the Phone Word or any similar word or mark;
 - subject to the Licence, it will not directly or indirectly challenge 1300 Words’ or any other person’s rights (including intellectual property rights) in relation to the Phone Word or any similar word or mark.
15. Clauses 13 and 14 shall survive termination or expiry of this Agreement and all of 1300 Words’ rights and the Licensee’s obligations thereunder shall continue after termination or expiry of this Agreement.
16. The Licensee must ensure that neither the Phone Word nor any person’s use of the Phone Word infringes any person’s intellectual property rights or any consumer protection legislation.

Special Conditions

17. The Licensee must connect the Phone Word to an active service within 3 years from the date of allocation of the Phone Word and thereafter at least once in every 3 year period and otherwise as required by applicable regulation. If the Licensee fails (or if 1300 Words considers that the Licensee might fail) to satisfy this requirement, 1300 Words may take any steps necessary ensure that this requirement is satisfied. Such steps may include 1300 Words terminating or suspending the Licence, or connecting the Phone Word (either itself or through a third person) to an active service. The Licensee must fully indemnify 1300 Words for any steps taken by or on behalf of 1300 Words under this clause 17.

18. Notwithstanding any provision of this Agreement or any contract, arrangement or understanding, the Licensee acknowledges and agrees that:
- (a) the terms on which the Licence is granted to the Licensee shall be construed as being limited by and subject to the rights of use granted to 1300 Words and any applicable regulation;
 - (b) 1300 Words may at any time impose on the Licensee any directive, term, condition, warranty, limitation or exclusion which applies to 1300 Words (including under any applicable regulation or by any upstream supplier);
 - (c) if any person varies or imposes any charge on 1300 Words relating to anything provided by 1300 Words to the Licensee, then 1300 Words may immediately alter any Charges or impose a new Charge;
 - (d) 1300 Words may immediately suspend, terminate or vary all or any part of this Agreement without any liability to the Licensee:
 - (i) if for any reason 1300 Words' rights of use relating to the Phone Word expire or are suspended or terminated or are varied in a way which limits, restricts or prohibits 1300 Words' ability to grant the Licence, even if it is due to 1300 Words' breach or default; or
 - (ii) if for any reason 1300 Words no longer acquires any necessary or relevant goods or services from an upstream supplier (including without limitation if an upstream supplier suspends or terminates its arrangements with 1300 Words), even if it is due to 1300 Words' breach or default; and
 - (e) 1300 Words shall not be obliged to supply any goods or services on any terms more favourable to the Licensee than the terms on which such goods or services are supplied to 1300 Words.
19. If 1300 Words agrees (in its absolute discretion) to license to the Licensee a phone word which was allocated prior to 3 May 2004, then such licence shall be subject to the following conditions:
- (a) such phone word shall be deemed to be a "Phone Word" for the purposes of this agreement; and
 - (b) clause 17 shall not apply and this clause 19(b) shall apply instead: the Licensee acknowledges that the Phone Word must be connected to an active service for the duration of the Licence; and
 - (c) the Licensee must acquire the Carriage Services from 1300 Words for the duration of the Licence.

Areas

20. The Licensee must not use the Phone Word (including use in its marketing or advertising) in connection with a business which is located outside the Area.
21. The Licensee acknowledges that, whilst the Area generally reflects the geographical area nominated by the Licensee, it is not possible to associate Areas with precise geographical boundaries based on the location of the calling party.
22. 1300 Words does not warrant or guarantee that:
- (a) all calls made to the Phone Word from within the Area will terminate on the Phone Word; or
 - (b) calls made from outside the Area will not terminate on the Phone Word.
23. The Licensee releases and fully indemnifies 1300 Words in relation to any claim by any person (including the Licensee or any third person) at any time, regarding the correct or expected location of the termination of calls made to the Phone Word from any place (including calls made from within the Area or from outside the Area).

