

97/5M1

TRADE PRACTICES ACT 1974 (CTH)

Undertaking to the Australian Competition and Consumer Commission ("Commission") given for the purposes of section 87B

by

Telstra Corporation Limited (ACN 051 757 556) ("Telstra")

BACKGROUND

- 1 Telstra supplies telecommunications and other services throughout Australia and internationally. It is a condition of the licence issued to Telstra to operate as a general telecommunications carrier that it annually, until 30 June 1997, produce in volumes by geographical area and arrange to publish and distribute a telephone directory that integrates alphabetically the names, addresses and telephone numbers of all customers. Telstra's National Directory Services business unit ("NDS") creates and distributes directory products. As part of this function, NDS currently collects and verifies Telstra business and Government customer names, addresses and telephone numbers and collects occupation information, where such occupation information is made available to NDS, and maintains this information on a database.
- 2 The Commission alleges that Telstra:
 - (a) has a substantial degree of power in the directory database market and/or the telephone directories market ("the said markets"),
 - (b) has refused to supply such data on reasonable terms (including price) to a number of market participants who have sought supply, and
 - (c) by engaging in the conduct described in paragraph (b), has taken advantage of its power in each of the said markets and that such conduct on the part of Telstra contravenes section 46 of the Trade Practices Act.
- 3 Telstra and the Commission have been involved in negotiations in relation to the provision of access to Data on fair terms for all parties. The Commission wishes to ensure that other market participants have access to the Data to enable them to compete in the said markets.

PRELIMINARY

4.1 Definitions

"Commencement Date" means the date this undertaking is accepted by the Commission.

"Customer Database" means the computer based database of which the Data forms a part and which is compiled by or on behalf of Telstra for directory purposes and which contains customer data consisting of name, address and telephone number. This database is the major source of the data which appears in the Telstra White Pages™ directory

"Data" means

- (a) the Name, address and telephone number of Telstra business and Government customers as stored on the Customer Database on the Download Date;
- (b) the Name, address and telephone number of business and Government customers of carriers other than Telstra as stored on the Customer Database where the other carrier consents to the supply to the Licensee;
- (c) business customer occupation information (such as "plumber" or "solicitor"), stored on the Customer Database that has been obtained by NDS for publication as part of a customer's entry in the Telstra White Pages™ directory; and
- (d) any other information which Telstra in its sole discretion determines shall be provided to a Licensee on the terms and conditions of the Licence Agreement,

but does not include Prohibited Information.

"Entry" means a business or Government customer's Name, address and telephone number and, where applicable, occupation information contained in the Data supplied pursuant to this undertaking. For the avoidance of doubt each separate Telephone Service supplied to a business or Government customer is a separate Entry.

"Job Execution Charge" means an amount which reflects the costs reasonably incurred by Telstra in supplying the initial download of Data (irrespective of the number of Exchange Areas to which the Data relates) to the Licensee but which shall not exceed \$750.00.

"Licence Agreement" means an agreement or agreements entered into pursuant to clause 6.1 of this undertaking, and 'Licence Agreements' has a corresponding meaning.

"Licensee" means a licensee under a Licence Agreement, and "Licensees" has a corresponding meaning.

"Prohibited Information" has the meaning given in the Standard Licence Agreement.

"Standard Licence Agreement" means the pro forma licence agreement annexed to this undertaking at Schedule 1.

"Supply Fee" means an amount which reflects the costs reasonably incurred by Telstra in supplying each subsequent download of Data (irrespective of the number of Exchange Areas to which the Data relates) to the Licensee but which shall not exceed \$375.00 for each subsequent download.

In this undertaking, unless a contrary intention appears or the context otherwise requires, all words and phrases defined in the Standard Licence Agreement shall have the same meanings herein mutatis mutandis.

4.2 Interpretation

In this undertaking, unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) a reference to any gender includes all genders; and
- (c) a reference to any party to this undertaking or any other document includes that party's executors, administrators, substitutes, successors and permitted assigns.

5 Term

This undertaking shall be for a period of two years ("**Term**") commencing on the Commencement Date. At the expiration of the Term this undertaking shall cease automatically, without affecting the duration of the Licence Agreements that Telstra has entered into pursuant to this undertaking during the Term.

UNDERTAKING

6 Licence Agreements

- 6.1 Telstra undertakes, during the Term, to enter into Licence Agreements with interested third parties for the supply of Data which are no less favourable in their terms and conditions to the Licensee than the Standard Licence Agreement.
- 6.2 Subject to 6.3, Telstra undertakes that the term of each Licence Agreement shall be five years unless a particular Licensee requests a shorter term, in which case the term of the Licence Agreement shall be that shorter term requested by the Licensee.
- 6.3 Telstra undertakes not to terminate any Licence Agreement except in accordance with the termination provisions set out in the Licence Agreement.
- 6.4 Telstra undertakes that it shall negotiate with third persons who express an interest in obtaining the supply of Data in a bona fide manner with a view to entering into Licence Agreements as soon as practicable. Interested Licensees should contact the NDS Legal Counsel, 436 Elgar Road, Box Hill, Victoria.

7 Price charged to Licensees

- 7.1 Telstra undertakes to charge Licensees for the supply of Data an amount consisting of the following elements:
 - (a) such sum per Entry as agreed between Telstra and a Licensee, which shall not exceed \$0.18 per Entry;
 - (b) for the initial supply of Data, a Job Execution Charge; and
 - (c) for each subsequent supply of Data, a Supply Fee.

