

Background

- A Telegate provides a range of information technology services, including:
- infrastructure services; systems integration; project services
 - hardware and software procurement
 - telephony and data communications
- B This Master Service Agreement sets out the terms and conditions under which Telegate supplies these services.

Agreement

1. Parties

The parties are:

- 1.1. the Company named in a Telegate Order Confirmation Form ('Telegate', 'us', 'we' or 'our'); and
- 1.2. the Client or Customer named in a Telegate Order Confirmation Form ('you' or 'your').

2. Master Terms

This Master Service Agreement applies to all services provided by us to you to the exclusion of any purchase order or other document submitted by you to us.

3. Product Terms

- 3.1. The services that we are able to provide are described in the Service Schedule.
- 3.2. Each of the Service Schedules set out:
 - 3.2.1. the scope of the service;
 - 3.2.2. the fees for the service; and
 - 3.2.3. any special conditions that apply to the service.

All product service schedules can be downloaded at: <https://telegate.com.au/msa-product-service-schedules/>

4. Order Form

- 4.1. You may request a service by submitting an Order Confirmation Form to us.
- 4.2. Each Order Confirmation Form:
 - 4.2.1. must be in our standard form, as current at the time;
 - 4.2.2. must clearly identify the service requested by reference to Product Names and corresponding Service Schedules;
 - 4.2.3. must set out the required commencement date and term of the service;

- 4.2.4. must be completed by you accurately, with all required information; and
- 4.2.5. is a request for service and not a contract, unless and until accepted by us.

5. Service Contracts

- 5.1. If we accept a Telegate Order Confirmation Form in writing, a binding contract is created ('Service Contract') comprising:
 - 5.1.1. the Service Schedule, including any special conditions;
 - 5.1.2. the Telegate Order Confirmation Form;
 - 5.1.3. the NVM Pricing Appendix; and
 - 5.1.4. this Master Services Agreement.
- 5.2. Each Service Contract is an independent contract.
- 5.3. If there is any inconsistency between the parts of a Service Contract, the order of priority, from highest to lowest, is:
 - 5.3.1. any special conditions in the Service Schedule;
 - 5.3.2. the remainder of the Service Schedule;
 - 5.3.3. the Telegate Order Confirmation Form; and
 - 5.3.4. these Master Terms.

6. Services

- 6.1. For each Service Contract, we will provide you with the service specified in the relevant Product Service Schedule ('theservice').

7. Fees

- 7.1. The fees for a service are:
 - 7.1.1. the fees specified in the Order Confirmation Form;
 - 7.1.2. if none are specified, our then current published fees for that service; or
 - 7.1.3. if there are no current published fees, at our time and materials rates for similar services.
- 7.2. Except where we have agreed fixed fees for services, we may adjust our fees at any time.
- 7.3. If we perform any work that is not covered by the relevant Service Schedules, we may charge for that work:
 - 7.3.1. at our current published rates for that type of work; or
 - 7.3.2. if there are no current published rates, at our time and materials rates for similar work.
- 7.4. Unless we say otherwise in writing, when we use the term Monthly Recurring Fee, this means the standard price contained in the Telegate Order Confirmation Form,

excluding variations, usage, consumption, Excluded Item fees or set up fees.

8. Pre-paid fees

- 8.1. If a service requires fees to be pre-paid:
 - 8.1.1. services will not be provided until you pay the pre-paid fees;
 - 8.1.2. we may suspend providing a service if the balance of the pre-paid fees will not cover our fees for the service required; and
 - 8.1.3. we may apply amounts you owe us against the balance of your pre-paid fees in any manner we decide.
- 8.2. Pre-paid fees are non-refundable.

9. Expenses

- 9.1. You must reimburse our out of pocket expenses provided:
 - 9.1.1. the expenses have been approved in writing; and
 - 9.1.2. we supply reasonable evidence substantiating the expense.

