



# GLOBAL BUSINESS SERVICES AGREEMENT

## AGREEMENT TERMS

### 1 THIS AGREEMENT

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- 1.1 This Agreement consists of:
- (a) each Service Order Form;
  - (b) the Service Schedules; and
  - (c) the terms and conditions set out in this document (the **Agreement Terms**).
- 1.2 If there is an inconsistency among the parts of this Agreement, the document listed earlier in Section 1.1 will prevail to the extent of the inconsistency.

### 2 TERM

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#### AGREEMENT TERM

- 2.1 This Agreement commences on the Effective Date and continues until it is terminated in accordance with this Agreement. For the avoidance of doubt, in the event this Agreement is terminated, all of the Services under this Agreement shall terminate concurrently with the termination of this Agreement.

#### SERVICE TERM

- 2.2 The term for each Service commences on the Service Start Date and continues for the Initial Period, unless terminated or renewed in accordance with, and prior to the termination of, this Agreement (**Service Term**).
- 2.3 After the Initial Period, the Service Term for each Service will automatically extend on a month-to-month basis on the existing terms, unless either party notifies the other (at least thirty (30) days before any automatic extension) that it does not wish the Service Term to extend automatically. For the avoidance of doubt, in the event a Service is terminated in accordance with this Agreement, the termination of such Service shall not terminate or otherwise affect this Agreement or any other Service under this Agreement.

### 3 TELSTRA'S COMMITMENT TO CUSTOMER

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- 3.1 Telstra will:
- (a) provide the Services with reasonable care and skill;
  - (b) provide the Services in accordance with the Service Levels, however given the nature of telecommunications systems Telstra does not guarantee that they will be continuous or fault free;
  - (c) ensure that all work Telstra performs in connection with the Services is carried out by competent and suitably qualified personnel; and
  - (d) meet with Customer regularly to discuss the Services and Telstra's performance under this Agreement.

## **4 SERVICE LEVELS**

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### **SERVICE LEVELS**

4.1 The Service Levels (including any Service Level Credits, if any) applicable to a Service are set out in the applicable Service Schedule.

### **SERVICE LEVEL CREDITS**

4.2 If Telstra fails to meet a Service Level, Customer may be entitled to a Service Level Credit. To claim a Service Level Credit, Customer must notify Telstra of its claim within sixty (60) days after the end of the month in which the Service failure occurred (or such other period as set out in the applicable Service Schedule), identifying the associated trouble ticket number and the type of Service issue, such as Unavailability.

4.3 If Customer does not make a claim in accordance with Section 4.2, it cannot make any claim against Telstra in respect of the service failure.

4.4 Where the failure of the Service is due to an Exclusion Event, Telstra will not be liable for any failure to meet a Service Level (including the payment of any Service Level Credits).

## **5 CUSTOMER'S COMMITMENT TO TELSTRA**

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5.1 Customer:

- (a) must provide Telstra with all reasonable assistance and access to Customer's Premises, information, network, infrastructure, equipment and systems as required by Telstra to provide the Services;
- (b) must ensure that all equipment connected to the Services by Customer, or on Customer's behalf, is technically compatible with the applicable Service and that Customer's Premises and the equipment comply with, and are used in accordance with, all reasonable procedures notified by Telstra and Applicable Law;
- (c) must not alter, tamper, reverse engineer, repair or attempt to repair the Services or cause, or allow, anybody else to do any of these acts;
- (d) must comply with Telstra's Acceptable Use Policy when using the Services;
- (e) is solely responsible for selecting, supplying and maintaining Customer's own facilities and equipment, except where expressly provided otherwise in a Service Schedule;
- (f) is solely responsible for the content and security of any data or information which Customer sends or receives using the Services, except where expressly provided otherwise in a Service Schedule;
- (g) is solely responsible for any use of the Services, or any Facility connected to the Services on Customer's Premises, by Customer or any End User;
- (h) must not resell or re-supply a Service to any third party without Telstra's consent (which Telstra may give in its absolute discretion and subject to certain conditions); and
- (i) must not infringe, violate or misappropriate the Intellectual Property Rights of Telstra, Telstra's Service Providers or any third party in performing its obligations or exercising its rights under this Agreement.

5.2 If Customer receives equipment from Telstra, Customer will have no right, title or interest to it, nor use it for any purpose other than in conjunction with the Services as directed by Telstra. While Telstra's equipment is in Customer's care or on Customer's Premises, Customer is responsible for any theft or damage and

must keep the equipment free and clear of any lien or other encumbrance. Customer must ensure that it has the necessary approvals and consents for the equipment to be installed and maintained at Customer's Premises, and provide a suitable physical environment for the correct operation of the equipment.

