

## 1. Application of Terms

These General Terms and Conditions:

- (a) apply to all Application Forms and MAC Requests accepted by TDV; and
- (b) are a Standard Form of Agreement formulated for the purpose of section 479 of the Act.

## 2. TDV's Agreement With Customer

2.1 The Agreement will consist of the following documents:

- (a) the applicable Service Terms;
- (b) these General Terms and Conditions;
- (c) the applicable Product and Pricing Schedule;
- (d) the accepted Application Form;
- (e) each accepted MAC Request;
- (f) the TDV Standard Rates List;
- (g) the Service Level Guarantee (if any);
- (h) the Acceptable Use Policy; and
- (i) any documents incorporated into the above documents by way of reference.

2.2 If there is any conflict or inconsistency between the documents constituting the Agreement, unless otherwise provided, the documents will rank in order of precedence in accordance with the order in which they are listed in **clause 2.1**.

## 3. Application for Services and Equipment

3.1 Customer may submit an Application Form requesting that TDV supply the Services, Purchased Device, Purchased Equipment or Rented Equipment specified in the Application Form.

3.2 Subject to TDV:

- (a) accepting the Application Form (which acceptance may be express or implied by conduct and is subject to TDV's rights under **clause 11**); and
- (b) receiving any other necessary information substantially in the form prescribed by TDV,

the Services and Equipment specified in the Application Form will be supplied in accordance with the Agreement.

3.3 In order provide the Services, TDV may need to change some or all of Customer's service arrangements with Customer's current Provider. By signing the Application Form (or MAC Request) and, if applicable, the Transfer Form:

- (a) Customer authorise TDV to sign on Customer's behalf and in Customer's name, forms of authority to Customer's current Provider to transfer the services (including any Nominated Number) into TDV's name; and
- (b) Customer will on request itself give written instructions to Customer's current Provider to transfer the services to TDV.

3.4 TDV has no liability for charges, costs or expenses incurred by or on behalf of Customer to another Provider or other third party prior to the applicable Service Start Date.

3.5 The Services will be provided for the Contract Period.

3.6 If Customer cancels any Services or repudiates the Agreement after TDV has accepted the Application Form but prior to the Service Start Date for those Services, **clause 19.1** will apply to the affected Services.

## 4. Supply of Services

4.1 TDV:

- (a) will determine how the Services are provided, select the Providers, port the Service Numbers or any services to TDV's preferred Providers, or arrange least cost routing of traffic;
- (b) will invoice Customer for all Charges incurred in connection with:
  - (i) the use of the Nominated Numbers and Services; and
  - (ii) the delivery and installation of the Services or any Equipment;
- (c) will carry out any actions necessary or incidental to give effect to this **clause 4** (including signing and submitting on Customer's behalf any necessary authority forms or other details required to provide the Services); and
- (d) may engage subcontractors or other service providers to supply some or all of the Services but will remain liable for the performance of its obligations under the Agreement notwithstanding any such engagement.

4.2 Customer acknowledges that except for any warranties implied by law which cannot be legally excluded, TDV does not warrant:

- (a) that the Services will be free from fault or interruption;
- (b) that the Services will be available at all times;
- (c) that the Services will be free from external intrusion;
- (d) that the Services will meet Customer's requirements, other than as expressly set out in the Agreement; or
- (e) the currency, availability, accuracy, security, privacy or quality of any information or communication received or accessed using the Services or the Website.

4.3 Customer also acknowledges that it is solely responsible for:

- (a) any Customer Content published via websites, email, newsgroups, online forums or other publishing mediums accessed via the Services, whether or not Customer authorises such publication; and
- (b) any reliance on or use of the information received or that is accessed when using the Services or the Website.

## 5. Suspension of Services

5.1 TDV may suspend the Services or any of them immediately at any time without notice if any of following occurs:

- (a) Customer poses a Credit Risk;
- (b) there is a Planned Outage;
- (c) it is necessary due to a Force Majeure Event;
- (d) an Emergency occurs;
- (e) TDV considers that it is necessary for unscheduled repair, maintenance or service of any part of a Network;
- (f) TDV has a right under the Agreement to terminate, cancel or suspend the Services (including, without limitation, a right under the Acceptable Use Policy);
- (g) TDV, acting reasonably, suspects that there has been fraudulent or illegal use of the Services or a Nominated Number;
- (h) Customer has breached **clause 11.3**;

- (i) TDV reasonably believes that Customer has breached the Agreement (other than a breach which separately gives rise to rights under this clause) and either:
    - (i) the breach is not capable of remedy; or
    - (ii) the breach is capable of remedy and Customer has not remedied that breach within the period specified in TDV's notice;
  - (j) TDV reasonably believes that there is excessive or unusual use of the Services (having regard to, amongst other things, Customer's previous usage or any forecast given to TDV);
  - (k) TDV reasonably believes that Customer is jeopardising the operation or quality of a Network or the services TDV or a Provider supplies to its customers; or
  - (l) Customer become subject to an Insolvency Event.
- 5.2 TDV will end a suspension pursuant to **clause 5.1** as soon as reasonably practicable after the event or circumstance requiring the suspension has ceased (if applicable), or in the case of **clause 5.1(h)** only, Customer has remedied the breach within a further period specified by TDV in writing.
- 5.3 Customer acknowledges that:
  - (a) periodic Charges will continue to accrue during any suspension; and
  - (b) if TDV ends a suspension of Services in accordance with **clause 5.1**, Customer may be liable to pay TDV a reactivation Charge in respect of the suspended Services.
- 6. Customer Requested Moves, Adds and Changes to an existing Application Form**
- 6.1 Customer may at any time request a move, add or change to an existing Application Form (including the cancellation of a Service), by issuing a MAC Request to TDV. TDV may in its absolute discretion accept or reject any such MAC Request.
- 6.2 TDV may issue a MAC Request Confirmation in relation to any MAC Request upon receipt of all necessary technical information from Customer. Subject to **clause 6.3**, the issue of a MAC Request Confirmation constitutes acceptance by TDV of the MAC Request to which it relates, subject to the terms of that MAC Request Confirmation and the Agreement.
- 6.3 Customer must notify TDV of any requested changes to the MAC Request Confirmation within 2 Business Days of receipt, failing which Customer is deemed to have accepted the MAC Request Confirmation. TDV may agree to requested changes and may alter the Charges or the TDV Ready For Service Dates accordingly. If the parties cannot agree on any requested changes to a MAC Request Confirmation within 5 Business Days of TDV issuing the MAC Request Confirmation, the MAC Request will be deemed to have been rejected by TDV.
- 6.4 Customer is liable for all Charges incurred in implementing or arising out of an accepted MAC Request. If Services are being cancelled, additional Charges may apply in accordance with **clause 19.1**.
- 6.5 Subject to **clause 6.6**, TDV will provision the Services in accordance with the accepted MAC Request and the applicable MAC Request Confirmation. For new Services, a notice will be issued by TDV after the Services have been implemented and Customer is liable for all Charges for the new Services from the date of TDV's acceptance of the MAC Request.
- 6.6 Customer agrees to provide all necessary assistance, cooperation and information reasonably required by TDV to implement the accepted MAC Request. TDV is not liable for any delays or costs arising from a failure of Customer to comply with this **clause 6.6**.
- 6.7 If Customer cancels any Services after TDV has accepted the MAC Request but prior to the Service Start Date for those Services, **clause 19.1** will apply to those affected Services.
- 7. Use of Services**
- 7.1 Customer is responsible for:
  - (a) controlling access to and use of the Services, except to the extent otherwise agreed in writing by the parties;
  - (b) controlling access to and use of any passwords provided by TDV (including, but not limited to, Customer's personal identification numbers);
  - (c) ensuring that the Services are used only in accordance with the Agreement (including the Acceptable Use Policy); and
  - (d) ensuring the security of any communications made using the Services or any Customer Equipment connected to the Services.
  - (e) payment of all Charges arising out of the use of the Services, even if someone uses the Services without Customer's knowledge or consent.
- 7.2 Customer must not use the Services and must use its reasonable endeavours to prevent any other person from using the Services:
  - (a) to break any law or infringe any copyright or any person's rights;
  - (b) to transmit, publish or communicate material that is defamatory, offensive, abusive, indecent, menacing or unwanted;
  - (c) in any way that damages or interferes with or interrupts the Services or the systems that TDV uses to supply the Services.
- 8. Customer's Responsibilities**
- 8.1 Customer must:
  - (a) permit TDV and its Personnel to have reasonable access to the Premises to install the TDV Equipment, Purchased Equipment, Rented Equipment and Network Access Line;
  - (b) ensure that TDV has full and unhindered access to the TDV Equipment and Rented Equipment during normal business hours or at such other times as Customer and TDV agree;
  - (c) ensure that any Customer Equipment used in connection with the Service has all the necessary approvals, is not prohibited by law or any regulator and is capable of operating with the Services;

