

The terms set out in these Service Terms apply to the provision of Data Services in addition to the General Terms and Conditions (available at [www.truedatavoice.com.au](http://www.truedatavoice.com.au) or in hard copy on request from TDV). Any capitalised terms not defined in these Service Terms have the meaning given to them in the General Terms and Conditions.

## 1. Conditions of Data &/or DSL Service

- 1.1 If TDV does not supply a standard telephone service with the ADSL/SHDSL access component it may be necessary to terminate the service if Customer requests another carrier to provide a standard telephone service after the date of the Agreement;
- 1.2 TDV may, at its discretion, provide the service by using either:
  - (a) an existing or new Unconditioned Local Loop Service (ULLS); or
  - (b) an existing or new access line that supplies a standard telephone service; provided by Telstra Corporation Limited ('Telstra') or a reseller of Telstra, depending on the technical & operational requirements of the particular Service.
- 1.3 Where a telephone exchange area is shown as being DSL enabled, there is no guarantee that individual telephone services provided from that exchange will qualify for DSL service provision.
- 1.4 The performance of the end-to-end service offered over DSL is determined by the quality of the copper line and the distance from the DSL exchange. As such the performance of the end-to-end service can only be estimated until TDV has qualified the line performance. TDV will accept a customer order upon appropriate qualification where the line performance meets TDV's service objectives and the availability of the said service.
- 1.5 For the purpose of measurement of data usage 1000MB = 1GB.

## 2. Supply of Services

- 2.1 TDV will provide the Data Services specified in the accepted Application Form or MAC Request.
- 2.2 The Data Services may comprise any of the services referred to in these Service Terms.

## 3. Charges

- 3.1 The TDV Agreed Rates may comprise a fixed monthly component for the Data Services and a variable component to reflect usage of the Data Services (particularly data transfer).
- 3.2 Additional Charges may apply if Customer exceeds any agreed usage limits or any upload/download ratios specified in the Product and Pricing Schedule or accepted MAC Request.
- 3.3 Customer acknowledges that the TDV Agreed Rates for the Data Services may vary as a result of TDV's acceptance of a MAC Request in accordance with clause 4 of the General Terms.

## 4. Access and Transmission Services

- 4.1 If specified in the accepted Application Form or MAC Request, TDV will provide:
  - (a) the TDV Equipment and the access tail connecting Customer Equipment to the TDV Backbone or the World Wide Web (**Access Services**); and

- (b) services enabling the transmission of data on Customer's Network from point to point or point to any point across the TDV Backbone within Australia or utilising other carriers for international destinations (**Transmission Services**).

- 4.2 TDV will provide the Access Services to Customer's Premises at the agreed speeds or bandwidths specified in an accepted Application Form or MAC Request. In providing the Access Services, TDV may use any access technology it determines is appropriate, subject to availability, technical feasibility and clause 4.3.
- 4.3 Customer acknowledges that:
  - (a) each Access Service specified in an accepted Application Form or MAC Request that utilises xDSL access technology will be subject to a pre-installation service qualification process by TDV to determine:
    - (i) copper pair availability;
    - (ii) line quality of the copper pair; and
    - (iii) copper pair distance from the exchange to Customer's Premises;
  - (b) TDV reserves the right not to proceed with installation of an Access Service if TDV, acting reasonably, believes that the service qualification process indicates a possibility of failure of that Access Service on installation;
  - (c) if TDV determines not to proceed with installation of the Access Service:
    - (i) Customer may cancel that Access Service by notice to TDV and no cancellation Charges will be payable in respect of that cancellation; and
    - (ii) Customer may order an alternative Access Service by issuing a MAC Request to TDV in accordance with **clause 6** of the General Terms.
- 4.4 Customer is responsible for communicating with its own end users and for handling all complaints and trouble reports made by such users.

## 5. Internet Services

- 5.1 If specified in the accepted Application Form or MAC Request, TDV will provide Customer with access to the World Wide Web and allow the upload or download of data from the internet (**Internet Services**).
- 5.2 Customer acknowledges that TDV does not throttle or otherwise limit Customer's internet usage and Customer is liable for all Charges incurred in using the Internet Services, whether or not the use of the Internet Services has been authorised by Customer.
- 5.3 Customer acknowledges and agrees that neither TDV nor any Provider:
  - (a) exercises any control over content accessible through use of the Internet Services;
  - (b) makes any representations or provides warranties (express or implied), in respect of the Internet Services or has any other liability to Customer in respect of the Internet Services; and
  - (c) is responsible for any damage or loss that Customer may suffer arising from using:
    - (i) the Internet Services (including loss of data, delays, non-deliveries, mis-deliveries or service interruptions whether or not caused by any