10. Invoicing and payment

- 10.1. Our Billing Cycle is 1 calendar month.
- 10.2. We will undertake credit approval processes.
- 10.3. We will invoice you:
 - 10.3.1. in accordance with any payment schedule specified in the Service Schedule;
 - 10.3.2. otherwise:
 - 10.3.2.1. monthly in advance for pre-paid fees; or
 - 10.3.2.2. monthly in arrears.
- 10.4. You must pay each invoice in full:
 - 10.4.1. by the due date specified in the invoice; or
 - 10.4.2. if no due date is specified, within 14 days of the invoice date.
- 10.5. Late invoicing does not affect our right to payment or your obligation to pay.
- 10.6. If a payment is overdue, in addition to our other rights:
 - 10.6.1. we may charge interest on the overdue amount at the Default Rate, calculated daily;
 - 10.6.2. we may withhold providing services under any Service Contract; and
 - 10.6.3. you must indemnify us against all costs and expenses (including legal expenses on a solicitor / client basis) incurred by us in attempting to recover the overdue amount.

'Default Rate' means the overdraft reference rate quoted by our principal banker on the first day of the applicable month plus 2%.

10.7. If:

- 10.7.1. you fail to pay any amount (whether in whole or part) payable in respect of any hardware and/or Loan Equipment by the time required for payment;
- 10.7.2. you become insolvent (as that term is defined in the *Corporations Act 2001*); or
- 10.7.3. the Service Contract between us is terminated, or becomes terminable at our option,

we may, without notice to you, enter at any reasonable time any premises where hardware and/or Loan Equipment is located (or believed by us to be located) and take possession of that hardware and/or Loan Equipment not paid for and any other hardware and/or Loan Equipment to the value of the amount owing. Our permission to enter your premises for that purpose is irrevocable. We are not liable to you in contract, tort or otherwise, for any costs, damages, expenses or losses incurred by you as a result of any action taken by us under this clause.

11. Third party charges

- 11.1. You are responsible for all third-party charges incurred as a result of your use of the service (for example, telecommunications carriage fees) unless we specify otherwise in writing.
- 11.2. Where we specify that our fees include third party charges, we may increase our fees by written notice to you if there is an increase in third party charges.

12. GST

- 12.1. Terms in italics in this clause have the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999*.
- 12.2. Unless stated otherwise, fees stated under this agreement exclude GST.
- 12.3. The *consideration* payable by you under this agreement is the *value* of any *taxable supply* for which payment is to be made.
- 12.4. Subject to us supplying you with a valid *tax invoice*, if we make a *taxable supply* in connection with a Service Contract for a *consideration*, which represents its *value*, then you must pay, at the same time and in the same manner as the *value* is otherwise payable, the amount of any GST payable in respect of the *taxable supply*.
- 12.5. Subject to us supplying you with a valid *tax invoice*, if a Service Contract requires you to pay, reimburse or contribute to an amount paid or payable by us in respect of an *acquisition* of a *taxable supply* from a third party, the amount required to be paid, reimbursed or contributed by you will be the *value* of the *acquisition* by us less any *input tax credit* to which we are entitled plus, if our recovery from you is a *taxable supply*, any GST payable under clause 12.4.

13. Service delivery

- 13.1. We will provide the service:
 - 13.1.1. during Business Hours, unless otherwise specified in writing;
 - 13.1.2. at the location(s) specified in the Service Schedule or, if no location is specified, at the location we determine to be most appropriate; and
 - 13.1.3. with professional skill and care, using appropriately qualified personnel.
- 'Business Hours' means between 8:00 am and 6:00 pm, Monday to Friday excluding public holidays at the place in which the service is to be provided.

14. Service standard

- 14.1. We do not warrant that the service will be uninterrupted or error free.
- 14.2. If service levels are specified in the Service Schedule, we will use all reasonable efforts to meet or exceed those service levels.
- 14.3. We do not guarantee that service levels will be met. If the Service Schedule specify that credits or rebates will apply, those credits or rebates are your sole remedy in respect of service level failure.

15. Access

- 15.1. You must provide us with reasonable and timely access to your facilities, premises, information, equipment, personnel, network and data to enable to fulfill our obligations under the Service Schedule.
- 15.2. We will not be responsible for any delay in providing a service where the delay results from your failure to provide timely access in accordance with clause 15.1.