- (d) not cause or permit any TDV Equipment or Rented Equipment to be altered, repaired, serviced or moved except by TDV Personnel;
  - (e) ensure, at its own cost, that the TDV Equipment and Rented Equipment is protected from power surges and is located in a suitable physical environment for the operation of that Equipment;
  - (f) ensure, at its own cost, that Customer has all the equipment and software necessary (whether by firewall or by any other means) to protect from any external attack the security and integrity of the configuration of the TDV Equipment and Rented Equipment;
  - (g) use all reasonable endeavours to assist TDV in any investigation by any government body or regulator in which TDV is involved where Customer's use of the Services is relevant to the investigation regardless of whether or not Customer is required by law to assist;
  - (h) take reasonable and appropriate precautions to prevent any violations of Customer's network and or related systems security, including by ensuring that adequate security in the form of virus protection or firewalls exist to protect Customer's electronic data or the electronic data of Customer's business against unauthorised or unwarranted intrusion; and
  - (i) not re-supply any of the Services without TDV's express agreement in writing.
- 8.2 If, when TDV's Personnel attend by arrangement at the Premises to:
- (a) inspect the Premises to establish the method or location of installation of any Equipment or Network Access Line; or
  - (b) install any Equipment or the Network Access Line, no provision has been made by Customer for that inspection or installation and that inspection or installation has to be rescheduled, then Customer will be liable to pay to TDV all reasonable costs and expenses incurred by it as a result of cancelling, postponing or rescheduling that inspection or installation and such cost and expense will be a debt due and payable by Customer on demand to TDV.
- 9. Fault Reporting**
- 9.1 Customer may report a fault with the Services to TDV at any time in accordance with this clause.
- 9.2 Prior to reporting a fault, Customer must investigate and ascertain for itself the cause of the fault and, if required by TDV, provide any further information in relation to the fault, including what Customer has done to satisfy this clause.
- 9.3 Upon being notified of a fault, TDV will immediately assign a reference number to the fault and will issue that reference number to Customer. Customer must use and quote that reference number in relation to any dealings with TDV in respect of that fault.
- 9.4 TDV will use all reasonable endeavours to rectify the fault within the timelines set out in any Service Level Guarantee.
- 9.5 Customer acknowledges that if a fault has been caused by the services or network of any Provider, TDV will not be liable to Customer for any failure by that Provider to remedy the fault within the time lines set out in any Service Level Guarantee.
- 9.6 When TDV has remedied the fault, it will notify Customer that the fault ticket is "closed".
- 9.7 If TDV determines that:
- (a) a fault arises out of or in connection with any Customer Equipment or any other facilities, networks or systems of Customer; or
  - (b) there is or was no fault,
- then TDV may require Customer to pay its reasonable costs and expenses (based on the TDV Standard Rates List) in dealing with or resolving a fault, in which case TDV will invoice and Customer will be liable to pay those costs and expenses as Charges in accordance with the Agreement.
- 10. Charges, Payment & GST**
- 10.1 Customer is liable for all Charges incurred by or on behalf of it under any accepted Application Form or MAC Request.
- 10.2 The TDV Agreed Rates:
- (a) will be specified in the Product and Pricing Schedule or an accepted MAC Request;
  - (b) unless stated otherwise in the applicable Service Terms, apply to the Services from their respective Service Start Dates;
  - (c) apply until:
    - (i) Customer's receipt of a notice of termination pursuant to **clause 18.2**; or
    - (ii) TDV's receipt of a notice of cancellation of the Services to which those TDV Agreed Rates apply, or a request to transfer or preselect some or all of the Nominated Numbers to another Provider; and
  - (d) apply only if payment for the Charges is made in accordance with **clause 10.10**.
- 10.3 Where no TDV Agreed Rates apply to a Service or as otherwise specified in the Agreement, the Charges are calculated using the applicable Charges for that Service specified in the TDV Standard Rates List at the time the Charges are incurred.
- 10.4 If the TDV Agreed Rates cease to apply in accordance with **clause 10.2**, the Charges are calculated using the applicable rate in the TDV Standard Rates List, or if the applicable rate is not listed in the TDV Standard Rates List, the applicable rate in the Telstra SFOA.
- 10.5 TDV may vary:
- (a) the TDV Agreed Rates at any time by providing 30 days' notice to Customer to reflect any increase or decrease in charges passed on to TDV by any Provider. Any such variation will take effect from the start of the first billing period not less than 30 days after the notice is given;
  - (b) the TDV Agreed Rates applicable to a particular Service without notice to Customer if that Service is automatically renewed in accordance with **clause 18.2**, by an amount equal to the increase (if any) in the Consumer Price Index (Sydney) in the period from the date of the accepted Application Form (or, if applicable, accepted MAC Request) to the Renewal Date for that Service. Any such variation will take effect from the Renewal Date for that Service;
  - (c) the TDV Standard Rates List at any time by notice to Customer. Any such variation will take effect from the start of the first billing period not less than 30 days after the date of that notice; and