- Provider's intentional or negligent acts or omissions); or
    - (ii) any content accessed through the Internet Services (including inaccurate, incomplete or out-of-date information).
- 5.4 No Service Level Guarantees apply to the Internet Services.
- 5.5 TDV has no obligation to control or monitor Customer's use of the Internet Services or Customer Content stored or transmitted using the Internet Services.
- 5.6 Notwithstanding **clause 5.5**, and without limiting its rights under the General Terms, TDV may at any time, without liability to Customer, block, alter or suspend Customer's access to or use of the Internet Services if:
  - (a) TDV considers that Customer's use of the Services is in breach of the Agreement (including the Acceptable Use Policy), in breach of any law or regulation or infringes the rights of any third party;
  - (b) TDV considers that Customer Content could threaten the security or integrity of any Network; or
  - (c) required to do so by any law, regulation, or regulatory body (including the ACMA).
- 6. Customer Managed Routers**
- 6.1 This **clause 6** only applies in circumstances where routers (in respect of which TDV is not providing managed router services) are used for the provision of the following Data Services:
  - (a) TDV Layer 2 DSL; and
  - (b) TDV Private IP with Quality of Service, (**Customer Managed Routers**).
- 6.2 Customer acknowledges that if this **clause 6** applies:
  - (a) the following Service Level Guarantees do not apply to the Data Services:
    - (i) TDV Private IP Network – Service Level Guarantee – Business Class;
    - (ii) TDV Private IP Network Service Level Guarantee – Premier Class;
    - (iii) TDV Private IP Network – Quality of Service Class Service Level Guarantee; and
    - (iv) Private IP Core and Edge Service Level Guarantee;
  - (b) any support services provided by TDV or its nominated Provider in relation to Customer Managed Routers will be at Customer's sole cost and will be charged on a time and materials basis at the then current standard rates of TDV or any relevant Provider;
  - (c) TDV will be unable (if requested by Customer), to provide reports that rely on data collected from Customer Managed Routers; and
  - (d) TDV will not provide any proactive alarm monitoring of Customer Managed Routers.
- 6.3 Customer must:
  - (a) ensure that Customer Managed Routers are maintained to relevant industry standards, including ensuring Customer Managed Routers have the then current internal operating software versions, upgrades and patches installed;
  - (b) at all times maintain backups of the configurations for Customer Managed Routers;
  - (c) provide all support and helpdesk services in relation to Customer Managed Routers (unless otherwise agreed in writing by the parties); and
  - (d) advise TDV immediately upon any changes to Customer Managed Router specifications or configuration.
- 6.4 If the Services include TDV's Private IP Quality of Service:
  - (a) any Customer Managed Routers must be configured using the specifications and policies notified by TDV from time to time, including without limitation:
    - (i) the internal operating system software version specifications; and
    - (ii) the QoS configuration,**(Required QoS Configuration);**
  - (b) Customer must not change the Required QoS Configuration without TDV's prior written approval; and
  - (c) Customer may on 2 Business Days' notice to TDV request changes be made to the Required QoS Configuration. Any such notice must contain details of the proposed changes. Customer will be responsible for implementing any changes to the Required QoS Configuration approved by TDV.
- 7. Rented Router Services**
- 7.1 If specified in the accepted Application Form or MAC Request, TDV will provide TDV Equipment as part of the Data Services (**Rented Router Service**). TDV does not represent or warrant that the TDV Equipment will, at the time of installation at Customer's Premises, be new.
- 7.2 The following provisions will apply if, during the current Period, Customer elects in accordance with **clause 6** of the General Terms to replace (for the purpose of an upgrade), any TDV Equipment or a component of any TDV Equipment being provided as part of the Rented Router Service:
  - (a) if TDV determines, in its absolute discretion, that the TDV Equipment being replaced is capable of being redeployed to another TDV customer, TDV will notify Customer of that fact and:
    - (i) Customer must at its cost return the replaced TDV Equipment to TDV within 30 days of the date of installation of the replacement TDV Equipment;
    - (ii) upon the return of the replaced TDV Equipment Customer will be liable to pay TDV a fee equal to 2 months' periodic Charges payable in respect of the replaced TDV Equipment, calculated from the date that the replaced TDV Equipment is returned to TDV; and
    - (iii) subject only to payment of the fee specified in **clause 7.2(a)(ii)** and any other Charges payable by Customer in respect of the replaced TDV Equipment for the period prior to its return to TDV, no further Charges (including any early termination payments that might otherwise have been payable under **clause 19.1** of the General Terms) will be payable by Customer in respect of the replaced TDV Equipment;
  - (b) if TDV determines, in its absolute discretion, that the component being replaced is capable of being

redeployed to another TDV customer, TDV will notify Customer of that fact and:

- (i) Customer must at its cost return the replaced component to TDV within 30 days of the date of installation of the replacement component;
- (ii) upon the return of the replaced component Customer will be liable to pay TDV a one-off fee of \$400 (exclusive of GST); and
- (iii) subject only to payment of the fee specified in **clause 7.2(b)(ii)** and any other Charges payable by Customer in respect of the replaced component for the period prior to its return to TDV, no further Charges (including any early termination payments that might otherwise have been payable under **clause 19.1** of the General Terms) will be payable by Customer in respect of the replaced component;
- (c) unless TDV determines, in its absolute discretion, that the TDV Equipment or component being replaced is not capable of being redeployed to another TDV customer, **clause 6.4** of the General Terms will apply to the replacement of that TDV Equipment or component; and
- (d) if Customer fails to return the replaced TDV Equipment or component in accordance with **clause 7.2 (a)(i) or (b)(i), clause 19.1(b)** of the General Terms will apply as if that failure were a failure to comply with **clause 18.7(c)** of the General Terms.