For the avoidance of doubt, Telstra acknowledges that only one Job Execution Charge will be chargeable to Licensees in relation to Data for all Exchange Areas supplied on the Delivery Date or which the Licensee requests to be supplied on the Delivery Date and that only one Supply Fee will be chargeable to Licensees in relation to Data for all Exchange Areas supplied on each Supply Date or which the Licensee requests to be supplied on a Supply Date. Subsequent requests for Data will be supplied on the same basis.

- 7.2 Telstra undertakes, if requested by a Licensee, to provide to that Licensee regular downloads of Data, on the terms and conditions set out in the Licence Agreement.
- 7.3 Each Licensee shall have the right to nominate in Schedule 2 of the Licence Agreement the Exchange Areas for which it requires Data.

8 Data of carriers other than Telstra

Telstra undertakes to co-operate with the Commission to seek the consent of carriers other than Telstra to the supply to Licensees of the name, address and telephone number of those other carriers' customers, where that information forms part of the Customer Database.

9 Multi Number Subscribers

Telstra undertakes that, where a business subscriber has a range of telephone numbers (for example, PABX extensions) the Licensee will only be supplied and charged for those Entries listed by subscriber in the White Pages™ directory.

10 Prohibited Information

Telstra undertakes that it will not use clause 3.7 of the Licence Agreement to appoint a sole distributor of Data.

11 REQUEST FOR INFORMATION

11.1 If the Commission -

- (a) has reason to believe that Telstra has breached, or may have breached, this undertaking as a result of receiving a written complaint;
- (b) is of the reasonable belief that it requires written information or documents ("Information") from Telstra to determine whether or not that breach of the undertaking has occurred;
- (c) informs Telstra in writing of the nature of the alleged breach including the provision of the undertaking which the Commission has reason to believe Telstra has breached; and
- (d) requests Telstra in writing to furnish Information relevant to the alleged breach,

Telstra undertakes to provide such Information that is within its possession, custody or control to the Commission within fourteen days of receipt of the request provided that it will not breach this undertaking should it fail to provide the Information within fourteen days for any cause beyond its reasonable control.

- 11.2 The Commission shall keep any Information furnished by Telstra under this provision confidential and shall only use the Information for the purpose of determining whether or not Telstra may have breached the Undertaking.
- 11.3 The Commission shall use reasonable endeavours to notify Telstra of the view it has reached on whether or not the alleged breach has occurred, on or before the expiry of 30 days from receipt of any Information.
- 11.4 Where the Commission is of the view that Telstra has breached the undertaking the Commission may exercise its rights under section 87B of the Trade Practices Act. In the event that the Commission decides not to exercise such rights Telstra and the Commission shall meet as soon as practicable to discuss the alleged breach and ways in which any matters of dispute between the parties might be resolved.
- 11.5 Where the Commission does not form the view that Telstra has breached the undertaking the Commission shall within 5 days of notifying Telstra of this result, return the Information including all copies made by the Commission to Telstra.
- 11.6 Where despite using reasonable endeavours the Commission is unable to notify Telstra of its view on whether or not it believes Telstra has breached the undertaking under clause 11.3, the Commission shall take such further time as it reasonably requires to reach a view after which time provisions 11.4 and 11.5 shall apply as the case requires.

ACKNOWLEDGEMENTS

12 Publicity

- 12.1 Telstra acknowledges that the terms of this undertaking shall be available to the public through the Section 87B register, and that the Commission may from time to time publicly refer to this undertaking.
- 12.2 Both the Commission and Telstra may make press releases in relation to this undertaking. These press releases shall be copied to the other party prior to distribution.
- 12.3 The Commission acknowledges that Telstra is not required to advertise this undertaking.

13 No derogation of rights

- 13.1 Telstra acknowledges that this undertaking in no way derogates from the rights and remedies available to any other person arising from Telstra's conduct.
- 13.2 Telstra claims copyright in its directories but acknowledges that the Commission neither accepts or rejects this claim.

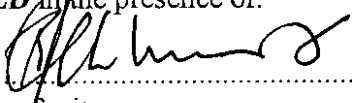
14 Review

- 14.1 The Commission acknowledges that, during the Term, Telstra may, at any time, seek a review of the continuation of this undertaking.

- 14.2 The Commission acknowledges that this undertaking is given to facilitate certain market outcomes, and therefore in the event of a material change in market conditions (other than a change caused directly or indirectly as a result of the implementation of this undertaking), including changes arising from the new telecommunications regulation regime, the Commission will review this undertaking and negotiate in good faith with Telstra the amendment or revocation of this undertaking.
- 14.3 For the avoidance of doubt, this undertaking shall continue to be fully operative notwithstanding a request for a review or that a review may be implemented in accordance with clauses 14.1 or 14.2.