## **6 PAYMENT**

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- 6.1 Customer must pay Telstra all Undisputed Charges (a) by the date that is thirty (30) days from the date on which the invoice for such Charges was delivered or made available to Customer (the **Invoice Due Date**) and (b) in the Specified Currency.
- 6.2 Charges will generally consist of monthly recurring Charges and non-recurring Charges that are billed in advance and/or variable usage Charges that are billed monthly in arrears, and include, without limitation, any applicable Early Termination Charges payable by Customer.
- 6.3 For each Service, Telstra will (a) commence billing Customer for the Charges on the relevant Service Start Date, or as set out in the Order Form, and (b) deliver to Customer (or make available for Customer) the invoices for the Charges on a monthly basis thereafter.
- 6.4 If Customer does not pay any Undisputed Charges by the Invoice Due Date, Telstra may charge Customer interest (calculated on a daily basis) on any unpaid Undisputed Charges at a monthly rate of 1%. Under no circumstances will the amount charged by Telstra on such unpaid Undisputed Charges exceed the maximum amount chargeable by Applicable Law.
- 6.5 For the avoidance of doubt, Customer will:
- (a) not be responsible for paying any Disputed Charges until the Invoice Dispute for such Disputed Charges is resolved; provided that Customer has complied with its obligations under this Section 6 and Section 13, including, without limitation, Customer's obligation to notify Telstra of any Invoice Disputes before the relevant Invoice Due Date; and
  - (b) be deemed to have waived its right to challenge any Charges on an invoice under this Agreement if Customer fails to initiate the Dispute Procedure for an Invoice Dispute within twelve (12) months of the Invoice Due Date.

## **7 TAXES**

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- 7.1 Customer must pay all Taxes in respect of the Services. Unless expressly stated otherwise, the Charges for the Services are exclusive of any Taxes.
- 7.2 If Customer is required to make a Tax Deduction by Applicable Law, Customer must pay Telstra an additional amount so that, after making any Tax Deduction, Telstra is entitled to receive an amount equal to the payment which would have been due if no Tax Deduction had been required.

## **8 SUSPENSION OR TERMINATION**

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### **SUSPENSION OR TERMINATION OF SERVICES**

- 8.1 Subject to Section 9, Customer may terminate a Service at any time during the relevant Service Term (and prior to termination of this Agreement) by giving Telstra at least (thirty) 30 days' notice thereof.
- 8.2 Telstra may limit, suspend or terminate a Service at any time without notice to Customer, if in Telstra's reasonable opinion:
- (a) the supply or use of a Service breaches or is likely to breach Applicable Law;
  - (b) limiting, suspending or terminating a Service is required to comply with Applicable Law or any order, instruction or request issued by, or received from, a Governmental Body;
  - (c) the provision of a Service is likely to cause death or personal injury or damage to property; or

- (d) Customer breaches Telstra's Acceptable Use Policy.
- 8.3 Telstra may limit, suspend or terminate a Service at any time by giving Customer at least fourteen (14) days' notice, if:
- (a) Customer does not pay any Undisputed Charges due for that Service by the due date;
  - (b) a third party holding an encumbrance takes possession of the whole or a substantial part of the undertaking or property of Customer, Customer becomes unable to pay its debts when they are due or enters into, or resolves to enter into any arrangement, composition or compromise with, or assignment for the benefit of, its creditors generally, or any case, proceeding or other action is commenced relating to bankruptcy, insolvency, liquidation, reorganization or relief of debtors in respect of Customer; or
  - (c) if Customer has resold, resupplied or shared a Service to or with any third party without obtaining Telstra's consent.
- 8.4 Telstra may require Customer to pay a re-connection Charge if (a) Telstra suspends or terminates a Service (i) under Section 8.2 due to Customer's breach or (ii) under Section 8.3 and (b) following such suspension or termination, the Service is re-connected.
- 8.5 If Telstra decides to modify a Service or exit a Service from the market, then Telstra may:
- (a) without notice to Customer, make an immaterial modification to the Service or migrate Customer to a service that is substantially the same as the Service in all material respects;
  - (b) after giving Customer at least three (3) months' notice, make a material modification to the Service or migrate Customer to a service that is markedly different from the Service in all material respects; provided that, in the case of a migration under this Section 8.5(b), Customer may terminate the Service effective on the day before the proposed date of migration without the payment of any Early Termination Charges, if (i) Customer reasonably determines that the service to which Telstra proposes Customer migrate is detrimental to it and (ii) within forty-five (45) days of receipt of Telstra's written notice of migration, Customer provides Telstra with written notice of its desire to terminate the Service; or
  - (c) after giving Customer at least six (6) months' notice, terminate the Service.