7.3 The following provisions will apply if, during the current Period, TDV receives notice from the manufacturer of any TDV Equipment being provided as part of the Rented Router Service that the manufacturer will cease supporting the operating system software for the TDV Equipment from the date specified in the notice (**End of Life Date**):

- (a) if the End of Life Date is more than 6 months from the end of the Contract Period for the Rented Router Service to which the TDV Equipment relates, TDV will notify Customer of the receipt of the notice and Customer must (at its option and by notice to TDV) elect within 14 days of the date of TDV's notice to either:
  - (i) immediately replace the affected Third Party Equipment in accordance with **clause 6** of the General Terms, in which case Customer will be liable to pay to TDV:
    - (A) all Charges incurred in implementing or arising out of the accepted MAC Request relating to the replacement TDV Equipment; and
    - (B) 100% of the Minimum Charges relating to the replaced TDV Party Equipment; or
  - (ii) retain the affected Third Party Equipment, in which case:

- (A) Customer acknowledges that TDV will have no responsibility or liability in respect of any operating system software support issues that arise in respect of the affected TDV Equipment after the End of Life Date; and
- (B) if an operating system software support issue arises in respect of the affected TDV Equipment after the End of Life Date, Customer may replace the affected TDV Party Equipment in accordance with **clause 6** of the General Terms and Customer will be liable to pay to TDV the Charges specified in **clause 7.3(a)(i)**.

If Customer fails to notify TDV of its election within that 14 days period, Customer will be deemed to have elected to retain the affected TDV Equipment and **clause 7.3(a)(ii)** will apply accordingly; and

- (b) if the End of Life Date is less than 6 months from the end of the Contract Period for the Rented Router Service to which the TDV Equipment relates:
  - (i) TDV will not be obliged to notify Customer of the receipt of the notice; and
  - (ii) if an operating system software support issue arises in respect of the affected TDV Equipment after the End of Life Date, TDV will provide to Customer a short term replacement item of TDV Equipment until the end of the Contract Period for the Rented Router Service to which the TDV Equipment relates.

## 8. Early Termination and Cancellation

8.1 The Charges payable for early termination or cancellation of a Data Service pursuant to **clause 19.1(a)** of the General Terms are, if the Data Services are terminated or cancelled other than in accordance with **clauses 18.2 or 18.5** of the General Terms prior to the expiry of the current Period for those Data Services, the sum of:

- (a) 100% of the Minimum Charges; and
- (b) any installation charges that may have been waived by TDV on the basis that the relevant Data Services continue for the duration of the Contract Period or Renewal Period (as the case may be).

8.2 The Charges payable pursuant to **clause 19.1(b)** of the General Terms are:

- (a) in the case of TDV Equipment:
  - (i) if the Data Services are terminated or cancelled in accordance with **clauses 18.2 or 18.5** of the General Terms and:



- (A) Customer returns or, if TDV elects in accordance with **clause 18.7(c)** of the Trading to collect, permits TDV to collect, any TDV Equipment in accordance with that clause within 30 days after the effective date of termination or cancellation, an amount equal to the periodic Charges specified in the applicable Product and Pricing Schedule or accepted MAC Request in respect of that TDV Equipment, calculated on a pro rata basis; and
- (B) Customer fails to return or, if TDV elects in accordance with **clause 18.7(c)** of the Trading to collect, fails to permit TDV to collect, any TDV Equipment in accordance with that clause within 30 days after the effective date of termination or cancellation, an amount equal to:
  - (I) if the TDV Equipment is owned by TDV, an amount equal to:
    - a. if TDV determines, in its absolute discretion, that the equipment is capable of being redeployed to another TDV customer, the replacement value of the equipment; and
    - b. if TDV determines, in its absolute discretion, that the equipment is not capable of being redeployed, nil; or
  - (II) if the TDV Equipment is owned by a third party, an amount equal to any costs imposed on TDV by that third party as a direct result of that failure; and
- (ii) if the Data Services are terminated or cancelled other than in accordance with **clauses 18.2** or **18.5** of the General Terms prior to the expiry of the current Period for those Data Services and Customer fails to return or, if TDV elects in accordance with **clause 18.7 (c)** of the Trading to collect, fails to permit TDV to collect, any TDV Equipment in accordance with that clause within 30 days after the effective date of termination or cancellation, an amount equal to:
  - (A) if the TDV Equipment is owned by TDV, an amount equal to the written down value of the equipment in the books of TDV as at the effective date of termination or cancellation; or
  - (B) if the TDV Equipment is owned by a third party, an amount equal to any costs imposed upon or otherwise incurred by TDV as a direct result of that failure; and
- (b) in the case of Purchased Equipment, an amount equal to the difference between:
  - (i) the Charges invoiced to or, if not yet invoiced by TDV, for which Customer is otherwise liable to pay in respect of the Purchased Equipment; and
  - (ii) the amounts (if any), paid by Customer in respect of the Purchased Equipment.