TM Trademark of Telstra Corporation Limited


SIGNED by)
as authorised representative for)
TELSTRA CORPORATION)
LIMITED in the presence of:)


.....)
Signature of witness)

BRUCE AKHURST)
.....)
Name of witness (block letters))

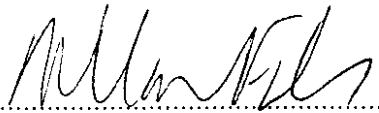
242 EXHIBITION ST. MELBOURNE)
.....)
Address of witness)

SOLICITOR)
.....)
Occupation of witness)



.....
By executing this agreement the signatory
warrants that the signatory is duly
authorised to execute this agreement on
behalf of **TELSTRA CORPORATION**
LIMITED

ACCEPTED BY THE AUSTRALIAN
COMPETITION AND CONSUMER
COMMISSION PURSUANT TO SECTION 87B
OF THE TRADE PRACTICES ACT 1974.


.....
Chairman

Dated 18/2/97

Dated

1996

Licence Agreement

**TELSTRA CORPORATION
LIMITED (ACN 051 775 556)
("Telstra")**

**XXXXXXXXXX
("Licensee")**

**Mallesons Stephen Jaques
Solicitors**

Rialto
525 Collins Street
Melbourne Vic 3000
Telephone (03) 9643 4000
Facsimile (03) 9643 4999

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- (b) the receiving party establishes was lawfully in that party's possession prior to that date;
- (c) subsequently became readily available in the public domain through any means except an unauthorised act or omission on the part of the receiving party or on the part of its officers, employees, advisers or consultants which directly or indirectly results in the Confidential Information becoming available in the public domain; or
- (d) the receiving party establishes was subsequently supplied to that party by a third party without an obligation of confidence being imposed on, and by that third party; or
- (e) the receiving party establishes was independently developed by it without a breach of this agreement.

"Contract Price" means the sum payable to Telstra by the Licensee on the Delivery Date for the Data as specified in item 2 of Schedule 1.

"Customer" means a person to whom Telstra provides a Telephone Service.

"Customer Database" means the computer based database of which the Data forms a part and which is compiled by or on behalf of Telstra for directory purposes and which contains customer data consisting of Name, address and telephone number.

"Data" means the information set out in Schedule 2.

"Delivery Date" means [insert date Licensee is to first receive the Data].

"Directory" means a list of Names, addresses and telephone numbers (with or without other or further details) organised alphabetically or according to any occupational, type of service or other grouping which list has been derived from or using the Data or any part of it and whether or not supplemented with other or further information.

"Download Date" means the date the Data is loaded from the Customer Database onto the media to be provided to the Licensee.

"Entry" means a business or Government customer's Name, address and telephone number and, where applicable, occupation information contained in the Data supplied pursuant to this agreement. For the avoidance of doubt each separate Telephone Service supplied to a business or Government customer is a separate Entry.

"Exchange Area" means Telstra network exchange areas and which for the purpose of this agreement specifically refers to the Exchange Area or Areas specified in schedule 2.

"Insolvency Event" means the happening of any of these events

- (a) an application is made to a court for an order or an order is made that the Licensee be wound up; or
- (b) an application is made to a court for an order appointing a liquidator or provisional liquidator in respect of the Licensee, or one of them is appointed, whether or not under an order; or
- (c) an administrator is appointed in respect of the Licensee;
- (d) the Licensee or person enters into, or resolves to enter into, a scheme of arrangement or composition with, or assignment for the benefit of, all or any class of its creditors, or proposes a reorganisation, moratorium or other administration involving any of them; or
- (e) the Licensee resolves to wind itself up, or otherwise dissolve itself, or gives notice of intention to do so, except to reconstruct or amalgamate while solvent on terms approved by Telstra or is otherwise wound up or dissolved; or
- (f) the Licensee is or states that it is unable to pay its debts when they fall due; or
- (g) a receiver or receiver and manager is appointed in respect of the Licensee or the whole or any part of the business of the Licensee or steps are taken to enforce a security in respect of an asset of the Licensee.

“Job Execution Charge” means an amount which reflects the costs reasonably incurred by Telstra in supplying the initial download of Data (irrespective of the number of Exchange Area to which the Data relates) to the Licensee but which shall not exceed \$750.00.

“Minister” means the person from time to time appointed as the Minister for Communications and the Arts or any substitute portfolio.

“Name” means the individual, firm, body corporate, association (whether incorporated or not), government or governmental, semi-governmental or local authority or agency name or description or Trade Mark which may be or is used to identify a Customer.

“Prescribed Terms” means the terms, conditions and warranties implied by law into contracts for the supply of goods and services.

“Prohibited Information” is the type of information referred to in clause 3.7 from time to time and also includes silent numbers, unlisted numbers, suppressed addresses, no entry lines and information relating to a Telephone Service provided by a carrier other than Telstra.

“Supply Date” means the date the Licensee has nominated in accordance with clause 3.1(b) for each subsequent supply of Data to the Licensee after the Delivery Date.

“Supply Fee” means an amount which reflects the costs reasonably incurred by Telstra in supplying each subsequent download of Data (irrespective of the number of Exchange Areas to which the Data relates) to the Licensee but which shall not exceed \$375.00 for each subsequent download.

“Supply Price” means the sum payable to Telstra by the Licensee on the Supply Date for the Data as set out in item 3 of Schedule 1.

“Telephone Service” means a public switched telephone service.

“Term” means a period of 5 years or less as required by the Licensee before executing this agreement or as the parties may agree after the Commencement Date or until this Agreement has been terminated in accordance with clause 9, whatever occurs earlier.

“Trade Mark” means logo, symbol, get-up, trade mark, trade name, service mark, brand name and similar rights, whether registered or unregistered and includes those trade marks described in item 4 of Schedule 1.