## **TERMINATION OF AGREEMENT OR SERVICES**

- 8.6 If a party commits a material breach of this Agreement (including non-payment of any Undisputed Charges by the Invoice Due Date) and does not remedy the breach within thirty (30) days of receiving a notice to do so, then the other party may terminate this Agreement or terminate the relevant Service.

## **9 EFFECT OF TERMINATION**

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- 9.1 If, for any reason, this Agreement is terminated or a Service is terminated:
- (a) Customer must pay Telstra (i) all outstanding Charges by the relevant Invoice Due Date and, (ii) within thirty (30) days of request for payment, all other Charges outstanding as of the date of, or arising as a result of, termination of this Agreement or termination of a Service (including any Early Termination Charges in the case of (1) termination of a Service by Telstra pursuant to Section 8.2(c) or Section 8.3, (2) termination of this Agreement by Telstra pursuant to Section 8.6, (3) termination of a Service by Customer pursuant to Section 8.1, or (4) termination of a Service by either party as otherwise expressly provided for in the relevant Service Schedule);
  - (b) Telstra may, after providing reasonable notice to Customer, enter the Premises and remove (i) in the case of termination of this Agreement, any equipment belonging to Telstra, and (ii) in the case of termination of a Service, any equipment belonging to Telstra and connected to the terminated

Service. If Telstra is unable to gain access to the Premises in accordance with this Section 9.1(b), Customer will be required to pay Telstra for the value of the equipment at the time of original delivery, net depreciation (calculated on a straight line basis); and

- (c) all rights a party has accrued before termination of this Agreement or termination of a Service shall continue.

9.2 To terminate a Service, Customer must submit a Service termination notice to Telstra via e-mail to the then-current Telstra Account Manager. Such Service termination notice shall be deemed received by Telstra on the first Business Day after the date on which Telstra sends Customer confirmation of receipt of the Service termination notice.

9.3 If this Agreement is terminated for any reason, Sections 5.2 (Customer's Commitment to Telstra), 9 (Effect of Termination), 10 (Confidentiality and Privacy), 11 (Limitation of Liability), 12 (Third Party IP Claims), 13 (Dispute Resolution), 14 (General), 15 (Definitions) and associated obligations in a Service Schedule that by their nature survive termination of this Agreement shall continue in full force and effect. If a Service is terminated for any reason, this Agreement and all other Services under this Agreement shall continue in full force and effect.

## **10 CONFIDENTIALITY AND PRIVACY**

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10.1 Each party must treat as confidential information:

- (a) the terms of this Agreement; and
- (b) all information provided by the other party in relation to this Agreement, including Telstra's 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 Affiliates and its and their respective Personnel, professional advisors and Service Providers 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 Applicable Law or a Governmental Body; or
- (d) if the confidential information is independently developed by the receiving party, is lawfully received by the receiving party free of any obligation to keep it confidential or is in the public domain, other than by a breach of this Section 10.

10.3 Customer is responsible for providing a copy of Telstra's Privacy Statement to its Affiliates, End Users and Personnel to the extent required pursuant to Applicable Law or agreements with such parties.

10.4 Customer acknowledges and agrees that disclosing Customer's confidential information to those parties contemplated in Section 10.2(a) may also involve Telstra disclosing, transferring, storing and making Customer's confidential information accessible offshore.

## **11 LIMITATION OF LIABILITY**

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11.1 AS FAR AS APPLICABLE LAW PERMITS, BOTH PARTIES EXCLUDE ALL LIABILITY IN TORT (INCLUDING NEGLIGENCE), CONTRACT, STATUTE OR OTHERWISE FOR ANY INDIRECT OR CONSEQUENTIAL LOSS, DAMAGE, COST OR EXPENSE (INCLUDING LOSS OF USE, REVENUE OR LOSS OF PROFITS, LOSS OF DATA OR DIMINUTION IN VALUE, INCREASED COST OF OPERATIONS, OR ANY SPECIAL, INDIRECT, PUNITIVE, INCIDENTAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES), WHETHER OR NOT SUCH LOSSES WERE FORESEEABLE, INCURRED BY EITHER PARTY IN CONNECTION WITH ANY OF THE SERVICES OR ANY ACT OR OMISSION BY EITHER