- (d) the Charge imposed by TDV on credit card payments at any time by notice to Customer. Any such variation will take effect from the start of the first billing period not less than 30 days after the date of that notice.
- 10.6 The TDV Agreed Rates may also be varied by the written agreement of the parties. Any agreed variation in the TDV Agreed Rates will take effect from the start of the first billing period not less than 30 days after the change is agreed.
- 10.7 TDV may round up any Charge to the nearest cent before GST is applied.
- 10.8 TDV will invoice Customer for the Charges. Invoices may be provided in paper format or electronically. Electronic invoices are subject to any terms and conditions that apply to TDV's online services from time to time. To the extent of any inconsistency between the Charges specified in an invoice and those accessed electronically via the Website, the Charges specified in the invoice will prevail. Delivery of archived invoices is available upon request in PDF format.
- 10.9 Customer is liable for any Tax, subject to TDV first providing a tax invoice. Any such Tax will be payable by Customer in accordance with **clause 10.10**.
- 10.10 Customer must pay the Charges (other than any disputed amount withheld in accordance with **clause 12.1**), in full within the Payment Period. Unless otherwise agreed, payment must be by cheque or direct deposit into TDV's nominated account.
- 10.11 All payments made using:
  - (a) American Express or Diners Club credit cards will be subject to a 4.5% surcharge;
  - (b) Visa or MasterCard or credit cards will be subject to a 2% surcharge;
  - (c) BPay via a credit card will be subject to a 2% surcharge; and
  - (d) direct debit will incur a fee in the amount specified in the TDV Standard Rates List for each failed transaction.
- 10.12 No implication arises that the Charges set out in an invoice are not payable where:
  - (a) not all Charges incurred in a billing period are included in the same invoice; or
  - (b) incorrect invoices are issued and amended or additional invoices are subsequently issued.
- 10.13 Subject to **clause 12.1**, if some or all invoiced Charges are not paid within the Payment Period, TDV may, without prejudice to its rights under **clause 18**, do any or all of the following:
  - (a) by notice cease using the TDV Agreed Rates in respect of the Services and assess the Charges by reference to the applicable rate in the TDV Standard Rates List, or if the applicable rate is not listed in the TDV Standard Rates List, the applicable rate in the Telstra SFOA, until payment in full (including interest and other Charges), is made;
  - (b) impose interest on the outstanding amount from the due date until it is paid in full at the Official Cash Rate as published in *The Australian Financial Review* plus 3 per cent per annum; and
  - (c) by 7 days' notice suspend availability of the Services, without terminating the Agreement, until payment in full (including interest and other Charges), is made.
- 10.14 If Customer default in payment under the Agreement, TDV may use or disclose any personal information collected and recorded in relation to Customer to assist TDV in the process of debt recovery. Personal information includes details and status of any of Customer's accounts, Customer's credit history, and information about Customer's credit worthiness or capacity.
- 10.15 In consideration of TDV having agreed to supply the services to Customer, the person signing the Agreement on Customer's behalf ("the signatories") hereby jointly and severally guarantee the payment on demand of all monies which are or shall hereafter become due to TDV by Customer. This guarantee shall be a continuing guarantee and shall not be affected by TDV giving time or any other indulgence to Customer, nor shall any of TDV's rights to sue or report Customer's details to a credit reporting agency be affected.
- 11. Credit Check and Management**
  - 11.1 Customer consents to TDV obtaining at any time a credit report from a credit reporting agency and will supply to TDV without delay all such information as TDV may reasonably require for that purpose.
  - 11.2 If:
    - (a) any credit report obtained pursuant to **clause 11.1** is in TDV's view unfavourable; or
    - (b) Customer has breached **clause 10.10** on two or more occasions;
    - (c) Customer poses a Credit Risk; or
    - (d) Customer requests reactivation of Services that have been suspended due to lack of payment of Charges,
 TDV reserves the right (without prejudice to its rights under **clauses 3.6 or 18**), to:
    - (e) require Customer to provide a Security or to increase the amount of any existing Security or provide an additional form of Security; or
    - (f) impose a credit limit on any future Charges that may be incurred under the Agreement.
  - 11.3 Any Security required under **clause 11.2** must be provided in a form and method acceptable to TDV within 7 days of the date of TDV's notice.
  - 11.4 If the ownership or control of Customer or Customer's business changes, whether as the result of a change of shareholdings, director or otherwise, TDV may in its absolute discretion request a new Application Form to be completed by the new owners or directors, in which case this **clause 11** will apply to that Application Form.
- 12. Disputed Amounts**
  - 12.1 Subject to **clause 12.3**, if Customer in good faith disputes any invoiced Charges, Customer may withhold the disputed amount, but only if on or before expiry of the Payment Period:
    - (a) the undisputed amount of the invoice is paid in full; and
    - (b) notice of the dispute is given to TDV, setting out details of the amount disputed, the reasons for the dispute and the basis for calculating the disputed amount.



12.2 TDV will investigate the dispute and (if applicable), raise it with the Provider. Customer acknowledges and agrees that TDV's decision (or the Provider's decision, if applicable), on the disputed amount is, in the absence of fraud or manifest error, final. TDV will provide, on request by Customer, the reasons for any Provider's decision. If all or part of the disputed amount is found to be payable, Customer must pay that amount within 14 days of receiving notice of the decision.

12.3 Invoiced Charges that are not disputed in good faith within six months of the date of an invoice are deemed to be correct and may not be disputed by Customer.

### 13. Purchase of Equipment

13.1 Customer may at any time order Equipment, using an Application Form or a MAC Request for the Device. TDV may in its absolute discretion accept or reject such an order.

13.2 The following conditions will apply to any Purchased Equipment:

- (a) title to any Purchased Equipment does not pass and remains with TDV until the Purchased Equipment is paid for in full; and
- (b) the Purchased Equipment is at the Customer's risk immediately on delivery to the Customer, irrespective of when payment is due from the Customer.

13.3 Customer accepts exclusively the applicable terms and conditions of the manufacturer's warranty in respect of all Purchased Equipment and agrees that, subject to **clauses 17.3, and 17.6**, TDV has no obligation to the Customer for any malfunction of or damage to any Purchased Equipment.

13.4 Customer acknowledges that it has relied upon its own skill and judgement in selecting the Purchased Equipment.

### 14. TDV Equipment – Supply, Delivery and Installation

14.1 This **clause 14** only applies if TDV is providing TDV Equipment as part of the Services.

14.2 Subject to the payment of applicable Charges for the TDV Equipment, TDV will provide Customer with such TDV Equipment as is specified in the applicable Product and Pricing Schedule or otherwise agreed in writing by the parties. TDV may substitute any component of the TDV Equipment or part of any component of the TDV Equipment prior to delivery without consultation with Customer and may in any respect modify the TDV Equipment if, in the reasonable opinion of TDV, the substitution or modification will not:

- (a) adversely affect the performance or capacity of the TDV Equipment in any material respect;
- (b) alter the configuration of the TDV Equipment in any material respect; or
- (c) otherwise materially affect the obligations of TDV or prejudice the rights of Customer under the Agreement.

14.3 TDV will use its reasonable endeavours to deliver the TDV Equipment to Customer on the Delivery Date at the Premises during Customer's normal business hours.

14.4 If Customer wishes the TDV Equipment to be delivered to a location other than the Premises, Customer must make a request in writing to TDV not later than 14 days (or such other period agreed in writing by TDV and Customer) prior to the Delivery Date. TDV may at its sole discretion determine whether to agree to such a request and what conditions, if any, will apply in the event of TDV agreeing to such a request.

14.5 If Customer requests delivery of the TDV Equipment to be made in advance of the Delivery Date or postponed beyond the Delivery Date, TDV will use reasonable endeavours to re-schedule delivery accordingly but will otherwise be under no obligation to comply with Customer's request.

14.6 If TDV agrees to a request made by Customer pursuant to **clauses 14.4 and 14.5**, TDV may impose such additional charge as it reasonably considers to be appropriate to reflect the direct impact upon its resources in complying with such request.