1.2 In this agreement, unless otherwise indicated:

- (a) words and phrases defined in the Act have the same meaning when used in this agreement, unless the context dictates otherwise;
- (b) the word person includes a firm, body corporate, an unincorporated association or an authority;
- (c) words importing a gender include all other genders;
- (d) the singular includes the plural and vice versa;
- (e) headings are inserted for convenience only and do not affect the interpretation of this agreement;
- (f) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- (g) if any payment falls due or an act is to be done on a day which is not a Business Day, that payment shall be due and that act shall be done on the next Business Day;
- (h) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including, but not limited to, persons taking by novation) business divisions and permitted assigns;
- (i) a reference to a statute includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;

- (j) a reference to this agreement includes any variation or replacement of it;
- (k) a reference to a clause, schedule or appendix is a reference to a clause of or schedule or appendix to this agreement and references to this agreement include any recital, schedule or appendix; and
- (l) a clause in the body of this agreement shall prevail to the extent of any inconsistency with any clause or paragraph in a Schedule to this agreement.

2 Grant of licence

- 2.1 Telstra grants to the Licensee a non-exclusive, non-transferable licence to use the Data for the sole purpose of undertaking the Activities.
- 2.2 The Licensee acknowledges that it may not disclose, use or reproduce the Data for any purpose other than to undertake the Activities, unless otherwise agreed in writing with Telstra.
- 2.3 The Licensee must not and must ensure that its employees and officers do not -
 - (a) sub-license, on-sell, assign, transfer or otherwise part with possession of the whole or any part of the Data;
 - (b) disclose to any other person or permit any other person to use, reproduce or deal with the whole or any part of the Data;
 - (c) copy, reproduce, adapt or record the whole or any part of the Data except to the extent necessary for bona fide back-up purposes and to the extent necessary to undertake the Activities; or
 - (d) use the Data or any part thereof for any purpose other than the Activities.
- 2.4 The Licensee shall:
 - (a) take such reasonable and appropriate steps to ensure the safety of the Data, including storing media on which the Data is supplied, together with any copies made, in a secure place;
 - (b) implement and ensure the observance of such further measures as Telstra may reasonably direct be taken to ensure the security of the Data storage medium from unauthorised use and access by any person; and
 - (c) from time to time upon receiving at least 7 days notice from Telstra, comply with Telstra's reasonable requests for access to its premises for the purpose of allowing Telstra to review and

determine whether the Licensee is complying with its obligations pursuant to this agreement and to inspect storage and security measures in place for the protection of the Data and Data storage medium.

- 2.5 The Licensee agrees not to copy, reproduce or adapt the whole or a substantial part of the classifications, including headings and cross references, developed by or for Telstra and used in Telstra's classified directories. The Licensee may independently develop and compile its own classifications for and compilations of the Data.
- 2.6 For the avoidance of doubt, clause 2.3 does not prevent the Licensee from supplying or in any other way dealing with or disposing of any Directory produced by the Licensee in the course of undertaking the Activities in accordance with this agreement.
- 2.7 The Licensee acknowledges that certain aspects of the Data are protected by copyright. Unless and until Telstra's claim for copyright is finally determined against it by Court decision or Telstra otherwise waives its claim the Licensee must ensure that a notice in the form "This material is subject to Copyright. All rights reserved", or in such other form as may be agreed by Telstra and the Licensee, accompanies all material forms of the Data.

3 Supply of Data

3.1

- (a) During the Term, Telstra will supply the Data to the Licensee at the location specified in item 1 of Schedule 1 on the Delivery Date and if applicable, on each Supply Date.
- (b) The Licensee must provide to Telstra at least 21 days prior written notice of each Supply Date.

3.2 Telstra will supply the Data in the format and medium set out in Schedule 2 or as the parties otherwise agree from time to time. The medium upon which the Data is stored will be stamped with the Download Date.

3.3 The Licensee acknowledges that the information stored on the Customer Database, and accordingly, the Data to be supplied and licensed to the Licensee, may contain inaccuracies, errors and omissions.

3.4 Telstra warrants that the Data provided under this clause 3 will be a complete and accurate reproduction of the Data as it exists in the Customer Database on the Download Date.

3.5 The Licensee acknowledges that the Customer Database changes daily and that Data obtained from the Customer Database on the Download Date may be inaccurate after the Download Date.

- 3.6 Within 7 days after receipt of the Data, the Licensee will, in accordance with any request from Telstra, either return to Telstra the media on which the Data is stored or completely erase the Data from those media.