PARTY UNDER OR IN RELATION TO THIS AGREEMENT AND WHETHER OR NOT A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

- 11.2 AS FAR AS APPLICABLE LAW PERMITS AND EXCEPT AS PROVIDED OTHERWISE IN SECTION 11.3, LIABILITY FOR EACH PARTY UNDER THIS AGREEMENT SHALL BE LIMITED TO DIRECT DAMAGES NOT TO EXCEED PER CLAIM (OR IN THE AGGREGATE DURING ANY TWELVE (12) MONTH PERIOD) AN AMOUNT EQUAL TO THE TOTAL NET CHARGES PAYABLE BY CUSTOMER TO TELSTRA FOR THE APPLICABLE SERVICE DURING THE TWELVE (12) MONTHS PRECEDING THE MONTH IN WHICH THE DAMAGE OCCURRED.
- 11.3 Section 11.2 does not limit:
- (a) the responsibility of either party with respect to:
    - (1) direct damages to the extent caused by the gross negligence or intentional misconduct of such party, its Affiliates, Personnel (including, in the case of Telstra, its Service Providers) or, in the case of Customer, its End Users;
    - (2) bodily injury, death or real or tangible property damages to the extent directly caused by any negligence of such party, its Affiliates, Personnel (including, in the case of Telstra, its Service Providers) or, in the case of Customer, its End Users;
  - (b) Customer's payment obligations under Sections 6, 7 and 9;
  - (c) Customer's obligations under Section 5.1(i); or
  - (d) either party's indemnification obligations under Section 12.
- 11.4 Notwithstanding anything else in this Agreement, each party's liability will be reduced to the extent the loss or damage is caused, or contributed to, by the other party, its Personnel or Affiliates, or any third party, which is not (a) a Service Provider, in the case of Telstra, or (b) an End User, in the case of Customer.
- 11.5 EXCEPT AS PROVIDED IN SECTION 14.11, TELSTRA MAKES NO WARRANTY WHATSOEVER, EITHER EXPRESS OR IMPLIED BY APPLICABLE LAW, CONCERNING TELSTRA'S FACILITIES OR ANY GOODS OR SERVICES PROVIDED TO THE CUSTOMER HEREUNDER, AND EXPRESSLY DISCLAIMS WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NONINFRINGEMENT OR ANY WARRANTY ARISING BY USAGE OF TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE OR OTHERWISE. TELSTRA DOES NOT AUTHORIZE ANYONE TO MAKE A WARRANTY OF ANY KIND ON ITS BEHALF, EITHER ORAL OR WRITTEN, AND THE CUSTOMER SHOULD NOT RELY ON ANY SUCH STATEMENT.
- 11.6 If Telstra fails to meet a Service Level set forth in a Service Schedule, Customer acknowledges that Customer's sole and exclusive remedy for such failure, if any, are the Service Level Credits set out in the Service Schedule. In addition, for the avoidance of doubt, Telstra is not liable for any loss, damage, liability, cost or expense arising out of Customer's failure to adhere to Telstra's reasonable directions or instructions.

## 12 THIRD PARTY IP CLAIMS

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- 12.1 Telstra indemnifies Customer against any direct loss, damage, liability, costs or expenses incurred by Customer as a result of a claim by a third party against Customer that the Services or any Telstra Material (including Facilities) infringe the Intellectual Property Rights of such third party (a **Customer Infringement Claim**); provided that Telstra will not be required to indemnify Customer under this Section 12.1 to the extent that the Customer Infringement Claim: (a) arises from any modification of any Telstra Materials; (b) relates to services or materials provided in conjunction with the Services by a third party who is not a Service Provider; or (c) is caused, or contributed to, by Customer or its Personnel. Where any third party makes a Customer Infringement Claim in connection with this Agreement, Telstra may modify, replace, limit, suspend or terminate the Services or Telstra Materials, if required, in response to the Customer Infringement Claim.

- 12.2 Customer indemnifies Telstra against any loss, damage, liability, costs or expenses incurred by Telstra as a result of a claim by a third party against Telstra that the Services infringe the Intellectual Property Rights or patents of such third party (a **Telstra Infringement Claim** and together with a Customer Infringement Claim, an **Infringement Claim**); provided that Customer will only be required to indemnify Telstra under this Section 12.2 to the extent that the Telstra Infringement Claim: (a)(x) arises from any modification of any Telstra Materials or (y) relates to services or materials provided in conjunction with the Services by a third party who is not a Service Provider; and (b) is caused, or contributed to, by Customer or its Personnel, Affiliates or End Users.
- 12.3 A party seeking indemnification (the **Indemnitee**) from the other party (the **Indemnitor**) under this Section 12 must: (a) give the Indemnitor prompt notice of any Infringement Claim to which indemnity may apply; (b) allow the Indemnitor to (at its option) direct any defense and settlement of any such Infringement Claim; and (c) provide the Indemnitor with all necessary assistance relating to the Infringement Claim. Failure by the Indemnitee to comply with the requirements of this Section 12.3 will relieve the Indemnitor of its indemnification obligations under this Section 12 to the extent that such failure has prejudiced the Indemnitor's defense of the relevant Infringement Claim.