14.7 If TDV requests permission to deliver the TDV Equipment prior to the Delivery Date, Customer will use Customer's reasonable endeavours to prepare the Premises and to do all other things necessary to accept early delivery.

14.8 TDV will use its reasonable endeavours to install the TDV Equipment at the Premises on the installation date specified in the applicable Product and Pricing Schedule or otherwise agreed in writing by the parties. Unless otherwise agreed in writing, the installation will be carried out during TDV's normal business hours.

14.9 Customer will at Customer's own expense prepare the Premises for the installation of the TDV Equipment. In doing so, Customer must comply with any directions or specifications issued by TDV. Without limiting the foregoing, Customer must:

- (a) ensure the supply at the Premises of:
  - (i) adequate electric current for the continuous use of the TDV Equipment;
  - (ii) adequate electrical and mechanical fittings; and
  - (iii) appropriate environmental conditions;
- (b) provide all relevant facilities for the location of the TDV Equipment at the Premises; and
- (c) provide TDV with access to all relevant personnel including Customer's technical and other personnel;
- (d) obtain and maintain, at Customer's expense, any and all permits, licences, approvals, authorisations, including local council planning approval required for the installation (including making any minor physical modifications required for the purposes of installation) and operation of the TDV Equipment and indemnify TDV against any claim made against, or loss, damage, cost or expense incurred by (including legal costs on a full indemnity basis) it, as a result of Customer's failure to do so.

14.10 TDV will, if requested by Customer:

- (a) supply such information and assistance as TDV consider reasonable and necessary to enable Customer to prepare the Premises; and
- (b) at Customer's expense inspect the Premises prior to delivery and installation of the TDV Equipment for the purpose of providing an opinion as to whether

the Premises are suitable for delivery and installation of the TDV Equipment.

- 14.11 Where TDV reasonably determines the requirements for installation exceed reasonable expectations for any installation fee quoted or agreed with Customer, TDV will not be obliged to provide the installation at that fee and TDV and Customer will negotiate in good faith to agree a new installation fee.
- 14.12 Subject to TDV completing the assessment in **clause 14.10(b)** to its satisfaction, Customer is responsible for all other things not included within the installation.
- 14.13 If Customer is relocating Customer's Premises and, as a result, the TDV Equipment located at those Premises, TDV may, if requested by Customer, allow Customer to move the TDV Equipment from the Premises to new Premises (**New Premises**) so that Customer can continue using the Services at the New Premises, subject to:
- (a) TDV being able to provide the Services at the New Premises; and
  - (b) Customer paying all agreed Charges incurred by TDV as a result of Customer having the TDV Equipment moved to and installed at the New Premises.
- The terms of this **clause 14** will apply to the installation of the TDV Equipment at the New Premises.
- 14.14 During the term of the Agreement, the Customer is granted a non-exclusive, non-transferable, restricted licence to use the TDV Equipment in accordance with the Agreement for the purpose of using the Services.
- 14.15 Title to the TDV Equipment is retained by TDV or (if applicable), the third party (including any Provider), involved in the supply of the Services and nothing in the Agreement will be construed as conferring ownership upon the Customer. Customer acknowledges that despite any law to the contrary or any affixation of the TDV Equipment to the Premises, the TDV Equipment is and remains the property of TDV or the relevant third party.
- 14.16 TDV reserves all rights in the TDV Equipment not expressly granted to the Customer.
- 14.17 Customer must:
- (a) operate the TDV Equipment with due care and skill and by using appropriately qualified personnel;
  - (b) comply with all TDV's reasonable directions in respect of any TDV Equipment;
  - (c) not allow any TDV Equipment to be altered, repaired, serviced, moved or connected to or disconnected from any power source other than by personnel approved by TDV;
  - (d) not transfer, sell, hire or give away any TDV Equipment or any of its rights in any TDV Equipment; and
  - (e) assume all risk of loss or damage to any TDV Equipment while it is in its possession or control (except to the extent of TDV's negligence).
- 14.18 Customer irrevocably grant to TDV, its agents and servants, leave and license without the necessity of giving any notice, to enter at any time on and into premises occupied by Customer using reasonable force if necessary to inspect, search for and re-take possession of any equipment in respect to which payment is overdue.

## 15. Information

- 15.1 Subject to the Privacy Act and except in relation to Customer Content, Customer:
- (a) will promptly provide TDV with all information that TDV (including TDV's contractors and agents), may reasonably require in order to fulfil its obligations under the Agreement or any of its contractual obligations to any Provider or other supplier;
  - (b) authorises TDV to obtain such information as TDV may need from time to time from any Provider for the purpose of fulfilling its obligations under the Agreement or as otherwise required or permitted by law;
  - (c) authorises TDV to obtain from or give to any credit providers named in a credit report or credit reporting agency, information about Customer's credit arrangements which may include any information as to Customer's creditworthiness, credit standing, credit history or credit capacity that credit providers or credit reporting agencies are allowed to give or receive under the Privacy Act; and
  - (d) consents to TDV, any Provider and any other third party (including TBG) involved in the supply of the Services exchanging Customer's details including information relating to the affairs or personal particulars (including any listed or unlisted telephone number, address or account history) or carriage services supplied to Customer and other information concerning Customer's account.
- 15.2 Customer consents to TDV collecting and authorises TDV to use, exchange or disclose any information provided by Customer (other than Customer Content), with TDV's Providers, contractors and agents to the extent necessary to install and supply the Services. Customer acknowledges that this may contain personal information as defined under the Privacy Act. A copy of TDV's privacy policy is available on the Website and Customer specifically consents to TDV using and disclosing personal information in accordance with that policy.

## 16. Service Levels and Service Level Guarantees

- 16.1 The Services may be supported by a Service Level Guarantee. Depending on the Service Level agreed in writing by the parties, the Service Level Guarantee may entitle Customer to receive a Service Credit if it is breached.
- 16.2 TDV will endeavour to supply the Services in accordance with or in excess of the Service Levels (if any), but a failure to meet a Service Level or Service Level Guarantee is not a breach of the Agreement.
- 16.3 The Service Level Guarantee excludes any Outage that results from:
- (a) a Planned Outage;
  - (b) an Emergency;
  - (c) a failure or malfunction with Customer's property, any Customer Equipment, computer software or power supply to the Premises (unless caused by TDV);
  - (d) a failure or malfunction of an internet connection forming part of the Service;