Prohibited Information

- 3.7 The Licensee acknowledges that from time to time during the Term Telstra may be prohibited, inhibited or restricted from using for a particular purpose or supplying or disclosing information or data stored on the Customer Database to any third party by reason of any one or more of the following:
- (a) a contractual or other arrangement with a Customer or a telecommunications supplier;
 - (b) legislation;
 - (c) a direction by AUSTEL or the Minister or any statutory or governmental authority; or
 - (d) any other obligation pursuant to law or principles of equity,
- (such information or data being "**Prohibited Information**"). The Licensee acknowledges that Telstra is under no obligation to supply to the Licensee Prohibited Information. However, if Prohibited Information is supplied to the Licensee, the Licensee shall, upon receipt of notification from Telstra, take appropriate steps including but not limited to steps similar to those described in clause 3.8 to ensure compliance with the matters referred to in (a), (b), (c) and (d) above.
- 3.8 From time to time during the Term Telstra may notify the Licensee that part of the Data supplied by Telstra to the Licensee is or comprises Prohibited Information. The Licensee must, upon receipt of such notice from Telstra, forthwith:
- (a) cease to access or use or include in any Directory produced or distributed after receipt of the notice, any part of the Data which is Prohibited Information;
 - (b) erase from any medium recording the Data or part thereof in any material form, all of the Data which is Prohibited Information; and
 - (c) take all reasonable steps, at Telstra's cost, to assist Telstra in any remedial or recall program relating to that part of the data which is Prohibited Information.
- 3.9 Upon request by Telstra, the Licensee shall promptly deliver to Telstra a statutory declaration made by an authorised officer of the Licensee declaring that the Licensee has complied with its obligations set out in clauses 3.6, 3.7 and 3.8.
- 3.10 Telstra shall refund the Licensee any amount which has been paid for part of the Data if that part of the Data becomes Prohibited Information

and shall reimburse the Licensee any reasonable costs and expenses incurred by the Licensee in complying with Telstra's requirement under clauses 3.7 and 3.8.

- 3.11 The obligations in clauses 3.6, 3.7, 3.8, 3.9 and 3.10 survive termination of this agreement.

Exchange Areas

- 3.12 From time to time during the Term, Telstra may make alterations to the geographic boundaries covered by the Exchange Areas. Telstra will use all reasonable endeavours to provide written notice to the Licensee of any such alterations at least 30 days prior to the effective date of such alterations and Schedule 2 shall be deemed to be amended to reflect such alterations as and from the date such alterations become effective.
- 3.13 Telstra will use its reasonable endeavours to provide written notice to the Licensee within 10 days of becoming aware that the telephone exchanges in the Exchange Areas have not been technically conditioned as required to implement the AUSTEL Numbering Plan in accordance with the timetable set out in that Plan and will notify the Licensee of the anticipated time that such conditioning will take place.

4 Payment and Accounts

- 4.1 The Licensee will pay Telstra the Contract Price on the Delivery Date and the Supply Price on each Supply Date.
- 4.2 Telstra shall be entitled to interest on all overdue amounts at the annual rate of 2% above the bank bill rate per month until the date of payment in full together with all legal expenses incurred by Telstra in attempting to obtain payment of the amount due.
- 4.3 Any payments to be made by one party to the other pursuant to this clause shall be made by [bank cheque].

5 Warranties

- 5.1 The Licensee warrants that:
- (a) it will not without Telstra's prior written consent, represent, suggest or imply in any way whatsoever that Telstra or any of its related companies in any way approves of, sponsors, endorses or is affiliated with any products produced by the Licensee;
 - (b) it will expressly provide on all products produced by the Licensee and on all materials produced relating to any products that such products are not sponsored or approved by or affiliated with Telstra or any of its related companies; and
 - (c) it will not use any Trade Mark of Telstra.

- 5.2 The Licensee may name Telstra as the source of the Data provided that if the Licensee decides to name Telstra as the source of the Data, it may only do so using the following statement, which must be displayed in its entirety in the one position inside the front cover of the Licensee's product:

“A source of original business subscriber source data used in this directory has been Telstra. [Licensee] may have altered or enhanced this data. Telstra does not in any way sponsor, approve or in any way affiliate itself with [Licensee's directory]. Any customer complaints or queries about [Licensee's directory] should be made to [Licensee] on [phone number].”

6 Limitation of Liability

- 6.1 The Licensee acknowledges that:

- (a) in obtaining the Data from Telstra and using the Data, the Licensee is relying upon its own enquiries, skill and judgement and has not relied on any statement or on any conduct which may have been made by or on behalf of Telstra including, without limiting the generality of the foregoing, any statement or any conduct in relation to the quality or accuracy of the Data or the uses to which the Data may be put;
- (b) except as provided in clause 3.4 Telstra does not warrant the quality, completeness or accuracy of the Data or the uses to which the Data may be put and has warned the Licensee that the Data may contain inaccuracies, errors and omissions and may not be up to date and that Telstra is not obliged to notify the Licensee at any time of any inaccuracies, errors and omissions in the Data of which Telstra becomes aware;
- (c) Telstra is under no obligation to inform the Licensee of changes to the Data, including, but not limited to, a change to a telephone number or area code made as a result of the implementation of the AUSTEL Numbering Plan;
- (d) the Licensee is responsible for determining the effect of the AUSTEL Numbering Plan on any of the Data and making any necessary changes to the Data as a result of the implementation of the AUSTEL Numbering Plan;
- (e) Telstra's classification of a Customer as a residential or business customer is based on Telstra internal guidelines from time to time and may not be the same as a classification which the Licensee or any other person would make of that Customer; and
- (f) in entering into this agreement, the Licensee has not relied on any representations or warranties about its subject matter except as expressly provided in this agreement.