## 13 DISPUTE RESOLUTION

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- 13.1 The parties agree to try to resolve any Disputes in good faith and in accordance with the procedures set forth in this Section 13 (the **Dispute Procedure**) before starting court proceedings for any Dispute (except for urgent injunctive or declaratory relief). If a Dispute arises, any party may initiate the Dispute Procedure by giving a written notice of the Dispute to the other party (a **Dispute Notice**). Dispute Notices must be sent by e-mail to the other party's Notice Mailbox; provided that, in the case of Invoice Disputes, Customer shall send the Dispute Notice via e-mail to GES-IUSBilling\_Support@team.telstra.com. The Dispute Notice must contain: (a) a brief statement of the nature of the Dispute; (b) a brief description of the relief sought by the issuing party; and (c) an express request that the Dispute Procedure of this Section 13 be commenced. In the case of an Invoice Dispute, if, following receipt of the Dispute Notice, Telstra requests additional information reasonably related to the Invoice Dispute, Customer must provide the requested information as promptly as practicable.
- 13.2 Upon receipt of a Dispute Notice from a party, each party shall refer the Dispute to its Designated Person and such Designated Persons shall, as promptly as practicable after the date on which the Dispute Notice was issued, negotiate in good faith and attempt to resolve the Dispute. If the Designated Persons cannot promptly resolve the Dispute, each party shall refer the Dispute to its Nominated Senior Executive and such Nominated Senior Executives shall, within seven (7) days after the date on which the Dispute was referred to the Nominated Senior Executives, negotiate in good faith and attempt to resolve the Dispute.

## 14 GENERAL

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### ENTIRE AGREEMENT

- 14.1 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

- 14.2 This Agreement, including without limitation its validity, interpretation, construction, performance and enforcement, and all of the transactions it contemplates, are governed by the laws of the state of New York, excluding any conflicts of law rules or principles. Each party irrevocably submits to venue and exclusive personal jurisdiction in the federal and state courts in New York, New York U.S.A. for any dispute arising out of this Agreement, and waives all objections to jurisdiction and venue of such courts. The parties agree that this Agreement is not governed in any way by the United Nations Convention on the International Sale of Goods. Any legal action arising in connection with this Agreement must begin within two (2) years after the cause of action arises.

## **INTERPRETATION**

- 14.3 In this Agreement:
- (a) a reference to this Agreement includes all its parts described in Section 1.1, and includes any amendment to or replacement of them;
  - (b) a reference to a party includes a reference to the party's executors, administrators, successors and assigns;
  - (c) the singular includes the plural, and vice versa;
  - (d) "includes", "including", "for example", "such as" and similar terms are not words of limitation; and
  - (e) the headings are for reference only and shall not affect the interpretation of this Agreement.

## **NOTICES**

- 14.4 Any notice regarding a breach or termination of this Agreement must be in writing and hand-delivered or sent by certified mail (return receipt requested), registered mail or express courier to the other party's Notice Mailbox. For the avoidance of doubt, any Service termination notice by Customer for reasons other than breach must be served in accordance with Section 9.2 and any Dispute Notice must be served in accordance with Section 13.
- 14.5 All other notices and consents must be in writing and sent by e-mail or regular mail to the other party's Notice Mailbox. Either party may change its notice details at any time by notifying the other party in accordance with this Section 14.5.

## **AMENDMENTS**

- 14.6 Any amendment, modification or supplement to this Agreement must be in writing and executed by duly authorized representatives of each party.

## **ELECTRONIC SIGNATURES**

- 14.7 The parties agree that an electronic signature shall have the same effect as a handwritten signature.

## **SEVERABILITY**

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

## **WAIVER OF RIGHTS**

- 14.9 No waiver under this Agreement is effective unless it is in writing, identified as a waiver to this Agreement, and signed by an authorized representative of the party waiving its right. Any failure or delay in exercising any right, remedy, power, or privilege or in enforcing any condition under this Agreement; or any act, omission, or course, of dealing between the parties, shall not constitute a waiver or estoppel of any right, remedy, power, privilege, or condition arising from this Agreement.
- 14.10 Any waiver authorized on one occasion is effective only in that instance and only for the purpose stated and does not operate as a waiver on any future occasion.