- (e) an act or an omission of Customer or a person under Customer's direction or control (other than if the act or omission is at TDV's direction);
  - (f) a Force Majeure Event or an Intervening Event;
  - (g) a requirement imposed upon TDV by a Government, statutory or other relevant authority with jurisdiction over the Services; or
  - (h) unauthorised or illegal access by any party to any part of the system providing the Services, including hacking, cracking, virus dissemination and denial of service attacks.
- 16.4 No Service Credit is payable for a failure to meet a Service Level Guarantee if Customer fails to notify TDV of the events giving rise to a claim for any Service Credit based on an alleged failure to meet a Service Level Guarantee within 90 days of the event occurring.
- 16.5 If a Service Credit is payable for a failure to meet a Service Level Guarantee:
- (a) the maximum amount payable for any failure to meet a Service Level Guarantee in any one calendar month cannot exceed the total Charges payable by Customer in that month for the Service affected by the failure giving rise to the claim. Where necessary, this amount will be calculated on a pro-rata basis;
  - (b) the Service Level Guarantee may impose a cap on the amount of the Service Credit payable in relation to a single incident;
  - (c) any Service Credit payable under the Service Level Guarantee is Customer's sole and exclusive remedy under the Agreement for that failure;
  - (d) Customer acknowledges and agrees that the Availability Service Credit represents a genuine and reasonable pre-estimate of its loss arising from TDV's failure to perform the VoIP Services in accordance with the Service Level Guarantee and
  - (e) if the circumstances of a single event or sequence of events are such that a Service Credit may be claimed for more than one type of failure to meet a relevant Service Level Guarantee, Customer's entitlement to obtain a Service Credit is limited to receiving only one Service Credit, being that Service Credit which TDV determines (acting in good faith), will provide the greatest benefit to Customer.
- 17. Limitation of Liability**
- 17.1 To the full extent permitted by law:
- (a) if TDV is liable to Customer in relation to the Services or the Agreement, TDV's liability is limited to a sum equal to the total Charges paid or payable by Customer under the Agreement in relation to the Services affected by the circumstances giving rise to the claim in the period of 12 months prior to the date of the liability arising; and
  - (b) TDV will not be liable in any circumstances, however arising, to Customer (or any person claiming through Customer) in contract, tort, or otherwise for:
    - (i) any loss of revenue, profits, actual or potential business opportunities, contracts, anticipated savings, goodwill, reputation or data; or
    - (ii) any indirect or consequential loss or damage, even if such loss or damage was reasonably foreseeable.
- 17.2 Subject to any consumer guarantee under the Australian Consumer Law, or any condition, warranty or right granted or implied under any other law, which cannot by law be excluded by agreement:
- (a) neither party gives any warranty to the other, and the other party has no other rights, apart from those, if any, expressly set out in this agreement; and
  - (b) all implied conditions, warranties and rights are excluded.
- 17.3 To the full extent permitted under section 64 of the Australian Consumer Law, TDV limits its liability for failure to comply with a consumer guarantee under the Australian Consumer Law:
- (a) in connection with the supply of services, to any one or more of the following (as TDV may determine):
    - (i) the supplying of the services again; or
    - (ii) the payment of the costs of having the services supplied again; and
  - (b) in connection with the supply of goods, to any one or more of the following (as TDV may determine):
    - (i) the replacement of the goods or the supply of equivalent goods;
    - (ii) the repair of the goods;
    - (iii) the payment of the costs of replacing the goods or of acquiring equivalent goods; or
    - (iv) the payment of the costs of having the goods repaired.
- 17.4 Customer is liable to TDV (including TDV's directors, officers and Personnel), for and indemnifies TDV and its directors, officers and Personnel against any loss, damage, claim, proceeding and cost (including all legal costs on an indemnity basis), including as a result of a third party claim against TDV, arising out of:
- (a) the use or attempted use (including fraudulent use), by any person (including Customer), of a Service or equipment connected to a Service (including any use that constitutes a breach of the Acceptable Use Policy);
  - (b) any information, data, images, graphics or material produced, stored, transmitted, accessed, downloaded or used by Customer or any other person using the Services; and
  - (c) any loss of or damage to any TDV Equipment while it is in its possession or control (except to the extent of TDV's negligence).
- 17.5 Each party's liability to the other party under the Agreement (including without limitation under an indemnity), will be reduced to the extent that such liability was caused by the other party or its Personnel or a related body corporate (as defined in the *Corporations Act 2001 (Cth)*) of that other party.
- 17.6 To the extent applicable, nothing in the Agreement will affect a party's rights under the Australian Consumer Law.
- 18. Term of Agreement and Services, Cancellation and Termination**
- 18.1 In respect of each Service set out in the accepted Application Form or MAC Request, the Agreement will commence on the date of its signing by Customer and will continue in relation to that Service until:

- (a) expiry of the Contract Period selected for the Service on the Application Form; and
  - (b) for further consecutive periods of 12 months, unless terminated one month prior to the expiry of any such period; or
  - (c) it is otherwise terminated or that Service is cancelled in accordance with this clause.
- 18.2 If Customer does not wish some or all of the Services to continue beyond the Renewal Date for those Services, it must provide notice of cancellation to TDV at least 60 days prior to that Renewal Date. If no such notice is given, the Services are automatically renewed as and from that Renewal Date for the Renewal Period and **clause 10.5(b)** will apply to the affected Services.
- 18.3 If Customer gives notice of cancellation in accordance with **clause 18.2**, the applicable Services will be cancelled with effect from the Renewal Date and this **clause 18** will apply to the affected Services.
- 18.4 TDV may terminate the Agreement or any affected Service with immediate by notice in writing to Customer if Customer:
- (a) breaches any material term of the Agreement and:
    - (i) the breach is not capable of remedy; or
    - (ii) the breach is capable of remedy and Customer fails to rectify that breach within 14 days of receipt of a notice from TDV requiring it to do so;
  - (b) is subject to an Insolvency Event; or
  - (c) assigns or otherwise deals with Customer's rights under the Agreement without TDV's prior written consent.
- 18.5 Customer is entitled to cancel any Services with immediate effect by prior notice to TDV if TDV is subject to an Insolvency Event.
- 18.6 Subject to **clause 19.1**, either party is entitled to cancel any Service without reason by providing at least:
- (a) in the case of Fixed Line Services, Mobile Services and VoIP Services, 60 days' prior notice; or
  - (b) in the case of Data Services, 90 days' prior notice.
- 18.7 On cancellation of Services or termination of the Agreement for any reason:
- (a) TDV may, subject to **clause 18.9**, cease providing the Services with immediate effect;
  - (b) all Charges and any other amounts owing by Customer for those Services, including the amounts calculated in accordance with **clause 19.1**, are immediately due and payable;
  - (c) Customer must, in relation to the cancelled Services, within 3 Business Days of the effective date of termination or cancellation, at TDV's option either return to TDV or permit TDV to collect:
    - (i) all TDV Equipment in Customer's possession or under Customer's control; and
    - (ii) any Purchased Equipment that has not been fully paid for.

