



BUSINESS SERVICES AGREEMENT

AGREEMENT TERMS

YOUR DETAILS

Name	Data Action Pty Ltd	(you or your)
ABN	32 008 102 690	
Address for Notices	Level 1, 151 South Terrace Adelaide SA 5000	
Billing Address	As above	
Contact Person	Karl Grant	
Email Address	kgrant@da.com.au	
Fax Number	08 8410 0175	
Phone Number	08 8201 1000	

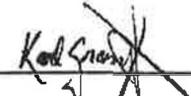
OUR DETAILS

Name	Telstra Corporation Limited (ABN 33 051 775 556)	(we, us or our)
Address for Notices	General Manager, Contract Management Locked Bag 6502, Sydney NSW 2001	
Contact Person	Ray Ormsby	
Fax Number	1300 886 281	
Phone Number	08 8433 4059	

START DATE The date this agreement is signed by the last party.

AGREED BY YOU

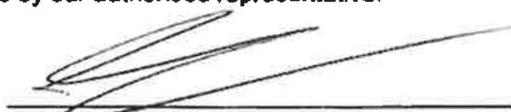
Signed for you by your authorised representative:

Signature  Date 27/6/14
Print Name Karl Grant Position Chief Executive Officer

AGREED BY US

Signed for us by our authorised representative:

Signature



Date

30/06/2014

Print Name

Michael Luchetti

Position

State Director SA/WI

Capitalised terms are defined in this Agreement (including clause 17 of these Agreement Terms).

1 THIS AGREEMENT

- 1.1 This Agreement consists of:
 - (a) the Service Schedules;
 - (b) the Agreement Terms;
 - (c) any Attachment; and
 - (d) Our Customer Terms as they apply to the Services (except for the General Terms section of Our Customer Terms).
- 1.2 You acknowledge either receiving, or having had the opportunity to review, a copy of Our Customer Terms. You may view Our Customer Terms at <http://www.telstra.com.au/customerterms/> or obtain a copy from us.
- 1.3 If there is an inconsistency between the parts of this Agreement, the document listed earlier in clause 1.1 prevails to the extent of the inconsistency.

2 SERVICES

- 2.1 We agree to supply the Services to you, and you agree to acquire them from us, at the prices and on the terms of this Agreement.
- 2.2 The Services must be ordered, supplied and billed against the nominated accounts agreed by the parties.
- 2.3 If we decide, or are required, to modify or exit a Service from the market, then we may, by giving you prior reasonable notice:
 - (a) migrate you to the modified service or an alternative service (and if requested by us you will provide reasonable assistance to enable us to do so); or
 - (b) cancel the Service.
- 2.4 Where we migrate or cancel a Service progressively we will give you prior reasonable notice on a progressive basis.
- 2.5 If the service to which we propose you migrate is materially detrimental to you, you may cancel the service without the payment of any Early Termination Charges.

3 TERM

- 3.1 This Agreement begins on the Start Date and continues until it is terminated or the Service Schedule Terms for all Services have expired or been terminated.
- 3.2 A Service Schedule Term automatically extends on a month to month basis on the existing terms (including price), unless either party notifies the other (at least 30 days before any automatic extension) that it does not wish the Service Schedule Term to extend automatically.
- 3.3 A Service Schedule will terminate when all the Services under that Service Schedule are cancelled or terminated.

4 OUR COMMITMENT TO YOU

- 4.1 We will:

- (a) provide the Services with due care and skill, but do not guarantee that they will be continuous or fault free;
- (b) ensure that any goods supplied in connection with the Services are reasonably fit for the purpose for which they are supplied;
- (c) ensure that all work we perform in connection with the Services is carried out by competent and suitably qualified personnel; and
- (d) meet with you regularly to discuss our performance under this Agreement.

5 YOUR COMMITMENT TO US**5.1 You:**

- (a) must ensure that all equipment connected to the Services by you, or on your behalf, is technically compatible with the relevant Service(s) and that your Premises and the equipment complies with and is used in accordance with all reasonable procedures notified by us and any applicable legislation;
- (b) must not alter, tamper, reverse engineer, repair or attempt to repair the Services or cause, or allow, a third party to do any of these acts;
- (c) are solely responsible for selecting, supplying and maintaining your own facilities and equipment;
- (d) are solely responsible for the content and security of any data or information which you send or receive using the Services; and
- (e) are solely responsible for any use of the Services, or any Facility connected to the Services on your Premises, by you or any third party whether authorised or not.