Carriage Services

24. If the Licensee requests before completion of the Application process that the Licensee does not require Carriage Services from 1300 Words, and 1300 Words agrees in writing (in its absolute discretion) to that request, then any provision in this Agreement (to the extent to which it relates to Carriage Services, including clauses 25 to 39) shall not apply.
25. The definition of "applicable regulation" shall include any legal or regulatory requirement applicable to the Carriage Services.
26. The Licensee agrees to acquire, and 1300 Words agrees to supply, the Carriage Services on the terms of this Agreement.
27. 1300 Words shall be under no liability to the Licensee or any other person for any delay in the supply of any Carriage Services for any reason.
28. The Licensee acknowledges that 1300 Words is a reseller of the Carriage Services provided by one or more wholesale providers.
29. The Carriage Services shall be personal to the Licensee and any persons authorized on the Application. The Licensee must not permit any other person to use the Carriage Services and must not re-sell or purport to re-sell the Carriage Services without the express written permission of 1300 Words.
30. For the purposes of this Agreement:
- (c) any and all use of the Carriage Services, whether by the Licensee or by any other person, shall be deemed to be use by the Licensee, even if the Licensee has not consented to such use by such other person; and
 - (d) the Licensee shall be severally liable and responsible for any and all use of the Carriage Services, whether by the Licensee or by any other

person, even if the Licensee has not consented to such use by such other person.

31. To the extent required by law, the telecommunications customer service guarantee applies to the Carriage Services. Further information regarding this matter is available from the telecommunications industry ombudsman.
32. Unless otherwise agreed in writing by 1300 Words, the supply of the Carriage Services under this Agreement shall immediately terminate upon termination or expiry of the Licence.
33. 1300 Words may need access to the Licensee's premises from time to time in connection with the provision and maintenance of the Carriage Services. If the Licensee does not provide access as 1300 Words reasonably requires, 1300 Words may limit, suspend or cancel the Carriage Services.
34. The Licensee may not and must ensure that other people do not interfere with the operation of a Carriage Service or make it unsafe.
35. If the Licensee asks 1300 Words to provide a particular Carriage Service which requires installation of any equipment or a facility on the premises, the Licensee allows:
- (a) 1300 Words or its nominee to have access to the premises to install the equipment or facilities; and
 - (b) 1300 Words or its nominee to install the equipment or facility on the premises
36. If the Licensee does not own the premises, it must have the owner's permission and the Licensee warrants to 1300 Words that it has this permission.
37. The Licensee must allow 1300 Words or its nominee access to the premises to inspect or test any equipment or facility which may be causing interference or danger. If the Licensee does not own the premises, it must obtain the owner's permission.
38. If 1300 Words or its nominee needs access to the premises or needs to install equipment or a facility on the premises, the Licensee must:
- (a) provide safe access to the premises; and
 - (b) indemnify 1300 Words and its related bodies corporate and its nominee and their respective officers, employees, contractors and agents against a claim by the owner or occupier of the premises in relation to 1300 Words or its nominee's entry onto or installation of equipment or a facility on the premises.
39. If 1300 Words or its nominee requires modifications to equipment or a facility to avoid danger or interference the Licensee must make those modifications.

Applicable Regulations

40. The Licence is subject to each and every applicable regulation and the Licensee must strictly comply with each and every applicable regulation.
41. The Licensee must not cause or allow any breach (or do anything which might put 1300 Words or any of its related bodies corporate in breach) of any applicable regulation.
42. 1300 Words will not be deemed to have authorized the Licensee to breach any applicable regulation by reason of granting the Licence or by approving or consenting to any act or omission by the Licensee.
43. In the event of any inconsistency as between this Agreement (or 1300 Words' conduct under this Agreement) and any applicable regulation, 1300 Words may by written notice do any thing (including varying this Agreement or giving a direction to the Licensee) reasonably necessary in order to make this Agreement and the Licence consistent with that applicable regulation and that thing shall have effect from the date specified in the notice.
44. In the event of any applicable regulation which comes into force after the Commencement Date, 1300 Words may by written notice do any thing (including varying this Agreement or giving a direction to the Licensee) reasonably necessary in order to ensure that 1300 Words does not breach such applicable regulation and that thing shall have effect from the date specified in the notice. If for any reason 1300 Words is unable to ensure that 1300 Words does not breach such applicable regulation, 1300 Words may immediately terminate this Agreement upon written notice to the Licensee.

Licensee's Obligations

45. The Licensee must not use any name, logo, trade mark or get-up of 1300 Words.
46. The Licensee must comply with any reasonable direction issued by or on behalf of 1300 Words.
47. For the duration of this Agreement, the Licensee shall provide 1300 Words free of charge with all assistance, information, access, facilities and services reasonably required by 1300 Words to enable 1300 Words effectively to perform its obligations under this Agreement including use of Licensee Equipment (including PABX and key system equipment) and telecommunications facilities if required.
48. The Licensee grants to 1300 Words a non-exclusive, royalty-free licence to use the Phone Word, for the duration and purposes of this Agreement.
49. The Licensee warrants to 1300 Words that:

- (a) all information supplied by the Licensee in relation to this Agreement and the Licence is true and correct in every particular;
 - (b) the Licensee has not been permanently or temporarily suspended from applying for or obtaining the Phone Word.
50. The Licensee is responsible for insuring and maintaining any Licensee Equipment.