16. Your obligations

- 16.1. You must:
 - 16.1.1. comply with our reasonable and lawful directions in relation to the service;
 - 16.1.2. provide a safe working environment for our personnel;
 - 16.1.3. comply with all laws, regulations, policies and guidelines (including any acceptable use policy that we inform you of) applicable to the service;
 - 16.1.4. ensure that any incumbent provider who is transitioning the service to us makes available the information, resources and facilities required by us to provide the service; and
 - 16.1.5. maintain regular and complete backups of all of your data.
 - 16.1.6. Permit us, or a nominated auditor of our choice, to audit service records held by you at any time during the contract and for 1 year after the contract has completed, for the sole purpose of determining the termination dates of services.
- 16.2. We will not be responsible for any failure, default or delay to the extent caused by

your failure to perform your obligations under this clause.

17. Hardware supply

- 17.1. To the extent that the service is for the sale and supply of hardware:
 - 17.1.1. the risk of loss of or damage to the hardware passes to you on delivery. Your obligation to insure hardware commences when risk passes to you. You must insure the hardware for its full value and ensure that our interest is noted on the policy. We may require you to demonstrate compliance with this clause including by producing a copy of the insurance policy;
 - 17.1.2. we remain the legal and beneficial owner of all hardware sold by us to you under this Master Service Agreement until all amounts due in respect of all hardware and any other amounts you owe us, actually or contingently presently or in future, have been paid to us in cleared funds. This applies even if you install the hardware or commingle it with other goods.
 - 17.1.3. you must not sell, dispose of, assign or encumber the hardware unless and until you have paid for it in full;
 - 17.1.4. where the hardware manufacturer's warranty is capable of being assigned to you, it is the only warranty given in relation to the hardware, to the extent permitted by law;
 - 17.1.5. where hardware is subject to export control laws or regulations (including US export laws and regulations), you must not directly or indirectly export, re-export, distribute or otherwise act in violation of such laws and regulations; and
 - 17.1.6. the United Nations Convention on Contracts for the International Sale of Goods does not apply.
 - 17.1.6.1. you must promptly notify us of the loss or damage;
 - 17.1.6.2. you must pay us the cost of repairing or replacing the leased hardware; and
 - 17.1.6.3. your obligation to pay the fees in respect of the leased hardware is absolute and continues notwithstanding its loss, destruction or damage or the termination of the Service Contract; and
 - 17.1.7. we may retake possession of the hardware if
 - 17.1.7.1. you breach this agreement; or
 - 17.1.7.2. we reasonably believe we need to do so to protect our title to the hardware –and you irrevocably authorise us to enter onto your premises for this purpose.

18. Loan equipment

- 18.1. We may install on your premises, loan or otherwise provide you with equipment

(“Loan Equipment”). All Loan Equipment:

- 18.1.1. remains our property;
 - 18.1.2. must only be used by you for the purposes of receiving services from us; and
 - 18.1.3. must be kept secured from loss or damage.
- 18.2. If Loan Equipment in your possession or control is lost, stolen or damaged:
- 18.2.1. you must notify us without unreasonably delay; and
 - 18.2.2. you must pay us the replacement cost of the Loan Equipment calculated as the recommended retail price at the date the Loan Equipment was lost, stolen or damaged minus any amount we recover under an insurance policy.

19. Inspection and Insurance

- 19.1. You must allow us to enter upon your premises to inspect any hardware and/or Loan Equipment in your possession upon reasonable notice from time to time.
- 19.2. If any hardware and/or Loan Equipment belonging to us is sold or otherwise disposed of by you or if any insurance claim is made in respect of it, we are entitled to trace and receive the sale or insurance proceeds. You must notify us of all insurance claims made you in respect of the hardware and/or Loan Equipment. You must keep the proceeds of sale or insurance in a separate bank account on trust for us.
- 19.3. You must reimburse to us all costs incurred by us in exercising our rights under this clause.