6 PAYMENT AND INVOICES

- 6.1 You must pay us the charges set out in this Agreement for the Services.
- 6.2 The charges for the Services will ordinarily be billed monthly in arrears, except where they are payable in advance. All charges are payable within 30 days of the date of invoice.
- 6.3 If you genuinely dispute an invoice you need not pay the disputed amount until the dispute is resolved, however you must pay all undisputed amounts by the due date.
- 6.4 If you do not pay any amount due under this Agreement on time, we may:
 - (a) on 7 days notice, decrease or withdraw any off-tariff or discounted pricing for those Services until all unpaid amounts are paid; and
 - (b) charge you interest (calculated on a daily basis) on any unpaid amounts at an annual rate equivalent to the Official Cash Rate set by the Reserve Bank of Australia.
- 6.5 You may only make a claim on the basis that the charges on an invoice for Services are incorrect within 12 months of the invoice due date.

7 TAXES

- 7.1 Subject to clauses 7.2 and 7.3, you must pay all Taxes in connection with the Services.
- 7.2 Where GST is imposed on a taxable supply made in connection with this Agreement and the recipient of that supply receives a tax invoice for that supply, the recipient must pay the GST to the supplier (without deduction or set-off) by the tax invoice due date.

- 7.3 If one party is required to indemnify or reimburse another party (Payee) for any cost, loss or expense, the indemnity or reimbursement payable does not include any amount for which the Payee (or an entity grouped with the payee for GST purposes) is entitled to an input tax credit, but will be increased in accordance with clause 7.2 if the amount payable is consideration for a taxable supply.
- 7.4 We may charge you an annual charge in relation to the ACT Government Utilities Tax (ACT Government Utilities Tax Charge) if you acquire one or more affected services within the ACT Government Area. We will notify you of the applicable ACT Government Utilities Tax Charge amount each year before it is payable. ACT Government Area means the area of the Australia Capital Territory, including the Jervis Bay area of NSW.

8 SUSPENSION OR CANCELLATION OF SERVICES

- 8.1 You may cancel a Service at any time on 30 days notice, however we may charge you any applicable Early Termination Charges.
- 8.2 We may limit, suspend or cancel the provision of a Service at any time without notice to you:
 - (a) in the event of an emergency or in order to provide resources to emergency and other essential services;
 - (b) if the supply or use of a Service is or is to become unlawful; or
 - (c) if, in our reasonable opinion, the provision of a Service is liable to cause death or personal injury or damage to property.

For the avoidance of doubt, if we suspend or cancel a Service in accordance with this clause 8.2, we will not require you to pay us the charges set out in this Agreement for the Services for the period of such suspension or cancellation.
- 8.3 We may limit, suspend or cancel the provision of a Service at any time by notice to you and we will give you as much notice possible and as appropriate in the circumstances:
 - (a) if you do not pay any amounts due for that Service on time;
 - (b) if the Australian Competition and Consumer Commission (ACCC) issues or we reasonably anticipate that the ACCC may issue a competition notice in relation to a Service;
 - (c) if your use of a Service interferes (or threatens to interfere) with the efficiency of our network and you fail to rectify the situation;
 - (d) if you are or become a carrier or carriage service provider (as defined in the Act); or
 - (e) if an administrator, receiver, liquidator or provisional liquidator is appointed to you, or you resolve to enter into any settlement, moratorium or similar arrangement for the benefit of your creditors, or you are unable to pay your debts when they are due.
- 8.4 Where provision of a Service has been suspended or cancelled under clause 8.3(a), we may require you to pay a re-connection charge when the Service is re-connected.

9 TERMINATION

- 9.1 If a party commits a material breach and does not remedy the breach within 30 days of receiving a notice to do so, then the other party may terminate this Agreement (if the breach affects the Agreement) or terminate the Service Schedule (if the breach affects a Service provided under that Service Schedule).
- 9.2 We may, at any time on 7 days notice terminate a Service Schedule if no Services are acquired by you under that Service Schedule.