Charges and Billing

51. The Licensee must pay the Charges. For the avoidance of doubt, Charges are payable whether or not any Phone Word or any Carriage Service is used by the Licensee or on behalf of any person.
52. The Charges shall be subject to any discount specified in the Application.
53. Commencing on the first anniversary after the Commencement Date, the amount of the fee for the Licence will increase by 5% *per annum*.
54. 1300 Words may impose an additional Charge on the Licensee in respect of the supply of any goods or services other than the Licence and the Carriage Services (and which 1300 Words agrees to supply), or in any other reasonable circumstances.
55. All fees and charges which are known in advance (including recurring or fixed fees or charges) may be invoiced in advance. All other fees and charges may be invoiced monthly in arrears. The Licensee shall make all payments within 14 days of the date of invoice.
56. Failure by the Licensee to pay any outstanding amount within 14 days of the due date for payment will, without prejudice to 1300 Words' other rights entitle 1300 Words to charge interest on the unpaid amount at a rate equal to 5% per annum above the overdraft rate of the ANZ Bank on the first Working Day following the due date for payment.
57. Where the Licensee has failed to pay any amount owing to 1300 Words, 1300 Words may, in addition to any other fees or charges under this Agreement, charge the Licensee 1300 Words' then current fee for suspension and/or re-granting of a Licence and/or suspension and/or re-connection of any service.
58. Subject to any law to the contrary and clause 3(b), no amount paid by the Licensee to 1300 Words shall be refundable in any circumstances, unless agreed by 1300 Words in its absolute discretion.
59. The Licensee shall pay the Charges in full without any deduction or set-off whatsoever.
60. Unless expressly stated otherwise, all references to consideration (including Charges) relating to this Agreement are exclusive of GST.
61. The Licensee shall if requested by 1300 Words provide security to 1300 Words for an amount, in a form and within a timeframe reasonably required by 1300 Words, in relation to the Licensee's obligations under this Agreement. Without limiting the last previous sentence, such security may take any form, including a security bond, bank guarantee, parent company guarantee or director's guarantee. If 1300 Words requests that the Licensee provide security pursuant to this clause, then the provision of such security shall become a condition precedent to 1300 Words' remaining obligations under this Agreement.
62. The Licensee may not dispute an invoice or claim a refund for overpayment under this Agreement more than 12 months after date of the invoice to which the disputed amount or alleged overpayment relates.

Limitations, Exclusions and Indemnities

63. The Licensee acknowledges and agrees that, to the maximum extent permitted by law and subject to this Agreement:
- (a) 1300 Words does not warrant that the Phone Word is or will be available or that the Phone Word or the Carriage Services are suitable for the purpose for which the Licensee intends to use them (or for any purpose);
 - (b) the Licensee shall be deemed to have satisfied itself as to the suitability for purpose, accuracy and correctness of the Phone Word and the Carriage Services;
 - (c) the Licence is provided on an "as is" basis and the Licensee uses the Phone Word at the Licensee's own risk;
 - (d) all terms, conditions, warranties and representations (including as to the suitability for purpose, accuracy or correctness of the Licence) which are not expressly provided or included in this Agreement are excluded from this Agreement;
 - (e) 1300 Words' liability, whether in contract, tort (including negligence), under statute or otherwise, for any loss or damage resulting from any act, matter, circumstance or thing arising from or in connection with this Agreement or the Licence or the Carriage Services, is limited to the maximum extent permitted by law;
 - (f) faults related to the provision of the Carriage Services may occur;
 - (g) 1300 Words does not warrant that the Carriage Services will be uninterrupted or error free;
 - (h) 1300 Words shall not be liable or responsible for faults outside 1300 Words' control; and
 - (i) any restoration targets which 1300 Words provides to rectify faults may be subject to the performance of third parties.