20. Software

- 20.1. To the extent that a service involves the creation or licensing of software that we own:
 - 20.1.1. we warrant that our software will operate substantially in accordance with its accompanying documentation during the warranty period;
 - 20.1.2. we will use our reasonable efforts to correct any defect provided:
 - 20.1.2.1. you notify us of the defect during the warranty period;
 - 20.1.2.2. you have used the software in accordance with its accompanying documentation and our recommendations;
 - 20.1.2.3. the software has not been used on or in conjunction with equipment or software not approved by us;
 - 20.1.2.4. the software has not been modified by anyone other than us;
 - 20.1.2.5. the defect is not due to a change in your IT or physical environment after delivery of the software; and
 - 20.1.2.6. you are not in breach of this agreement or any Service Contract.
- 20.2. ‘Warranty period’ means 90 days from the date of delivery, unless we specify a different period.
- 20.3. ‘Defect’ means a reproducible failure of the software to work substantially as described in the documentation that accompanies it.

21. Third party materials

- 21.1. In providing a service we may supply you with materials (including software) licensed by third parties.
- 21.2. You must comply with the terms of the third party license and you indemnify us against any loss, damage, claim, liability or demand we incur due to your breach of a third party license.

22. Delay

- 22.1. We will use our reasonable efforts to meet any deadlines or milestones that we promise to meet but will not be liable for any delay or failure to meet these.
- 22.2. To the extent that our provision of a service is impaired by:
 - 22.2.1. you;
 - 22.2.2. a third party;
 - 22.2.3. a failure or defect (not caused by us) in hardware or software (not supplied by us); or
 - 22.2.4. an event beyond our reasonable control – then:
 - 22.2.5. our obligation to provide the service is suspended;
 - 22.2.6. we will not be liable to you in respect of any delay or failure to provide the service.
- 22.3. Where our personnel are delayed from performing a service due to a delay you cause, we may invoice you those personnel's hourly rate for the duration of the delay subject only to us making reasonable efforts to reallocate our personnel to other chargeable duties.

23. Termination and suspension of Service Contracts

- 23.1. We may terminate or suspend performance of a Service Contract immediately if:
 - 23.1.1. you breach the Service Contract and fail to remedy the breach within 14 days after receiving a notice detailing the breach and requiring that it be cured;
 - 23.1.2. you become insolvent;
 - 23.1.3. you fail to pay money owed to us within 30 days of it being due;
 - 23.1.4. you cease, or threaten to cease, carrying on your business;
 - 23.1.5. you exceed your credit limit or there is an adverse change in our credit assessment of you;
 - 23.1.6. we reasonably believe that you have used a service for unauthorised, criminal or unlawful activity; or
 - 23.1.7. an administrator or controller (as those terms are defined in the

Corporations Act 2001) is appointed in respect of any of your assets.

- 23.2. Your breach of a Service Contract is deemed to be a breach of these Master Service Agreement and all other Service Contracts.
- 23.3. Termination of a Service Contract does not affect our rights of action based on any breach by you before the termination.
- 23.4. On termination we may:
 - 23.4.1. repossess any of our property in your possession, custody or control;
 - 23.4.2. retain all moneys paid to us under the Service Contract;
 - 23.4.3. provide you with an invoice for all unpaid fees and expenses and any costs incurred by us as a result of termination; and
 - 23.4.4. pursue any additional or alternative remedies provided bylaw.
- 23.5. If you terminate a Service Contract prior to its expiry, then you must pay us within 14 days of invoice, the equivalent of the Monthly Service Fee multiplied by the number of months remaining in the Service Contract¹.
- 23.6. The termination fee in clause 23.5:
 - 23.6.1. is a reasonable pre-estimate of our loss and damage arising from an early termination of a Service Contract; and
 - 23.6.2. is without prejudice to any other rights we may have to recover other sums from you.
- 23.7. should the Service Contract expire and not be expressly terminated by you it will continue indefinitely on a quarter by quarter basis and you must provide us with 90 days notice to cancel the service.
- 23.8. Upon expiry or termination of a Service Contract each party must return any property belonging to the other party within 7 days.
- 23.9. Where you have a right to terminate a Service Contract, or any individual service, under these terms, you may only do so by providing us with written notice through our cancellation form.