- 9.3 If this Agreement or a Service Schedule expires or is terminated for any reason:
- (a) you must pay us all outstanding invoices by the due date and within 30 days of request for payment, all other amounts outstanding as at the date of, or arising as a result of, expiry, termination or cancellation (including any Early Termination Charges);
 - (b) those Services that are provided by us under Our Customer Terms and continue to be acquired by you, will be supplied on the terms (including price) of Our Customer Terms;
 - (c) we may enter the Premises and remove any Facility belonging to us which is connected with that Service. If we are unable to gain access to the Premises we may recover the value of the Facility from you as a debt due to us; and
 - (d) all rights a party has accrued before expiry, termination or cancellation continue.
- 9.4 If this Agreement expires or terminates for any reason, clauses 5 (Your commitment to us), 9.3 (Termination), 10 (Confidentiality and Privacy), 11 (Limitation of liability) and 12 (Third Party IP claims) continue in full force and effect.

10 CONFIDENTIALITY AND PRIVACY

- 10.1 Each party must treat as confidential information:
- (a) the provisions of this Agreement; and
 - (b) all information provided by the other party under this Agreement, including our technical, operational, billing, pricing and commercial information in relation to the supply of Services.
- 10.2 A party must not disclose the other party's confidential information to any person except:
- (a) to its employees, lawyers, accountants and our sub-contractors on a 'need to know' basis provided those persons first agree to observe the confidentiality of the information;
 - (b) with the other party's prior written consent;
 - (c) if required by law, any regulatory authority or stock exchange; or
 - (d) if it is in the public domain.
- 10.3 You agree and will ensure that any of your related bodies corporate which receive services connected with this Agreement and your representatives are aware, that we may use and disclose information about you and each of them in accordance with our Privacy Statement (as amended by us from time to time), which is available at http://www.telstra.com.au/privacy/privacy_statement.html or by calling us on 1800 039 059.

11 LIMITATION OF LIABILITY

- 11.1 If we fail to meet any of our service level obligations as a result of any interruption or delay to your Service, we accept liability to you, but limit our liability to the applicable service level rebates or credits. Where you are not entitled to a service level rebate or credit, we limit our liability to an amount equal to the charges billed for the affected Services for the period of the interruption or delay.
- 11.2 We accept liability arising from our breach of contract or negligence:
- (a) for any personal injury or death to you, your employees, agents and contractors in relation to the supply of the Services;
 - (b) for any damage to your real or tangible property resulting from the supply of the Services, but we limit our liability to our choice of repairing or replacing the property or paying the cost of repairing or replacing it; and

- (c) unless clause 11.1 applies, for any other cost or expense you reasonably incur that is a direct result of, and flows naturally from, such breach or negligence (but excludes loss of profits, revenue, business opportunities, likely savings and data), but we limit our liability for all such claims in aggregate to the total amount payable to us under this Agreement during the first year of this Agreement.
- 11.3 Other than for the liability we accept under clauses 11.1 and 11.2, we exclude all other warranties, rights, remedies and liability to you or a third party for breach of contract, negligence or breach of any other law. For any liability which cannot lawfully be excluded, but can be limited, our liability is limited to our choice of re-supplying or paying the cost of re-supplying services and repairing, replacing or paying the cost of repairing or replacing goods.
- 11.4 Notwithstanding anything else in this clause 11, our liability will be reduced to the extent the loss or damage is caused by you, your employees, agents or contractors.

12 THIRD PARTY IP CLAIMS

- 12.1 We indemnify you against any direct loss, damage, liability, costs or expenses incurred by you as a result of a claim by a third party against you that the Services or any material provided by us under this Agreement infringes the Intellectual Property Rights of the third party, subject to you allowing us to direct any defence and settlement of the claim. This indemnity does not apply to the extent the claim arises out of any modification of any materials provided by us, relates to services or materials provided by a third party in conjunction with the Services, or is caused or contributed to by you.
- 12.2 Where any person makes a claim for Intellectual Property Right infringement in connection with the provision of Services or materials (including Facilities) by us, we may modify, limit, suspend or cancel the provision of Services or materials, if required, in response to the claim.