The return or collection of any TDV Equipment or Purchased Equipment will be at Customer's cost, except where Customer cancels the Services in accordance with **clause 18.5**.
- 18.8 If TDV elects and Customer permits TDV to collect the TDV Equipment or Purchased Equipment in accordance with **clause 18.7(c)**:
- (a) TDV may without notice collect the TDV Equipment or Purchased Equipment in full and may through its authorised representatives enter Customer's premises or any other premises where the TDV Equipment or Purchased Equipment may be kept without being liable for any loss or damage occasioned by such action. Customer will provide all such assistance as TDV may require for the purpose of exercising its rights under this clause;
  - (b) Customer indemnifies TDV against any claim made against TDV for loss or damage arising out of any permissible action taken in accordance with **clause 18.7(c)**; and
  - (c) on collecting the Purchased Equipment, TDV may at its discretion credit Customer's account with an amount equal to the amounts (if any), paid by Customer in respect of the Purchased Equipment prior to the date of repossession, less the costs incurred by TDV in connection with the collection.
- 18.9 Customer acknowledges that if TDV is providing Fixed Line Services or Mobile Services, in line with industry practice, termination or cancellation of the Agreement or those Services (other than for Customer's default), does not mean that those Services will automatically cease to be supplied. In addition to terminating or cancelling the Agreement or those Services, the relevant Services must be either:
- (a) transferred to a new Provider (in accordance with the Porting Code); or
  - (b) cancelled upon Customer's written direction in accordance with the procedures in **clause 5**, and Customer remains liable for all Charges incurred in relation to those Services until they are either cancelled, or transferred to the gaining Provider.
- 18.10 If TDV is providing Fixed Lines Services or Mobile Services, TDV will comply with its obligations under the Porting Code in relation to any transfer upon termination or cancellation. Customer acknowledges that under the Porting Code it is the responsibility of the gaining Provider to arrange and complete the transfer.
- 18.11 Despite any provision in the Agreement to the contrary, the effective date of cancellation of Services or termination of the Agreement will be the date upon which TDV ceases to provide any Services to Customer.
- 18.12 For the purposes of **clause 18.4(a)**, a breach of a material term of the Agreement includes, without limitation, a failure to comply with:
- (a) the following provisions of these General Terms - **clauses 11.3, 19.2(c), 21.1(c) or 26.1**;
  - (b) the following provisions of the Mobile Service Terms - **clauses 2.1(a), (f) or (g) or 8.1(f)**; or
  - (c) the Acceptable Use Policy.
- 18.13 If the Services are cancelled by Customer, or the Agreement or any Service is terminated by TDV, any right which TDV has in respect of Customer's obligations under the Agreement that are not fulfilled at the time of cancellation or termination will continue to exist.



## 19. Termination Charges

19.1 In addition to any other Charges payable under the Agreement:

- (a) if:
  - (i) subject to **clause 19.3**, Customer cancels some or all of the Services with effect prior to the expiry of the current Period, other than in accordance with **clause 18.5**;
  - (ii) Customer cancels some or all of the Services in accordance with **clauses 3.6** or **6.7**;
  - (iii) Customer repudiates the Agreement; or
  - (iv) TDV terminates the Agreement or any Services in accordance with **clause 18.4(a)**,

Customer will be liable to pay to TDV as a genuine estimate of the loss TDV will incur from early cancellation or termination of the Services, any termination fees for the Services calculated in accordance with the applicable Service Terms, Product and Pricing Schedule or accepted MAC Request; and

- (b) if Customer fails to return or, if TDV elects in accordance with **clause 18.7(c)** to collect, fails to permit TDV to collect, the TDV Equipment or Purchased Equipment in accordance with that clause, Customer will be liable to pay to TDV as a genuine estimate of the loss TDV will incur from such failure an amount calculated in accordance with the applicable Service Terms;

19.2 For the purposes of **clause 19.1(a)(i)**, Customer will be deemed to have cancelled any Fixed Line Services, Mobile Services or VoIP Services by notice to TDV if:

- (a) in the case of Fixed Line Services, Customer removes any Nominated Numbers from the scope of the Fixed Line Services in breach of **clause 1.2** of the Fixed Line Service Terms;
- (b) in the case of Mobile Services, Customer removes any Nominated Numbers from the scope of the Mobile Services in breach of **clause 1.3** of the Mobile Service Terms; or
- (c) in the case of VoIP Services, Customer removes any Nominated Numbers from the scope of the VoIP Services in breach of **clause 1.3** of the VoIP Service Terms.

19.3 **Clause 19.1(a)(i)** will not apply to and no termination payment will be payable by Customer where Customer:

- (a) is a small business customer (as defined in **clause 19.4**); and
- (b) Customer cancels any Services during a Renewal Period.

19.4 Customer is a “small business customer” if it does not resell any of the Services and at the time of entering into the Agreement:

- (a) did not have a genuine a reasonable opportunity to negotiate the terms of the Agreement; and
- (b) has or will have an annual spend with TDV of less than \$20,000.

## 20. Confidentiality

20.1 Customer acknowledges that the contents of the Agreement and any pricing or product information provided to it by TDV, constitutes commercially sensitive and confidential information, except to the extent that it is published on a publicly available portion of the Website or is otherwise information available in the public domain. Customer must not disclose that information to any third party without TDV’s prior written consent, unless legally compelled to do so, and then only after providing notice to TDV of that requirement.

20.2 TDV acknowledges that the information supplied by Customer or received by TDV from a Provider in relation to the Services is commercially sensitive and may contain confidential information. Subject to its rights under **clause 15** and its privacy policy, TDV must not disclose to any third party any information provided by Customer and that Customer asserts is confidential information without Customer’s prior written consent, unless TDV is legally compelled to do so, and then only after providing notice to Customer of that requirement.

## 21. Regulatory Aspects

21.1 Customer:

- (a) consents to TDV disclosing any information in relation to Customer’s account or use of the Services to the extent required by any law enforcement agency without notifying Customer of the request or the information provided;
- (b) acknowledges that, where the Service is a carriage service (as defined in the Act), TDV may be required to intercept communications over the Service and may also monitor usage of the Service and communications sent over it as required by law;
- (c) must promptly comply with any direction issued by any Government agency or regulatory authority, including the ACMA or the Australian Competition and Consumer Commission, in connection with the supply of the Services;
- (d) will co-operate with TDV if TDV is required to comply with any such direction (which may include suspending Services); and
- (e) will provide reasonable assistance to TDV or, if applicable, a Government agency or regulatory authority, in any investigation by a Government agency or regulatory authority in connection with the supply of the Services in which TDV is involved, whether or not required by law to do so.

## 22. TCP Code

To the extent applicable, nothing in the Agreement will affect Customer’s rights under the TCP Code.

## 23. Force Majeure

23.1 Neither party will be liable for any delay or failure in performance of any part of the Agreement, other than for any delay or failure in an obligation to pay money, to the extent that such delay or failure is attributable to a Force Majeure Event.

23.2 Each party's obligations under an Application Form or a MAC Request affected by the Force Majeure Event will be suspended to the extent of the Force Majeure Event. The parties will work together in good faith to minimise the impact of any Force Majeure Event (including implementing any commercially practicable work-arounds).

## 24. Entire Agreement

24.1 The Agreement contains the parties' entire understanding regarding the supply of the Services and Equipment to the exclusion of any and all prior or collateral agreement or understanding whether oral or written. Customer acknowledges that it has not entered into the Agreement in reliance upon any statement made by TDV, other than as expressly contained in the Agreement.

24.2 If any part of the Agreement is found to be invalid or of no force or effect the Agreement will be construed as though such part had not been inserted and the remainder of the Agreement will retain its full force and effect.

## 25. Notices

25.1 Subject to **clause 25.6**, all notices, consents, requests and other communications required to be given under the Agreement must be in writing and delivered or sent by mail or e-mail to Customer's address or e-mail address on the Application Form, or to TDV at:

CHRNA Pty Ltd  
23 Chuter Street  
McMahons Point NSW 2060  
E-mail: sales@tdv.net.au  
Attention: The Managing Director

25.2 Subject to **clause 25.3** a notice, consent, request or other communication under the Agreement is, in the absence of earlier receipt, regarded as given and received:

- (a) if it is delivered, upon delivery at the address of the relevant party;
- (b) if it is sent by mail, on the third Business Day after the day of posting, or if to or from a place outside Australia, on the seventh Business Day after the day of posting; and
- (c) if it is sent by e-mail, at the time and on the day it was successfully sent.