24. Termination for Non-Performance

- 24.1. You may terminate the Service Contract immediately if we breach a Service Level Agreement and fail to remedy the breach within 14 days after receiving a notice detailing the breach and requiring that it be cured;
- 24.2. Termination of a Service Contract does not affect our rights of action based on any breach by you before the termination and is without prejudice to any other rights we may have to recover other sums from you.
- 24.3. On termination, we may retain all moneys paid to us under the Service Contract;
- 24.4. If you terminate a Service Contract prior to its expiry as per clause 24.1, then no termination fee will be payable.

¹ e.g. if the Monthly Service Fee is \$200 (inc GST), and there are 3 months remaining in the Service Contract, you must pay us \$600.

25. Privacy & Confidentiality

- 25.1. A party must not use or disclose the other party's confidential information without prior written approval.
- 25.2. Each party must take all reasonable steps to ensure that its employees and agents do not use or disclose the other party's confidential information.
- 25.3. A party may disclose confidential information where required by law or the rules of a stock exchange.
- 25.4. This clause survives termination of this agreement.
- 25.5. 'Confidential information' means all information treated by the owning party ('discloser') as confidential and:
 - 25.5.1. provided to the other party ('recipient'); or
 - 25.5.2. of which the recipient becomes aware – except information that:
 - 25.5.3. the recipient creates or lawfully obtains independently of the discloser; or
 - 25.5.4. is public knowledge (otherwise than as a result of a breach of confidentiality by the recipient).

26. Intellectual property rights

- 26.1. Unless otherwise specified in writing, we own exclusively all intellectual property rights in material, including software, that we design, create, modify, supply or license, even if it was created or modified for or suggested by you.
- 26.2. To the extent necessary for you to receive the benefit of a service, we grant you a non-exclusive, non-transferable, license to use our materials.
- 26.3. If any of your materials become combined with our materials with your knowledge and without your objection, then we have a perpetual, royalty-free, irrevocable, non-exclusive license to copy, use, adapt and distribute and sub-license those materials in the course of our ongoing business.
- 26.4. 'Intellectual property rights' includes all patents, copyright, rights in circuit layouts, registered designs, trademarks, trade, business or company names and the right to have confidential information kept confidential.

27. Limitation of liability

- 27.1. If we supply you with goods or services not of a kind ordinarily acquired for personal, domestic or household use or consumption but costing no more than \$40,000 you have extensive rights under the Australian Consumer Law including consumer guarantees and remedies but:
 - 27.1.1. in relation to these goods, our liability for failure to comply with a consumer guarantee (other than certain guarantees about ownership and undisturbed

use) is limited to:

- 27.1.1.1. replacing the goods or supplying equivalent ones;
- 27.1.1.2. repairing the goods;
- 27.1.1.3. paying the cost of replacing the goods or of acquiring equivalent ones; or
- 27.1.1.4. paying the cost of having the goods repaired; and
- 27.1.2. in relation to these services, our liability for failure to comply with a consumer guarantee is limited to:
 - 27.1.2.1. supplying the services again; or
 - 27.1.2.2. paying the cost of having the services supplied again.
- 27.2. Subject to clause 27.1:
 - 27.2.1. Any representation, warranty, condition, guarantee or undertaking that would be implied in these terms by legislation, common law, equity, trade, custom or usage or otherwise is excluded to the fullest extent permitted by law.
 - 27.2.2. We do not warrant or represent the performance, accuracy, reliability or continued availability of our goods and services or that they will be free from faults, errors or interruptions.
 - 27.2.3. We are never liable to you for, and you release us from any Claim for, any Consequential Loss.
 - 27.2.4. Subject to clause 27.1, 27.2.1, 27.2.2, 27.2.3 and 27.2.5, our maximum aggregate liability under a Service Contract or Claim, whether for breach of these terms or in negligence or in any other tort or for any other common law or statutory cause of action or otherwise is the amount equal to the fees you have paid to us under the Service Contract in the preceding year.
 - 27.2.5. We will not be liable to you for data loss under any circumstances.
- 27.3. For the purpose of this Agreement:
 - 27.3.1. Claim means any claim, demand, action, proceeding or legal process (including by way of set off, cross-claim or counterclaim); and
 - 27.3.2. Consequential Loss means any indirect, special, economic or consequential loss or damage or loss of revenue, profits, goodwill, bargain or opportunities or loss or corruption of data or loss of anticipated savings that you incur or suffer in any way, whether (a) caused by our negligence; or (b) we knew or should have known of the possibility of such loss or damage.