64. 1300 Words' liability is entirely excluded for any indirect or consequential loss or damage whatsoever including loss of profits, loss of business or anticipated savings and loss, corruption or destruction of data.
65. This Agreement includes terms implied by any statute which cannot be lawfully excluded, modified or restricted, including those implied by the *Trade Practices Act 1974* (Cth) and corresponding state and territory legislation. However, in relation to the supply of goods or services which are not of a kind ordinarily acquired for personal, domestic or household use or consumption, 1300 Words' liability for breach of those terms (other than section 69 of the *Trade Practices Act* and corresponding state and territory legislation) will be limited, at its option, to any one or more of:
- (a) in the case of goods, the replacement, repair or payment of the cost of replacement or repair of the goods; and
 - (b) in the case of services, supplying the services again or payment of the cost of having the services supplied again.
66. 1300 Words is not required to in any way provide assistance or advice to the Licensee. If 1300 Words does (in its absolute discretion) provide any assistance or advice to the Licensee, it shall be provided subject to the following conditions:
- (a) 1300 Words does not warrant that the advice or assistance is suitable for any purpose;
 - (b) the Licensee shall be deemed to have satisfied itself as to the suitability for purpose, accuracy and correctness of the advice or assistance;
 - (c) the advice or assistance is provided on an "as is" basis and the Licensee uses the advice or assistance at the Licensee's own risk;
 - (d) all terms, conditions, warranties and representations (including as to the suitability for purpose, accuracy or correctness of the advice or assistance) which are not expressly provided or included in this Agreement are excluded from this Agreement; and
 - (j) 1300 Words' liability, whether in contract, tort (including negligence), under statute or otherwise, for any loss or damage resulting from any act, matter, circumstance or thing arising from or in connection with the advice or assistance, is limited to the maximum extent permitted by law.
67. The Licensee must indemnify, defend and save harmless 1300 Words and its related bodies corporate and their respective officers, employees, contractors and agents (the "**Indemnified Persons**") from any loss, injury, damage, liability, costs or expenses (including legal costs and expenses on an indemnity basis) whatsoever suffered or incurred by an Indemnified Person arising from or in connection with this Agreement, the Licence, the Phone Word and/or the Carriage Services, including:
- (a) arranging the acquisition or supply of any good or service for the benefit of the Licensee;
 - (b) any and all use of the Licence, the Phone Word and/or the Carriage Services;
 - (c) any breach of, or failure strictly to comply with, the terms of this Agreement by the Licensee;
 - (d) any claim by any person directly or indirectly arising from any use of (or inability to use or to obtain any benefit from) the Licence, the Phone Word and/or the Carriage Services;
 - (e) any claim by any person directly or indirectly arising from a suspension or termination of all or any part of this Agreement (including the Licence and/or the Carriage Services);
 - (f) any damage to any person's network or property, or death or injury to any person, directly or indirectly arising from any use of the Licence, the Phone Word and/or the Carriage Services;
 - (g) the reproduction, broadcast, use, transmission, communication or making available of any material directly or indirectly arising from any use of the Licence, the Phone Word and/or the Carriage Services;
 - (h) any alleged breach of a person's rights (including defamation and intellectual property rights) by a communication, broadcast or transmission, made available by directly or indirectly arising from any use of the Licence, the Phone Word and/or the Carriage Services;
 - (i) any breach or contravention of any law (including consumer protection laws) or any applicable regulation; or
 - (j) any Licensee Equipment which causes a fault in, or interferes with, the operation of any system owned or operated by any Indemnified Person (including without limitation an Indemnified Person's systems or network).

Suspension and Termination

68. Notwithstanding any provision in this Agreement, 1300 Words may immediately suspend or terminate (in 1300 Words' sole discretion) all or any part of this Agreement by written notice to the Licensee:
- (a) if the Licensee breaches any provision of this Agreement and that breach is not remedied within two days of 1300 Words giving notice of the breach;
 - (b) if the Charges are not paid strictly in accordance with this Agreement or if the Licensee's payment is refused or dishonoured by the Licensee's nominated financial institution;