## **WARRANTIES**

- 14.11 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.



- 14.12 Customer warrants that it has not relied on any representations or warranties by Telstra, or any other person on Telstra's behalf, other than those specifically provided under Section 14.11.

### **ASSIGNMENT AND AGENCY**

- 14.13 A party must not assign its rights or novate its obligations under this Agreement without the other party's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed; provided that a party may, without the other party's prior written consent, assign or novate any or all of its rights and obligations under this Agreement to its Affiliate so long as such Affiliate:

- (a) has sufficient resources and financial capacity to perform the assigning party's obligations under this Agreement, and
- (b) is not (i) a Sanctioned Party, (ii) located, organized or resident in a Sanctioned Jurisdiction, or (iii) part of, or owned or controlled by, the government of a Sanctioned Jurisdiction;

provided further that, in the event of an assignment to an Affiliate, the non-assigning party may refuse to deal with the relevant Affiliate if it reasonably determines that such Affiliate does not meet the requirements set forth in this Section 14.13.

- 14.14 Notwithstanding the foregoing, Telstra may assign (a) any or all of its rights and obligations under this Agreement to a third party acquiring substantially all of the assets associated with the performance of such obligations and (b) any or all of its rights and obligations with respect to its receivables under this Agreement to its financing partner in circumstances where Customer does not pay any undisputed invoices on time in accordance with this Agreement. In the case of an assignment of receivables, Telstra shall retain the right to take other actions as set out in this Agreement in relation to non-payment of undisputed invoices.
- 14.15 Customer may appoint a third party to act on its behalf in relation to this Agreement; provided that Telstra may refuse to deal with such third party if it is a competitor of Telstra or on reasonable grounds relating to the conduct of such third party.

### **FORCE MAJEURE**

- 14.16 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. If a Force Majeure Event occurs, the affected party must:
- (a) 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
  - (b) resume compliance as soon as practicable after the event no longer affects either party.
- 14.17 Provided a party has complied with its obligations under Section 14.16, if a Force Majeure Event occurs which has a material adverse effect on the Service, and such Force Majeure Event continues for a period of thirty (30) consecutive days, then either party may terminate the affected Service by giving the other party at least seven (7) days' notice.

### **THIRD PARTY RIGHTS**

- 14.18 A person who is not a party to this Agreement has no rights under any applicable legislation to enforce any term or condition in this Agreement.

### **COUNTERPARTS**

- 14.19 This Agreement may be signed in any number of counterparts, which when taken together constitute one document.

## **15 DEFINITIONS**

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- 15.1 In this Agreement (including the Service Schedules and Service Order Forms), unless otherwise stated:

**Acceptable Use Policy** means Telstra's Acceptable Usage Policy (AUP) as amended by Telstra from time to time, which is available at [www.telstra.com/acceptable-use-policy](http://www.telstra.com/acceptable-use-policy).

**Affiliate** of a party means any entity that controls, is controlled by or is under common control with such party.

**Applicable Law** means any law, constitution, treaty, convention, statute, ordinance, code, rule, regulation, common law, case law, oral or written directive or question, interrogatory, request for information, subpoena, civil investigative demand, or other similar requirement or instrument that, in each case, is (a) enacted, adopted, promulgated, issued, or applied by, or in connection with the legal proceedings or processes of, a Governmental Body and (b) applicable to the parties, the Services or this Agreement. For the avoidance of doubt and subject to the requirements specified in clauses (a) and (b) of the foregoing sentence, Applicable Law will include, by way of example and without limitation, the following requirements or instruments: (i) obligations under any telecommunications license; (ii) any binding industry standard or code; (iii) any applicable international convention or agreement; and (iv) any consolidations, amendments, re-enactments, or replacements of Applicable Law.

**Available** or **Availability** means the number of minutes in a month during which a Service is not Unavailable.

**Business Day** means any day other than a Saturday, Sunday or recognized public holiday in the jurisdiction where the relevant Service is provided.

**Charges** means any and all amounts billed for the Services under this Agreement and any other amounts payable by the parties under this Agreement. For the avoidance of doubt, all references to Charges are references to Undisputed Charges, unless specified as Disputed Charges or Charges subject to an Invoice Dispute.

**Customer Infringement Claim** has the meaning set out in Section 12.1.

**Designated Person** means the Telstra Personnel and Customer Personnel who, in each case, is designated as such for purposes of resolving Disputes under Section 13.

**Dispute** means any genuine dispute among the parties arising out of, relating to, or in connection with, this Agreement or the existence, interpretation, breach, termination or validity thereof, including, without limitation, any Invoice Dispute.