28. Warranty and Indemnity

- 28.1. You warrant that you have not relied on any representation made by us which has not been stated expressly in these Master Terms.
- 28.2. You must indemnify us, our employees and agents against any loss (including reasonable legal costs and expenses) or liability any of us reasonably incurs or suffers

arising from any proceedings where such loss or liability was caused by:

- 28.2.1. your breach of these Master Service Agreement or a Service Contract; or
- 28.2.2. your wilful, unlawful or negligent act or omission.

29. Notices

- 29.1. All notices must be:
 - 29.1.1. in writing;
 - 29.1.2. signed by the party giving it (or its authorised representative); and
 - 29.1.3. sent to a party's service address.
- 29.2. A party's service address is any of:
 - 29.2.1. in the case of a corporation, its current registered office;
 - 29.2.2. the parties' business addresses set out in a Telegate Order Confirmation Form; or
 - 29.2.3. any other address a party nominates, by written notice to the other party, as a service address.

30. Restraints

- 30.1. Neither party may approach the Employees, Agents or Contractors of the other party to this Agreement, with an offer of employment during the term of this Agreement or for each of the following periods, 2 months, 3 months, 6 months and 12 months after its expiry or termination.
- 30.2. The client may not directly approach Telegate partners or suppliers while under contract for services with us.
- 30.3. For the avoidance of doubt, nothing in this clause 30 prevents either party from employing an employee of the other party as a result of the employee responding to a public notice, in the absence of any solicitation however if this occurs then the employing party will pay a replacement recruitment fee to the other party of \$15,000 ex GST.

31. General matters

- 31.1. We may sub-contract the performance of this agreement if we obtain your prior written consent (which you must not unreasonably withhold).
- 31.2. We may assign or novate our rights and obligations under this Agreement at any time without your consent.
- 31.3. You may not assign your rights and obligations under this agreement without our prior written consent (which we will not unreasonably withhold).
- 31.4. If a party overlooks a breach of a Service Contract by the other party on one or more occasions, it is not taken to have agreed to any future breach.
- 31.5. These Master Service Agreement terms, the Service Schedule and the Telegate Order

Confirmation Form are the entire agreement between the parties with respect to the services specified in the Service Schedule and all prior agreements regarding those services are superseded. No amendment or modification of a Service Contract is binding unless in writing and executed by the parties.

- 31.6. Anything that is unenforceable must be read down, to the point of severance if necessary.
- 31.7. Anything a party can do, it may do through an appropriately authorised representative.
- 31.8. Neither party shall have, nor represent that it has, any authority to make any commitments on the other parties behalf.

32. Applicable law and disputes

- 32.1. This agreement is subject to the laws that apply in Australia.
- 32.2. Any dispute or difference arising in connection with this agreement will be submitted to arbitration in accordance with and subject to the Institute of Arbitrators and Mediators Australia Expedited Commercial Arbitration Rules.
- 32.3. Otherwise, legal proceedings relating to this agreement or any dispute about it must be brought in the courts of New South Wales, Australia.

33. Interpretation

- 33.1. Headings are for navigational assistance only and do not affect the meaning of this agreement.
- 33.2. Where a term is said to 'include' one or more things, the list is not exhaustive and does not limit the natural meaning of the term in anyway.
- 33.3. A schedule or attachment to a document (including a schedule or attachment to this agreement) is part of that document, as is any document incorporated by reference.
- 33.4. A reference to the singular includes the plural and vice versa.
- 33.5. There is no significance in the use of gender-specific language.
- 33.6. A 'person' includes any entity which can sue and be sued and any legal successor to or representative of that person.
- 33.7. A reference to 'hardware' or 'Loan Equipment' includes all IT and communication products and equipment including hardware, software and related parts, accessories and other goods.
- 33.8. A reference to a law includes any amendment or replacement of that law.
- 33.9. A provision must not be construed to the disadvantage of a party because that party prepared or required it.