- (c) if there is a significant change or likely significant change in the Licensee's financial position including bankruptcy, insolvency, a winding-up application or the appointment of a receiver or administrator;
 - (d) if the Licensee (being a natural person) dies or (being a company) is wound up or (being a partnership or association) is dissolved;
 - (e) if the Licensee (or any related body corporate or any associate of the Licensee) breaches any other agreement with 1300 Words (or any related body corporate or any associate of 1300 Words).
69. Notwithstanding any provision in this Agreement, 1300 Words may immediately suspend the Licence upon notice to the Licensee (which notice need not be in writing):
- (a) in an emergency;
 - (b) if permitted or required under any applicable regulation or a direction of a competent law enforcement official or authority; or
 - (c) for any other reasonable reason.
70. If the Licence is suspended, 1300 Words may in its absolute discretion re-invoke the Licence at any time and subject to any terms or conditions it considers appropriate.
71. 1300 Words may immediately terminate this Agreement if this Agreement is suspended for a continuous period of 14 days or more.
72. 1300 Words is not required to suspend or give a notice of suspension under this Agreement before exercising its right to terminate all or any part of this Agreement.
73. The exercise by 1300 Words of its right to suspend all or any part of this Agreement shall be without prejudice to its right to terminate all or any part of this Agreement.
74. Upon termination:
- (a) of all or any part of this Agreement for any reason (other than due to a breach by 1300 Words), 1300 Words may charge a cancellation fee which shall be equal to the total of the Charges which would otherwise have been payable for the remainder of the term of this Agreement; and
 - (b) of this Agreement in its entirety, the Licensee must immediately cease using the Phone Word as a telephone number.

Disclosure, confidentiality and public statements

75. The Licensee consents to 1300 Words, its employees and agents making such enquiries as it deems necessary to investigate the creditworthiness of the Licensee from time to time including without limitation the making of enquiries of persons nominated as trade referees, the bankers of the Licensee or any other credit providers (the "information sources") and the Licensee hereby authorises the information sources to disclose to 1300 Words such information concerning the Licensee which is within their possession and which is requested by 1300 Words. The Licensee also consents to 1300 Words obtaining a credit report from a credit reporting agency containing personal information (as well as information concerning commercial creditworthiness and activities) for the purpose of assessment by 1300 Words of an Application or for the purpose of the collection of payments which are overdue in respect of any credit provided by 1300 Words, as permitted under the *Privacy Act 1988* (Cth).
76. The Licensee agrees that 1300 Words may give to or obtain from another credit provider, any information derived from a report to assess an application for service, its creditworthiness and its continuing creditworthiness. Items of personal information about the Licensee (including information in an Application and information arising from the conduct of an account) and permitted to be kept on a credit information file, may be disclosed to a credit reporting agency.
77. The Licensee authorizes 1300 Words to provide personal information to its suppliers to the extent necessary to fulfil its obligations under this Agreement or otherwise where required by law.
78. 1300 Words may collect the personal information and use it for the following purposes:
- (a) to provide information about other goods or services which 1300 Words or any of its related bodies corporate may offer; and
 - (b) for other purposes as notified to the Licensee in writing from time to time.
79. The Licensee gives its consent to the types of use of information described in this Agreement.
80. The Licensee gives its consent to 1300 Words sending electronic messages (including commercial electronic messages) within the meaning of the *Spam Act 2003* (Cth), to the Licensee.
81. The Licensee must treat as confidential, keep secret and not use or disclose (except with the prior written consent of 1300 Words) any information relating to the trade secrets, know-how, business practices, network or service configuration, operational or procedural information, charges, discounts or clientele, of 1300 Words or any of its related bodies corporate. Any confidential information must be returned to 1300 Words upon demand and/or at the termination or expiry of this Agreement. This clause does not include information which has come into the Licensee's possession or knowledge or entered the public domain other than by breach of an obligation of confidence. This clause 81 shall survive termination of this Agreement.

Notices

82. A notice, approval, consent or other communication ("Notice") under this Agreement must be in writing and must be left at the address of the addressee, or sent by pre-paid post or by facsimile or by e-mail to the address of the addressee specified in the Application or if the addressee has notified another address to that new address.
83. A Notice takes effect from the time it is received unless a later time is specified in it.
84. A Notice is taken to have been received:
- (a) in the case of a posted letter, on the 3rd day after posting; and
 - (b) in the case of a facsimile or e-mail, on production of a transmission report by the machine from which the facsimile or e-mail was sent which indicates that the facsimile or e-mail was sent in its entirety to the facsimile number or e-mail address of the recipient.