13 DISPUTE RESOLUTION

- 13.1 The parties agree to use best endeavours to resolve in good faith any dispute concerning this Agreement. Each party must follow the procedures in this clause 13 before starting arbitration or court proceedings (except for urgent injunctive or declaratory relief).
- 13.2 If a dispute arises between the parties that cannot be resolved promptly between our contact person and your contact person, either party may notify the other party of a formal dispute. Each party must nominate a senior executive to meet within 7 days of the notice (or another agreed period) to try and resolve the dispute.
- 13.3 If the dispute remains unresolved, the parties must try to resolve it by mediation administered by the Australian Commercial Disputes Centre according to its Mediation Guidelines.

14 TECHNOLOGY INCENTIVE FUND - ANNUAL CREDIT

- 14.1 Within 30 days of the Start Date, we will create a Technology Incentive Fund (TIF) account for you and credit this account with \$98,994.50 (GST inclusive). On each anniversary of the Start Date, we will credit your TIF account with \$98,994.50 (GST inclusive). The total amount we will credit under this clause is \$296,983.50 (GST inclusive).
- 14.2 You may only use the TIF to purchase eligible Telstra products and services or for other purposes approved by us and notified to you from time to time. Your TIF account is not transferable or redeemable as cash and cannot be used to pay any existing service or equipment charges. We will reduce the credit in your TIF account by the full GST inclusive retail list price of the purchased Telstra product or service redeemed by you.
- 14.3 We may suspend or close your TIF account at any time by notice to you:
- (a) if you do not pay any undisputed amounts due to us on time;

- (b) if you do not achieve any minimum commitments or Spend conditions set out or referred to in this Agreement; or
 - (c) if an administrator, receiver, liquidator or provisional liquidator is appointed to you, or you resolve to enter into any settlement, moratorium or similar arrangement for the benefit of your creditors, or you are unable to pay your debts when they are due.
- 14.4 If this Agreement is terminated for any reason other than for our material breach, you must reimburse us any TIF amount which has been used. Upon expiry or termination of this Agreement your TIF account will be closed.
- 14.5 If we close your TIF account for any reason, any balance remaining will be extinguished.

TIF Rollover

- 14.6 Within 30 days of the Start Date we will also create a Rollover TIF account for you and credit this account with the Rollover Amount. You acknowledge this Rollover Amount must be used by you within 90 days of the Start Date otherwise it will be forfeited and the Rollover TIF account will be closed.

15 LOYALTY CREDIT - ANNUAL CREDIT

- 15.1 We will credit your nominated Telstra account with the following loyalty credits (**Loyalty Credit**) to be applied against your Telstra invoices:
- (a) the amount of \$526,872.50 (GST inclusive) within thirty (30) days of the Start Date;
 - (b) a further amount of \$526,872.50 (GST inclusive) thirteen (13) months after the Start Date; and
 - (c) a further amount of \$526,872.50 (GST inclusive) thirteen (25) months after the Start Date.
- 15.2 The Loyalty Credit may only be applied against your invoices for the Services. The Loyalty Credit is not transferable or redeemable as cash.
- 15.3 We may suspend or cease payment of the Loyalty Credit at any time by notice to you:
- (a) if you do not pay any undisputed amounts due to us on time;
 - (b) if you do not achieve any minimum commitments or Spend conditions set out or referred to in this Agreement; or
 - (c) if an administrator, receiver, liquidator or provisional liquidator is appointed to you, or you resolve to enter into any settlement, moratorium or similar arrangement for the benefit of your creditors, or you are unable to pay your debts when they are due.
- 15.4 If this Agreement is terminated for any reason other than our material breach, you must reimburse us any Loyalty Credit which has been credited to your nominated Telstra account.

16 GENERAL

ENTIRE AGREEMENT

- 16.1 Other than as specifically set out in this Agreement, this Agreement constitutes the entire agreement between the parties about the Services, and supersedes any previous agreement or representation relating to the Services.