**Disputed Charges** means any Charges that are subject to an Invoice Dispute and disputed in accordance with Section 13.

**Dispute Notice** has the meaning set out in Section 13.1.

**Dispute Procedure** has the meaning set out in Section 13.1.

**Early Termination Charge (ETC)** or **Early Termination Fee (ETF)** means any early termination or downgrade Charges for a Service set out or referred to in the Service Schedule or Service Order Form or, if none is specified, an amount equal to the Charges which would have applied to each terminated Service for the then-current Service Term had the Services not been terminated, plus any de-installation or other non-recurring Charges set forth in the Service Schedule or Service Order Form. The Early Termination Charges are a genuine pre-estimate of the loss Telstra is likely to suffer. Customer acknowledges that the Early Termination Charges payable to Telstra are reasonable and proportionate to Telstra's legitimate interests in this Agreement, in the context of the significant investment that Telstra has made in providing the Service(s) to Customer.

**Effective Date** means the earlier of:

- (a) the date the Service Order Form or statement of work (as applicable) is signed by the last party;
- or

- (b) the date we accept the Service Order Form or statement of work (as applicable) that you submit to us to order a new Service or vary an existing Service.

**End User** means anyone, including a Customer Affiliate, who uses or accesses any Service purchased by Customer under this Agreement with or without Customer's express authorization or permission, except that "End User" shall not include any unauthorized party who, in violation of Applicable Law, accesses any Service without the knowledge of Customer due to Telstra's gross negligence or misconduct.

**Exclusion Event** means:

- (c) any faults or Unavailability caused or contributed to by the simultaneous failure of two or more international submarine cable systems not wholly owned or operated by Telstra or a Service Provider for the relevant Service, where the fault or Unavailability would not have occurred if only one such cable system had failed;
- (d) any faults, Unavailability or failure not caused by Telstra or its Service Providers, or which is caused or contributed to by an act or omission of Customer, its Personnel or any third party, or any Customer or third party Site (including access to such Site and availability of cabling facilities at such Site), equipment or software;
- (e) any scheduled or emergency repairs or maintenance to Services or associated networks or services; or
- (f) a Force Majeure Event.

**Facility** means any part of a telecommunications network, including any line, equipment, tower, mast, antenna, tunnel, hole, pit, pole or other structure used in connection with a telecommunications network.

**Governmental Body** means any foreign, federal, state or local legislative, executive, judicial or other governmental or semi-governmental board, agency, authority, commission, bureau, administration, department, court, tribunal, instrumentality or other duly authorized body (including, without limitation, any stock exchange), or any official thereof that, in each case, has jurisdiction with respect to the parties, the Services or any subject of this Agreement.

**Indemnitee** has the meaning set out in Section 12.3.

**Indemnitor** has the meaning set out in Section 12.3.

**Initial Period** means the minimum period for which Customer must acquire a Service, as set out or referred to in a Service Order Form or the applicable Service Schedule.

**Infringement Claim** has the meaning set out in Section 12.2.

**Intellectual Property Rights** means all current and future rights in respect of copyright and all current and future registered rights in respect of designs, circuit layouts, trademarks, trade secrets, domain names, database rights, know-how and confidential information and any other intellectual property rights as defined by Article 2 of the World Intellectual Property Organisation Convention of July 1967 (as amended), excluding patents.

**Invoice Dispute** means any Dispute among the parties arising out of, relating to, or in connection with, the Charges or any other amounts payable under this Agreement. For the avoidance of doubt, all references to Disputes are references to Disputes that are not Invoice Disputes, unless specified as an Invoice Dispute.

**Invoice Due Date** has the meaning set out in Section 6.1.

**Materials** means software, hardware, firmware, equipment, tools, documentation, reports, data, diagrams, procedures, plans, technology, manuals and any related know-how and other materials.

**Nominated Senior Executive** means the Telstra senior executive and Customer senior executive to whom a Dispute is referred to pursuant to Section 13.

**Notice Mailbox** means (a) in the case of general notices to Telstra, the Telstra email address and mailing address set forth in the Service Order Form, and (b) in the case of general notices to Customer, the Customer email address and mailing address set forth in the Service Order Form.

**Personnel** means a party's officers, employees, agents, contractors and sub-contractors.

**Premises** or **Sites** means any land, building, structure, vehicle or vessel which is owned, leased or occupied by Customer containing a Facility or a Service, or to which a Service is supplied.

**Privacy Statement** means Telstra's privacy statement as amended by Telstra from time to time, which is available at [Tel.st/privacy-policy](http://Tel.st/privacy-policy).