25.3 If a notice, consent, request or other communication under the Agreement is given and received on a day that is not a Business Day or after 5.00 pm (local time in the place of receipt), on a Business Day, it is regarded as being given and received at 9.00 am on the next Business Day.

25.4 Either party may change its address, fax number or e-mail address for service by providing not less than 7 days' prior notice to the other party.

25.5 Where TDV has prescribed a form of notice for the purposes of the Agreement, "*in writing*" means in that prescribed form.

25.6 A notice of termination of the Agreement must be delivered or sent by mail only.

## 26. Assignment

26.1 TDV may at any time assign or novate the whole or any part of the Agreement to a related body corporate or a third party without Customer's consent and Customer irrevocably appoints TDV as its lawful attorney to execute all documents and to do all acts as are necessary and desirable to give effect to any such assignment or novation.

26.2 Without limiting the generality of **clause 26.1**, if:

- (a) TDV is providing Mobile Services to Customer; and
- (b) TDV wishes to assign the benefit of and novate its rights and obligations under the Agreement insofar as they relate to those Mobile Services to TBG,

TDV may do so in accordance with **clause 26.1** and Customer must agree to novate the Agreement to TBG on receipt of a notice from either TDV or TBG.

26.3 Customer may assign or deal with its rights or obligations under the Agreement only with TDV's prior written consent, which TDV will not unreasonably withhold.

## 27. Amendments to Agreement

27.1 In addition to its rights under **clause 10.5**, TDV may vary any of the following during the term of the Agreement by giving Customer 30 days' prior notice:

- (a) these General Terms and Conditions; and
- (b) the Service Terms.

27.2 Customer may object to the variation provided that TDV Telecom receives Customer's objection within 10 Business Days of TDV's notice. If Customer objects, the parties will negotiate in good faith to agree upon an acceptable variation. If no agreement is reached before expiry of the original 30 day notice period, then TDV reserves the right to terminate the Agreement upon a further 30 days' notice to Customer. If TDV terminates the Agreement pursuant to this clause then no early termination charges will be payable by Customer pursuant to **clause 19**.

27.3 TDV may vary any of the following during the term of the Agreement without prior notice to Customer:

- (a) the Acceptable Use Policy;
- (b) the Fair Use Policy.
- (c) any Service Levels and Service Level Guarantees.

## 28. Definitions & Interpretation

28.1 Unless otherwise defined in a document forming part of the Agreement, terms used in the Agreement will have the following meaning:

**Acceptable Use Policy** means TDV's Acceptable Use Policy as published on the Website.

**ACMA** means the Australian Communications and Media Authority.

**Act** means the *Telecommunications Act 1997 (Cth)*.

**Application Form** means an order for any Service or Equipment in the form prescribed by TDV.

**Agreement** means the agreement between TDV and Customer for the supply of Services and Equipment.

**Australian Consumer Law** means the laws as contained in Schedule 2 of the *Competition and Consumer Act 2010 (Cth)* and equivalent State and Territory Fair Trading legislation in Australia regarding consumer guarantees to the extent that such guarantees cannot be excluded by law.

**Business Day** means any day other than a Saturday, Sunday or official public holiday in the State or Territory in which acts or things must be done on or by the relevant day.

**Charges** means:

- (a) any amounts payable by Customer for the provision of the Services and the supply of any Purchased Equipment or Rented Equipment under any accepted Application Form or MAC Request;

- (b) any amounts payable by Customer in accordance with **clause 19**;
  - (c) any other early termination cancellation payments for the Services; and
  - (d) any service charge imposed by TDV on credit card payments,
- calculated in accordance with the Product and Pricing Schedule, or if the relevant charges are not contained in the Product and Pricing Schedule, the TDV Standard Rates List or the applicable Service Terms.

**Contract Period** means:

- (a) in the case of Data Services, Fixed Line Services and VoIP Services, the period of 12 months or such longer period as specified in the Application Form, commencing on the Service Start Date;
- (b) in the case of Mobile Services, in respect of each Nominated Number, the period of 12 months, or such longer period as specified in the Application Form, commencing on the Service Start Date for each Nominated Number; and
- (c) in respect of any new Service provisioned under **clause 6**, the longer of:
  - (i) the longest Contract Period applicable to the Services currently being obtained by Customer; or
  - (ii) 12 months from the Service Start Date for the new Services.

**Credit Risk** means that TDV considers there is some doubt as to Customer's ability to pay the Charges by the end of the Payment Period, including as a result of:

- (a) Customer's previous payment history and payment behaviour (e.g. late payment, dishonoured payments or failure to pay);
- (a) any previous advice from Customer about a potential inability or unwillingness to pay; or
- (b) Customer's use of the Services being inconsistently high when compared with previous usage patterns.

**Customer** means the person, company or other legal entity nominated as the customer in the Application Form. It includes any additional person or company nominated by Customer, whether orally or in writing, to receive the Services and in relation to a company the term "Customer" includes a body corporate which is related to it within the meaning of the *Corporations Act 2001* and which uses the Services. Where Customer comprises more than one person the Agreement will bind each of those persons jointly and severally.

**Customer Content** means any data or software loaded onto any Customer Equipment or TDV Equipment, including, but not limited to, all text, words, names, likenesses, trademarks, logos, artwork, graphics, video, audio, HTML or other coding, domain names, image maps, links, software applications and any other content whatsoever.

**Customer Equipment** means any Equipment supplied by Customer and includes, where applicable, any Purchased Equipment.

**Data Services** means the data services specified in the accepted Application Form and the Data Product and Pricing Schedule or ADSL 2+ & Internet Product and Pricing

Schedule (as the case may be) or accepted MAC Request and, to the extent applicable, detailed in the Data Service Terms.

**Delivery Date** means the date for delivery of TDV Equipment to the Premises as specified in the applicable Product and Pricing Schedule or otherwise agreed in writing by the parties.

**Device** means a device capable of interfacing with the Services or transmitting and receiving communications and any equipment or accessories that are capable of being used with that device.

**Emergency** means a situation that, unless immediately remedied, has the potential to jeopardise human life or safety or to cause immediate risk to property.

**Equipment** means hardware (including Devices), and software.

**Fair Use Policy** means TDV's Fair Use Policy as published on the Website.

**Fixed Line Services** means any or all telecommunications services (including local, national long distance, international, fixed to mobile and inbound calls but excluding Mobile Services), supplied by TDV to Customer using the Nominated Numbers and includes (but is not limited to), any audio or video conferencing, video on demand or any other products offered by TDV as part of the Fixed Line Services.

**Force Majeure Event** means any cause beyond a party's reasonable control affecting the performance of its obligations under the Agreement, including, but not limited to, fire, flood, explosion, accident, war, act of terrorism, strike, embargo, governmental requirement, civil or military authority, Act of God, inability to secure materials, industrial disputes, but excludes any Intervening Event.

**Insolvency Event** means any of the following events in relation to a party:

- (c) having a receiver or manager appointed over any of its assets and property;
- (d) having a liquidator appointed (whether under a creditor's petition, voluntary liquidation or otherwise);
- (e) passing a resolution for winding-up (otherwise than for a purpose of amalgamation or reconstruction);
- (f) being placed under any form of insolvency administration;
- (g) entering into any composition or arrangement with its creditors;
- (h) becoming insolvent; or
- (i) ceasing to carry on business.