Dispute Resolution

85. The parties will seek to resolve any dispute in accordance with clause 86 and will not start proceedings except as allowed under clause 86 or to seek urgent interlocutory relief.
86. The procedure for resolving a dispute in relation to this Agreement is:
- (a) first, a party may give notice to the other party about the nature of the dispute and the parties will seek to negotiate a settlement within 14 days of receipt of such notice;
 - (b) secondly, to the extent those negotiations fail, the parties will seek, within a further 7 days, to reach agreement on a non-litigation, non-arbitration procedure for resolving the dispute (such agreement will deal with what steps are to be taken and when and the terms of retainer of any person who will assist the parties), and such procedure may include such methods as negotiation, mediation, conciliation, independent expert determination or mini-trial;
 - (c) thirdly, if the parties are unable to reach agreement under clause 86(b) or they do reach agreement and the agreed procedure does not culminate in a settlement of the entire dispute, either party may then commence court proceedings to resolve remaining issues. The parties will engage in the procedure in clause 86(a) and (b) in good faith and on a "without prejudice" basis.
87. The parties must continue to perform their obligations under this Agreement for the duration of the dispute.

General

88. Except where expressly provided to the contrary, 1300 Words may exercise any right or discretion, or form any opinion, under this Agreement in its absolute and unfettered discretion and without the need to provide prior notice or reasons to the Licensee.
89. Each indemnity in this Agreement is a continuing obligation, separate and independent from the other obligations of the parties and survives termination of this Agreement for whatever reason. It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity conferred by this Agreement.
90. The terms of this Agreement including the Charges, the Licence and the Carriage Services are subject to variation by 1300 Words. 1300 Words shall give not less than 30 days' written notice to the Licensee of any variation. In the event that the Licence or the Carriage Services are substantially limited by such variation, the Licensee shall be entitled to terminate this Agreement by written notice to 1300 Words.
91. In the event of a dispute arising under this Agreement, the Licensee may have rights under the Telecommunications Industry Ombudsman scheme. Further information regarding this matter may be found at www.tio.com.au.
92. Neither party shall have the power to bind the other party and this Agreement does not constitute any party the agent of another or imply that the parties intend constituting a partnership or other form of association in which any party may be liable for the acts or omissions of the other. The parties are independent contractors, and no party has authority to pledge the credit of the other.
93. Any provision which by its nature would survive termination or expiry of this Agreement (including any exclusion or limitation of liability or indemnity in this Agreement) shall survive termination or expiry of this Agreement.
94. The forbearance on the part of one party from exercising any right under this Agreement (including any right to suspend or terminate all or any part of this Agreement) on the first date that party is entitled to do so shall not constitute any waiver of that party's rights under this Agreement.
95. 1300 Words will not be responsible or liable for any delay or failure to perform its obligations under this Agreement where such delay or failure is directly or indirectly caused by any act, omission, fact, matter, circumstance or thing beyond its control, including acts of God, wars, strikes, natural disasters, delays or failures of any other person or any applicable regulation.
96. This Agreement contains the entire understanding and agreement between the parties as to its subject matter. All previous negotiations, understandings, representations warranties (other than as expressly set out in this Agreement), or commitments in relation to the subject

- matter of this Agreement are superseded by this Agreement and shall be of no force or effect whatever and no party shall be liable to any other party in respect to those matters. No oral explanation or information provided by any party to another shall affect the meaning or interpretation of this Agreement or constitute a collateral agreement, warranty or understanding between the parties.
97. The Licensee must not assign or purport to assign any of its rights or obligations under this Agreement without the prior written consent of 1300 Words (which consent may be granted or withheld in 1300 Words' absolute discretion). Subject to any applicable regulation, 1300 Words may transfer, assign or novate any of its rights or obligations under this Agreement and the Licensee shall be deemed to have consented to such transfer, assignment or novation.
98. Nothing in this Agreement limits 1300 Words' right to sell, assign, trade or otherwise transfer its rights of use in relation to the Phone Word.
99. In the event of any inconsistency as between the terms contained in this document, any Application or any other attachment, the order of precedence shall be as follows: (a) the terms contained in this document; (b) the Application; and (c) any other attachment.
100. If any clause or part of this Agreement is held to be void, illegal or unenforceable for any reason, it shall be deemed to be severed from this Agreement without affecting any other clause or part of this Agreement.
101. 1300 Words may sub-contract its obligations under this Agreement.
102. The person purporting to enter into this Agreement on behalf of the Licensee warrants to 1300 Words that he/she is duly authorized to enter into this Agreement in that capacity.
103. The Licensee and 1300 Words agree that the laws of Victoria shall govern this Agreement and each party irrevocably submits to the jurisdiction of Victorian courts and tribunals.