- 6.2 If liability of one party to the other party for breach of a Prescribed Term is capable of exclusion it is hereby excluded.
- 6.3 If liability of one party to the other party for a breach of a Prescribed Term is capable of limitation it is hereby limited (where it is fair and reasonable to do so) at the option of the party supplying the goods or services to:
- (a) in the case of goods, the resupply of those goods, or payment of the cost of resupplying those goods; and
 - (b) in the case of the supply of services, the supply of those services again, or the payment of the cost of having those services supplied again.
- 6.4 Except as provided by Prescribed Terms (if any) which are not capable of exclusion or as otherwise expressly provided in this agreement:
- (a) all conditions, warranties, terms, undertakings, duties and obligations expressed or implied by law in any way relating to goods or services are hereby excluded;
 - (b) Telstra shall not be liable in contract, tort, negligence, breach of statutory duty or otherwise to the Licensee, or any other person, in respect of any loss or damage, including loss of property or profit, claims or demands of any nature arising directly, or indirectly, out of the provision of the Data, or its use, or out of any inaccuracy, error in, or omission from the whole of or any part of the Data or as a result of the download of the Data being delayed or cancelled pursuant to this agreement.

7 Indemnity

- 7.1 Subject to any Prescribed Terms which are implied into this agreement and which cannot be excluded, the Licensee shall indemnify and keep indemnified Telstra, its employees, servants and agents against any and all claims, loss, liability, damage, costs (including legal costs and the costs associated with any compromise), compensation, or expense whatsoever which may be brought, or made against it, them or any of them, by any person in respect of, or arising directly or indirectly out of:
- (a) this agreement or any breach of this agreement; or
 - (b) any Directory produced or supplied by the Licensee or the use of the Data by or on behalf of the Licensee,
- whether negligent or otherwise.

7.2

- (a) If Telstra receives a claim within clause 7.1 and wishes to be indemnified under clause 7.1 in relation to any liability and cost incurred in respect of that claim, Telstra shall:
- (i) promptly notify the Licensee in writing of the claim;
 - (ii) at the Licensee's request, permit the Licensee to have control of the defence and any related settlement negotiations;
 - (iii) provide assistance and co-operate with the Licensee in the defence and any related settlement negotiations; and
 - (iv) if the Licensee does not make a request within paragraph (ii), consult with and seek the Licensee's consent before reaching any compromise, or compensation or settlement, in relation to the claim.
- (b) The Licensee shall not be required to indemnify Telstra for any compensation or settlement amounts paid by Telstra under clause 7.1 unless Telstra has complied with the requirements in clause 7.2(a).

7.3 This indemnity is a continuing obligation separate and independent from the other obligations of the Licensee and survives termination of this agreement.

7.4 It is not necessary for Telstra to incur expense or make payment before enforcing a right of indemnity conferred by this agreement.

7.5 For the avoidance of doubt, and without affecting the operation of clauses 7.1, 7.2 and 7.3, responsibility for dealing with and settling claims and complaints in relation to errors in Directories shall be allocated in the following manner:

- (a) Telstra shall be responsible for all errors in Directories published by Telstra; and
- (b) the Licensee shall be responsible for all errors in Directories published by the Licensee, regardless of how the error was caused.

8 Intellectual property and other rights

8.1 Except for the rights expressly provided in this agreement and to the extent expressly so provided, the Licensee shall not acquire any right, title or interest in or in relation to the Data, or the media on which the Data is supplied.

- 8.2 The Licensee will at Telstra's cost and expense cooperate with Telstra in the protection of any right, title or interest in or to the Data including without limitation, assisting Telstra in the prosecution or defence of actions before courts, administrative agencies, arbitration, or any other legal proceedings which protection is necessitated by virtue of the Licensee's access to, or use of, the Data under this agreement.
- 8.3 Telstra warrants that it is entitled, or will be entitled or will procure that it is entitled at the relevant time, to provide the Data and the associated storage medium in accordance with this agreement, and to permit the Licensee's use of the Data in accordance with this agreement.
- 8.4 The Licensee will promptly notify Telstra of any:
- (a) reproduction of the whole or any substantial part of the Data or other infringement of Telstra's rights in or in relation to the Data by a third party,
 - (b) claim or action, or any threatened claim or action, for a breach of any third party right in the Data or any part thereof,
- of which it becomes aware.
- 8.5 Telstra shall promptly notify the Licensee upon becoming aware of any claim or action, or any threatened claim or action, for a breach of any third party right in the Data or any part thereof. Telstra shall at its own cost and expense provide to the Licensee reasonable assistance in such a claim or action, and be liable for all reasonable costs and expenses (including legal costs and expenses) and all reasonable loss and damage suffered by the Licensee as a result of such claim or action or threatened claim or action, provided the Licensee has not contributed to any breach of any third party right in the Data or part thereof by reason of the Licensee breaching this agreement.
- 8.6 Telstra shall have no right or interest whatsoever in any improvement to, or adaptations and other variations of, the Data made by the Licensee pursuant to this agreement.

9 Term and termination

- 9.1 The agreement will commence on the Commencement Date and, subject to clauses 9.2, 9.3 and 11 shall continue in full force and effect for the Term.
- 9.2 A party ("**Non-defaulting Party**") may terminate this agreement by prior written notice to the other party ("**Defaulting Party**") if the Defaulting Party breaches any term of this agreement and such breach is not remedied within 30 days after written notice has been given to the Defaulting Party by the Non-defaulting Party requiring the breach to be remedied or if the breach is not capable of remedy, adequate compensation is not made to the reasonable satisfaction of the Non-Defaulting Party within 30 days after the written notice to the Defaulting

Party specifying the failure complained of and requiring its remedy or compensation has been given.