GOVERNING LAW

16.2 This Agreement is governed by the laws of the Australian State or Territory in which your principal place of business is located. Each party submits to the non exclusive jurisdiction of the courts of that place and the courts of appeal from them.

INTERPRETATION

16.3 In this Agreement:

- (a) a reference to this Agreement includes all its parts described in clause 1.1, and includes any amendment to or replacement of them;
- (b) a reference to a statute, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (c) terms used that are defined in the A New Tax System (Goods and Services Tax) Act 1999 (Cth) have the meaning given in that Act, unless the context makes it clear that a different meaning is intended;
- (d) a reference to a party includes a reference to the party's executors, administrators, successors and assigns;
- (e) the singular includes the plural, and vice versa; and
- (f) "includes", "including", "for example", "such as" and similar terms are not words of limitation.

NOTICES

16.4 All notices and consents must be in writing and sent to the addresses or fax numbers for notices specified on the front page of the Agreement Terms, or to your officer or as otherwise agreed. Notices must not be sent by email.

16.5 Notices sent:

- (a) by hand are taken to be received when delivered;
- (b) by post to an address in Australia are taken to be received by the third Business Day after posting;
- (c) by post to an address outside Australia are taken to be received by the seventh Business Day after posting; or
- (d) by fax are taken to be received when the sender's fax machine issues a successful transmission report.

VARIATIONS

16.6 This Agreement may only be varied:

- (a) by written agreement between the parties; except
- (b) for terms set out in Our Customer Terms, in accordance with the Act.

If you require information about detrimental changes to Our Customer Terms before they take effect, it will be available at <http://www.telstra.com.au/customerterms/>.

SEVERABILITY

- 16.7 If any clause or part of any clause is held by a court to be invalid or unenforceable, that clause or part of a clause is to be regarded as having been deleted from this Agreement and this Agreement otherwise remains in full force and effect.

WAIVER OF RIGHTS

- 16.8 A right created by this Agreement may only be waived in writing by the party giving the waiver, and the failure to exercise or any delay in exercising a right or remedy provided by this Agreement or by law does not waive the right or remedy.
- 16.9 A waiver of a breach of this Agreement does not waive any other breach.

WARRANTIES

- 16.10 Each party warrants to the other that entering into and performing its obligations under this Agreement does not breach any of its contractual obligations to any other person.
- 16.11 You warrant that you have not relied on any representations or warranties by us other than those in this Agreement.

ASSIGNMENT AND AGENCY

- 16.12 A party must not assign its rights or novate its obligations under this Agreement without the other party's prior written consent, which must not be unreasonably withheld.
- 16.13 You may appoint a third party to act on your behalf in relation to this Agreement with our prior written consent, which will not be unreasonably withheld. We may withdraw our consent on reasonable grounds relating to the conduct of the third party.

FORCE MAJEURE

- 16.14 If a party is unable to perform or is delayed in performing an obligation under this Agreement (other than an obligation to pay money) because of an event beyond that party's reasonable control (Force Majeure Event), that obligation is suspended but only so far and for so long as it is affected by the Force Majeure Event.
- 16.15 If a Force Majeure Event occurs, the non-performing party must:
- (a) promptly give the other party notice of the event and an estimate of the non-performance and delay;
 - (b) take all reasonable steps to overcome the effects of the event (but this does not require the settlement of industrial disputes or other claims on unreasonable terms); and
 - (c) resume compliance as soon as practicable after the event no longer affects either party.

17 SPEND CONDITIONS

- 17.1 The minimum Spend per Quarter for all Services set out in Schedule 1 – Fixed Voice Services and Schedule 2 – Telstra IP Telephony Services is \$492,592.00.
- 17.2 The minimum Spend per Quarter for all Services set out in Schedule 3 – Data Services, Schedule 4 – Data Services (GWIP & Ethernet Campus) and Schedule 6 – Managed Data Networks (MDN) is \$1,176,215.00.
- 17.3 We will monitor your Spend for each Quarter after the Service Start Date.
- 17.4 If you do not achieve at least 90% of the amount in clauses 17.1 and 17.2 above, we may on 7 days notice decrease or withdraw any off-tariff or discounted pricing for the relevant Service(s) for any subsequent