**Intervening Event** means an event beyond TDV's reasonable control which interferes with and prevents TDV from providing the VoIP Service to Customer, but excludes a Force Majeure Event. Such events include any act or omission of a Provider, any disruption to TDV's or TDV's Provider's networks, infrastructure and equipment, failure of any electrical power supply and changes to any laws or regulations.

**MAC Request** means any request by Customer to add to, vary, or cancel any Services. It may, without limit, include a request to vary the bandwidth or speed of any scalable service. Any such request must be in writing and

substantially in the form prescribed by TDV for that type of Service.

**MAC Request Confirmation** means a written confirmation issued by TDV in response to a MAC Request and which states, in relation to any new Services, the TDV Ready For Service Dates.

**Minimum Charges** means, in relation to Data Services or VoIP Services, the sum of all fixed one-off or periodic Charges specified in the applicable Product and Pricing Schedule and the TDV Standard Rates List that would be payable if the Services were provided from the effective date of termination or cancellation to the end of the Contract Period or, if applicable any Renewal Period.

**MNP Code** means the Industry Code Mobile Number Portability (C570:2009) (or any code which replaces that Code)

**Mobile Services** means any or all mobile telecommunications services (including mobile data services) supplied by TDV to Customer using the Nominated Numbers.

**Network** has the same meaning as "telecommunications network" in the Act.

**Network Access Line** means the dedicated access line between the Premises and TDV's network Provider or between two or more of Customer's Premises, used in connection with the Services.

**Nominated Number** means:

- (a) the Service Numbers specified in the Transfer Form signed by Customer or, if applicable, the Service Numbers relating to the Provider account numbers specified in that form; and
- (b) any new Service Numbers subsequently transferred to TDV.

**Numbering Plan** means the Numbering Plan made by the ACMA under the Act.

**Outage** is a period of time that the supply of the Services to Customer is interrupted other, than an interruption that is less than 1 second in duration.

**Payment Period** means 14 days from the date of TDV's invoice or such other period agreed in writing by the parties.

**Period** means the Contract Period and each subsequent Renewal Period.

**Personnel** of a party means that party's employees, agents and contractors.

**Planned Outage** means a period of time that TDV may interrupt its supply of the Services to Customer for routine maintenance or up-grading or other similar processes, after giving Customer 5 days' prior notice, and which does not exceed the period of time specified in that notice.

**Product and Pricing Schedule** means the Service-specific Product and Pricing Schedule attached to each accepted Application Form or MAC Request that specifies the TDV Agreed Rates.

**Porting Code** means:

- (a) in the case of Fixed Line Services, the Industry Code Local Number Portability Code (C540:2013) (or any code which replaces that Code); and
- (b) in the case of Mobile Services, the MNP Code.

**Premises** means the location owned, occupied or used by Customer to which a Service is supplied or at which Equipment is to be installed or any of Customer's or a Provider's property is located.

**Privacy Act** means the *Privacy Act 1988 (Cth)*.

**Provider** means a carrier, carriage service provider, telecommunications service provider, a wholesale supplier of telecommunications services, software provider equipment supplier or other supplier who TDV uses from time to time, in order to supply the Services or Equipment or any part of it, to Customer.

**Purchased Device** means a Device purchased by Customer from TDV.

**Purchased Equipment** means any Equipment purchased by Customer from TDV.

**Renewal Date** means, in respect of any Services the date on which the Contract Period or any subsequent Renewal Period expires for the relevant Services.

**Renewal Period** means, unless a longer term is agreed in writing by the parties, a period of 12 months.

**Rented Equipment** means any Equipment rented by Customer from TDV.

**Security** means any personal guarantee, director's guarantee, bill of sale, charge, undertaking, mortgage, irrevocable standby letter of credit issued by an Australian licensed bank, unconditional and irrevocable bank guarantee issued by a licensed Australian bank, bond or such other form of security reasonably required by TDV.

**Service Credit** means the amount of the rebate payable to Customer for a failure to meet a Service Level Guarantee.

**Service Level** means the reliability and performance standard that applies in regard to TDV's delivery of the Services to Customer, as agreed in writing between the parties.

**Service Level Guarantee** means the extent of the guarantee given by TDV for the Services, having regard to the Service Level, as modified by TDV from time to time.

**Service Number** means any telephone, facsimile, data or other service number which is capable, in accordance with the Numbering Plan, of being used as an individual Network address.

**Services** means the Data Services, Fixed Line Services, Mobile Services and VoIP Services (as applicable), in relation to which an accepted Application Form or MAC Request is in effect.

**Service Start Date** means:

- (a) in the case of Data Services and VoIP Services, the date from which TDV commences the supply of those Services to Customer;
- (b) in the case of Mobile Services, the date on which the Provider Connects a Nominated Number or activates a Service Number and the Charges in respect of the Mobile Services provided in respect of that number are billable by that Provider to TDV; and
- (c) in the case of Fixed Line Services, the date on which the Provider activates the Nominated Numbers or Service Number and the Charges for the Fixed Line Services provided in respect of that number are billable by that Provider to TDV.



**Service Terms** means the Service-specific terms setting out supplementary terms and conditions applicable to a particular Service as published on the Website.

**SIM** means a subscriber identity module card, provided by TDV to be used with a Device to enable use of the Mobile Services.

**Tax** means any tax (including goods and services tax applicable to any taxable supply but excluding any tax on TDV's income), duty, levy and other similar charge (and any related interest and penalty), however designated, imposed under the laws of Australia or any jurisdiction outside Australia, with respect to the provision of any Services or Equipment or on any Charges.

**TBG** means Telecoms Buying Group Pty Ltd (ABN 61 134 051 399) (or its nominee).

**TCP Code** means the *Telecommunications Consumer Protection Code (C628:2012)*.

**TDV** means CHRDA Pty Ltd (ACN 168 282 166) (as trustee for the DACHR Group Trust (ABN 18 596 204 186)) (trading as "True Data Voice").

**TDV Agreed Rates** means the agreed rates specified in a Product and Pricing Schedule to be used to calculate the applicable Charges for the Services and, if applicable, any Purchased Device, Purchased Equipment or Rented Equipment.

**TDV Equipment** means any Equipment supplied by TDV for the purpose of providing the Services, whether owned by TDV or a third party (including a Provider), but excludes any Purchased Equipment or Rented Equipment.

**TDV Ready For Service Date** means the date from which TDV expects to supply the Services, which may or may not be the same as the date requested by Customer.

**TDV Standard Rates List** means the document specifying TDV's standard rates and charges for the Services that are used to calculate the Charges in the absence of agreed rates and charges, as modified by TDV from time to time. The TDV Standard Rates List is available upon written request from TDV. Customer acknowledges that the TDV Standard Rates List is confidential information of TDV.

**Telstra SOA** means the standard form of agreement for non-preselected Telstra customers published by Telstra Corporation Limited ACN 051 775 556 from time to time, currently titled "*Business Line Part*", and which forms part of the standard form of agreement currently referred to by Telstra Corporation Limited as "*Our Customer Terms*".

**Transfer Form** means a customer authorisation form substantially in the form prescribed by TDV.

**VoIP Services** means the VoIP services specified in the accepted Application Form and VoIP Product and Pricing Schedule (or MAC Request) and, to the extent applicable, detailed in the VoIP Service Terms.

**Website** means the website located at <http://www.truedatavoice.com.au>.