9.3 This agreement may be terminated forthwith, subject to the provisions in this clause 9.3 and clause 9.4, by Telstra if:

- (a) the Licensee ceases to conduct business or threatens to cease conducting business; or
- (b) an Insolvency Event occurs; or
- (c) the Licensee uses the Data for any purpose other than to undertake the Activities; or
- (d) Telstra has reasonably formed the view that the Licensee is using the Data for unlawful purposes; or
- (e) the Licensee becomes the subject of serious and persistent adverse publicity or commentary in the media (or any of them) in relation to its use of the Data; or
- (f) ownership in the assets of that part of Telstra which maintains the Customer Database, is transmitted or transferred to, or vested in another person, other than a related corporation of Telstra. In such circumstances, whilst Telstra shall be entitled to terminate this agreement, Telstra shall:
 - (i) use reasonable endeavours to seek to ensure that any such new owner shall continue to supply Data to the Licensee; and
 - (ii) provide written notice of the decision to dispose of the assets to the Licensee promptly provided that no notice need be given unless and until the decision is officially made public by Telstra.
- (g) the Minister or any statutory governmental authority so directs; or
- (h) pursuant to any post June 1997 Telecommunications regulation, a body independent of Telstra assumes responsibility for providing and maintaining a database which contains the name, address and telephone number of Telstra's business and Government Customers.

Provided that if the ground for termination under this clause is based on an event within paragraph (a), (c), (d), or (e), Telstra's notice of termination shall not take effect unless:

- (i) the Licensee has at least 14 days advance notice in writing of Telstra's intention to terminate under any of these provisions and of the evidence establishing the alleged event; and

- (ii) if there is a dispute as to the ground for termination the parties have complied with clauses 11.1 and 11.2.
- 9.4 Termination, completion or expiry of this agreement for any reason shall not extinguish or otherwise affect:
- (a) any rights of either party against the other which:-
 - (i) accrued prior to the time of the termination; or
 - (ii) otherwise relate to or may arise at any future time from any breach or non-observance of obligations under this agreement which arose prior to the time of the termination, completion or expiry; or
 - (b) the provisions of this agreement which by their nature survive termination; or
 - (c) the Licensee's right to use (pursuant to the terms and conditions in this agreement) Data already provided to it before termination.

10 Confidentiality

10.1

- (a) The parties shall keep absolutely secret and confidential at all times the Confidential Information and shall not use or disclose any Confidential Information or any part thereof to any person except:
 - (i) to employees, legal advisers, auditors, consultants or agents of the receiving party requiring the Confidential Information for the purpose of this agreement;
 - (ii) to the extent expressly permitted by this agreement;
 - (iii) with the written consent of the other party, such consent not to be unreasonably withheld; or
 - (iv) if required by law or a stock exchange.
- (b) The receiving party shall ensure that any employee, legal adviser, auditor, consultant or agent to whom Confidential Information is disclosed pursuant to clause 10.1(a), is aware of the parties' obligations pursuant to this clause and at all times keep absolutely secret and confidential the Confidential Information and shall use the Confidential Information for the sole purpose of this agreement.
- (c) The receiving party must take such reasonable and appropriate steps to ensure the safety of the Confidential Information including marking any documentation embodying the Confidential Information or part thereof as confidential and

storing media on which Confidential Information is supplied, together with any copies made, in a secure place.

- 10.2 The obligations of the parties contained in this clause shall survive termination of this agreement.

11 Dispute Resolution

- 11.1 If a dispute arises under or in relation to this agreement the parties will each within 7 days:-
- (i) refer the dispute to an appropriate officer who has authority to settle the dispute; and
 - (ii) give written notice to each other of the nature of the claim or dispute and of the name and position of the officer to whom it has been referred.
- 11.2 Within 7 days of receipt of the written notice referred to in clause 11.1 the officers will meet and undertake bona fide negotiations to resolve the dispute.
- 11.3 Except as provided in this agreement, the parties shall each bear their own costs incurred in complying with clauses 11.1 and 11.2.
- 11.4 Notwithstanding the existence of a dispute, each party shall continue to perform its obligations under this agreement.
- 11.5 Nothing in this clause 11 prevents a party from applying to a court at any time for relief with respect to any matter arising under or in relation to this agreement or from exercising any other right it might have under this agreement.

12 General

Governing Law

- 12.1 This agreement is governed by the law in force in Victoria and the parties irrevocably and unconditionally submit to the exclusive jurisdiction of the courts of Victoria, and the courts of appeal from them, for determining any dispute concerning this agreement. Each party waives any right it has to object to an action being brought in those courts including, but not limited to, claiming that the action has been brought in an inconvenient forum or that those courts do not have jurisdiction.

Severance

- 12.2 If the whole or any part of a provision of this agreement is void, unenforceable or illegal in a jurisdiction it is severed for that jurisdiction. The remainder of this agreement has full force and effect and the validity and enforceability of that provision in any other jurisdiction is not

affected. This clause has no effect if severance alters the basic nature of this agreement or is contrary to public policy.

Entire agreement

- 12.3 This agreement constitutes the entire agreement of the parties about its subject matter and any previous agreements, understandings and negotiations on that subject matter cease to have any effect. No agreement or understanding varying or extending this agreement, including the inclusion of any new Exchange Area in relation to the supply of the Data, shall be binding upon the parties unless in writing and signed by both parties.