**Sanctioned Party** means:

- (a) any person or entity that is designated as such or subject to export controls or sanctions restrictions under any sanctions, export control, or import laws, or other regulations, orders, directives, designations, licences, or decisions imposed, administered or enforced from time to time by Australia, the United States, the United Kingdom, the EU, EU Member States, Switzerland, the United Nations, the United Nations Security Council or any other relevant Governmental Body; and
- (b) any entity 50% or more owned or any entity which is controlled, directly or indirectly, by one or more of the persons or entities in clause (a) of this definition.

For the avoidance of doubt, a Sanctioned Party will include, by way of example and without limitation, any person or entity that is included in (i) the Specially Designated Nationals and Blocked Persons List or any similar list published by the United States Office of Foreign Assets Control (OFAC), (ii) the Foreign Sanctions Evaders List, Denied Parties List and Entry List published by the United States Bureau of Industry and Security, (iii) the Debarred Persons Lists published by the United States Office of Defense Trade Controls, (iv) Australia's Consolidated List, (v) the UK Consolidated List or (vi) the EU Consolidated List of Persons, Groups, and Entities Subject to EU Financial Sanctions.

**Sanctioned Jurisdiction** means any country or territory against which comprehensive sanctions are imposed, administered or enforced from time to time by Australia, the United States, the United Kingdom, the EU, any EU Member States, Switzerland, the United Nations or United Nations Security Council, or any other country with jurisdiction over the activities undertaken in connection with this Agreement, including, without limitation, the jurisdictions designated as United States Foreign Adversaries by the United States Department of Commerce pursuant to Executive Order 13873 and 15 C.F.R. § 7.1 et seq.

**Service** means the service set out or referred to in a Service Order Form and the applicable Service Schedule.

**Service Levels** means the service levels, if any, set out in the relevant Service Schedule.

**Service Level Credits** means the credits, if any, as set out in the relevant Service Schedule.

**Service Order Form** or **Order Form** means:

- (a) Telstra's service order form (in electronic or hard copy) that Customer submits to Telstra and Telstra accepts to order a new Service or to vary, reconfigure, renew or terminate an existing Service; or

- (b) any statement of work agreed by Customer and Telstra and executed by Customer's and Telstra's authorized representatives setting out the scope of any professional or consulting services that Telstra provides to Customer under this Agreement.

**Service Provider** means a service provider who provides services to Telstra in connection with the Services, excluding any service providers from whom Telstra or any Telstra Affiliate acquires the Services as an agent for the Customer.

**Service Schedule** means a Schedule attached or added to this Agreement; provided that in the event that a Service is provided for which no applicable Service Schedule is attached or added to this Agreement, Service Schedule means applicable Service Schedule located at <https://www.telstra.us.com/en/service-terms> (Americas Service Terms), which shall be deemed incorporated herein by reference.

**Service Start Date** means:

- (a) If a Service Schedule specifies an acceptance test period, the date Customer accepts or is deemed to accept the Service pursuant to that Service Schedule. Customer is deemed to accept the Service on the expiration of the test period unless Customer has notified Telstra, and Telstra confirmed the existence, of a Provisioning Fault, as defined in the applicable Service Schedule, during the acceptance test period.
- (b) If no acceptance test period is specified, the first day that the Service is installed and ready-for-use, as determined by Telstra.

**Service Term** has the meaning set out in Section 2.2.

**Specified Currency** means United States Dollars or any other currency specified in a Service Order Form.

**Tax Deduction** means a deduction or withholding for or on account of Taxes from a payment.

**Taxes** means taxes, levies, imposts, duties, excise and charges, deductions or withholdings, however described, imposed by Applicable Law or Governmental Body, including, without limitation, any foreign, federal, state or local tax authority, the Federal Communications Commission, state public utilities commissions, and the Universal Service Administrative Company, and additionally including any related interest, penalties, fines or other charges or expenses, but excluding income tax or capital gains tax.

**Telstra Account Manager** means the person designated as such in the most recent relevant Service Order Form.

**Telstra Infringement Claim** has the meaning set out in Section 12.2.

**Telstra Materials** means all Materials provided by or on behalf of Telstra to Customer in connection with this Agreement.

**Unavailable** or **Unavailability** means an outage that results in the total disruption of a Service, such that the Service is unable to send and receive data. Unavailability commences when a trouble ticket has been logged by Telstra's service desk and excludes any period during which an Exclusion Event applies.

**Undisputed Charges** means any Charges that are not subject to an Invoice Dispute and disputed in accordance with Section 13.