Notices

- 12.4 Any notice, approval, consent or other communication in connection with this agreement:

- (a) must be in writing; and
- (b) must be left at the address of the addressee, or sent by prepaid ordinary post (airmail if posted to or from a place outside Australia) to the address of the addressee or sent by facsimile to the facsimile number of the addressee which is specified in this clause or if the addressee notifies another address or facsimile number then to that address or facsimile number.

The address and facsimile number of each party is:

Telstra
Address:

Facsimile:
Attention:

[LICENSEE]
Address:

Facsimile:
Attention:

Assignment

- 12.5 A party must not assign, transfer, mortgage or otherwise dispose of or encumber any of its rights or obligations under this agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld.

Waiver

- 12.6 A provision or a right created under this agreement may not:
- (a) be waived except in writing signed by the party granting the waiver; or

(b) be varied except in writing signed by the party.

Exercise of rights

12.7 A party may exercise a right, power or remedy at its discretion and separately or concurrently with another right or power or remedy. A single or partial exercise of a right power or remedy by a party does not prevent a further exercise of that or any right, power or remedy. Failure by a party to exercise or delay in exercising a right, power or remedy does not prevent its exercise.

Publicity

12.8 A party may not make press or other media announcements or releases relating to this agreement, without the approval of the other party to the form and manner of the announcement or release, unless that announcement or release is required to be made by law or by a stock exchange.

Events beyond party's control

12.9 A party will not be liable for any breach of its obligations under this agreement by a cause beyond that party's reasonable control.

Further assurance

12.10 Each party agrees, at its own expense, on the request of the other party, to do everything reasonably necessary to give effect to this agreement and the transactions contemplated by it, including but not limited to, the execution of documents.

Approvals

12.11 Where a party is to give its consent or approval pursuant to this agreement, such consent or approval must not be unreasonably withheld.

Directories

12.12 The Licensee acknowledges that notwithstanding any term of this agreement, Telstra reserves the right to produce and publish directories in any form and reserves the right to determine in its sole discretion, the format, style and content of the directories or which it produces and publishes and any other matters relating to the content of those directories.

EXECUTED as an agreement.

SCHEDULE 1

1. Address of the Licensee

Data will be provided to the Licensee at the following address:

Address:

2. Contract Price

The Licensee will pay to Telstra:

- (a) [as agreed by the parties, being not more than \$0.18 per Entry supplied to the Licensee]; and
- (b) a Job Execution Charge.

3. Supply Price

The Licensee will pay to Telstra:

- (a) [as agreed by the parties, being not more than \$0.18 per Entry supplied to the Licensee]; and
- (b) a Supply Fee.

4. Trade Marks

[to be inserted]

SCHEDULE 2**DATA**

- A. "Data" means
- (a) the Name, address and telephone number of Telstra business and Government customers as stored on the Customer Database on the Download Date;
 - (b) the Name, address and telephone number of business and Government customers of carriers other than Telstra as stored on the Customer Database where the other carrier consents to the supply to the Licensee;
 - (c) business customer occupation information (such as "plumber" or "solicitor"), stored on the Customer Database that has been obtained by NDS for publication as part of a customer's entry in the Telstra White Pages™ directory; and
 - (d) any other information which Telstra in its sole discretion determines shall be provided to a Licensee on the terms and conditions of the Licence Agreement.

but does not include Prohibited Information.

- B. Data will be supplied in the following format and medium.

[format]

[medium]

- C. Exchange Area comprises:

- (a) [Specify the Exchange Area]; and
- (b) any other Exchange Area which the [Licensee may nominate] [parties may agree in accordance with clause 12.3] for supply under the terms and conditions of the Licence Agreement.

SCHEDULE 3**ACTIVITIES**

1. **personal use**

- (a) purely internal use (whether oral, written or electronic) by the Licensee, such that the only persons having access to the Data are employees, directors, or consultants of the Licensee

directory use

- (b) use in the preparation of Directories in a form or format suitable for end-user use which is then sold, licensed or supplied to persons in a magnetic, optical, CD-ROM, microfiche or some other physical form and use in the preparation and delivery of an oral directory service.

2. The Licensee will not:

- (a) use, or authorise, aid, abet, counsel or procure any use of the Data for any purpose; or
- (b) include in any Directory any material

which is immoral or offensive to the common decency of the general population.

In this Licence Agreement TM means Trade Mark of Telstra Corporation Limited.

EXECUTION PAGE

SIGNED by)
 as authorised representative for)
TELSTRA CORPORATION)
LIMITED (ACN 051 775 556) in the)
 presence of:)
)
)
 Signature of witness)
)
)
 Name of witness (block letters))
)
)
 Address of witness)
)
)
 Occupation of witness)

.....
 By executing this agreement the signatory
 warrants that the signatory is duly
 authorised to execute this agreement on
 behalf of **TELSTRA CORPORATION**
LIMITED (ACN 051 775 556)

SIGNED by [**LICENSEE**])
 in the presence of:)
)
)
 Signature of witness)
)
)
 Name of witness (block letters))
)
)
 Address of witness)
)
)
 Occupation of witness)

.....
 By executing this agreement the signatory
 warrants that the signatory is duly
 authorised to execute this agreement on
 behalf of [**LICENSEE**]