



# 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.

#### 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 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 30 days before any automatic extension) that it does not wish the Initial Period to extend automatically.

### 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 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 for its claim.
- 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 any applicable laws;
- (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; and
- (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).

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 the charges set out in this Agreement for the Services.
- 6.2 The charges for the Services will consist of monthly recurring charges and non-recurring charges, which will ordinarily be billed in advance; and/or variable usage charges, which will ordinarily be billed monthly in arrears.
- 6.3 Telstra will commence billing Customer for each Service on the Service Start Date, or as set out in the Order.
- 6.4 All charges are payable within 30 days of the date of invoice.

- 6.5 All charges for the Services and any other amounts due under this Agreement, are payable in the Specified Currency unless otherwise agreed in writing.
- 6.6 If Customer genuinely disputes an invoice, Customer:
- (a) must promptly notify Telstra at [GES-IUSBilling\\_Support@team.telstra.com](mailto:GES-IUSBilling_Support@team.telstra.com) of the disputed amount (including details of the dispute), and provide Telstra with any other information it reasonably requests; and
  - (b) does not need to pay the disputed amount until the dispute is resolved, provided Customer notifies Telstra before the due date, however Customer must pay all undisputed amounts by the due date.
- For the avoidance of doubt, any amount not disputed in accordance with this Section 6.6 shall be deemed undisputed.
- 6.7 If Customer does not pay any undisputed amount by the due date, Telstra may charge Customer interest (calculated on a daily basis) on any unpaid amounts at a monthly rate of 1%. Under no circumstances will the amount charged by Telstra exceed the maximum amount chargeable by law.
- 6.8 Customer may only make a claim that the charges on an invoice for the Services are incorrect within 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 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 CANCELLATION OF SERVICES**

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- 8.1 Subject to Section 9, Customer may cancel a Service at any time by giving Telstra at least 30 days' notice.
- 8.2 Telstra may limit, suspend or cancel 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) the provision of a Service is likely to cause death or personal injury or damage to property; or
  - (c) Customer breaches Telstra's Acceptable Use Policy.
- 8.3 Telstra may limit, suspend or cancel a Service at any time by giving Customer at least 14 days' notice, if:
- (a) Customer does not pay any undisputed amounts due for that Service by the due date; or
  - (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.
- 8.4 Where a Service has been suspended or cancelled under Section 8.3 or due to Customer's breach under Section 8.2, Telstra may require Customer to pay a re-connection charge if the Service is re-connected.
- 8.5 If Telstra decides to modify or exit a Service from the market, then Telstra may migrate Customer to the modified service or an alternative service after giving Customer at least 3 months' notice in the case of any material modification, or cancel the Service after giving Customer at least 6 months' notice. If the service to which Telstra proposes Customer migrate is detrimental to it, Customer may cancel the Service effective

upon the proposed date of migration without the payment of any Early Termination Charges by providing Telstra with written notice delivered within 45 days from Telstra's written notice of migration.

## 9 TERMINATION

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- 9.1 If a party commits a material breach of this Agreement (including non-payment of any amounts not disputed in accordance with Section 6.6 by the due date) and does not remedy the breach within 30 days of receiving a notice to do so, then the other party may terminate this Agreement.
- 9.2 If this Agreement is terminated or a Service is cancelled for any reason:
- (a) Customer must pay Telstra all outstanding invoices by the relevant due date and, within 30 days of request for payment, all other amounts outstanding as at the date of, or arising as a result of, expiry, termination or cancellation (including any Early Termination Charges in the case of termination by Telstra pursuant to Section 8.2(c), 8.3 or 9.1 or termination by Customer pursuant to Section 8.1 or as otherwise expressly provided for in the Service Schedule);
  - (b) Telstra may, after providing reasonable notice to Customer, enter the Premises and remove any equipment belonging to Telstra which is connected with the affected Service; if Telstra is unable to gain access to the Premises, Customer will be required to pay Telstra for the value of the Equipment at the time of original delivery, net depreciation; and
  - (c) all rights a party has accrued before termination or cancellation continue.
- 9.3 To cancel a Service, Customer must submit a cancellation notice to [Service.Termination@team.telstra.com](mailto:Service.Termination@team.telstra.com) (the **Cancellation Mailbox**). Such cancellation shall be deemed received on the first Business Day after its confirmed delivery to the Cancellation Mailbox.
- 9.4 If this Agreement terminates for any reason, Sections 5.2 (Customer's commitment to Telstra), 9 (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 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, any Regulatory Authority or stock exchange; 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 Telstra may disclose Customer's confidential information to Telstra's Personnel, which 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 THE 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 THE 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 12-MONTH PERIOD) AN AMOUNT EQUAL TO THE TOTAL NET PAYMENTS PAYABLE BY CUSTOMER FOR THE APPLICABLE SERVICE DURING THE 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) and, 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) and, in the case of Customer, its End Users;
  - (b) Customer's payment obligations under Sections 6, 7 and 9; or
  - (c) 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 or its Personnel, or any third party, which is not a Service Provider, in the case of Telstra, or an End User, in the case of Customer.
- 11.5 EXCEPT AS PROVIDED IN SECTION 14.11 OF THIS AGREEMENT, TELSTRA MAKES NO WARRANTY WHATSOEVER, EITHER EXPRESS OR IMPLIED BY 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 level, and under no circumstance shall failure to meet such service level by itself be deemed a breach of the Agreement by Telstra. Telstra shall have no other liability for the performance or non-performance of the Services. 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 it that its use of the Services or any material provided by Telstra under this Agreement infringes the Intellectual Property Rights of the third party, subject to Customer promptly notifying Telstra of the claim, allowing Telstra (at its option) to direct any defense and

settlement of the claim, and providing Telstra with all necessary assistance relating to the claim. This indemnity does not apply to the extent the claim arises out of any modification of any materials provided by Telstra, relates to services or materials provided by a third party which is not a Service Provider, in conjunction with the Services, or is caused, or contributed to, by Customer or its Personnel. 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 it that the Service infringes any patent, trademark, copyright or trade secret, due to any of the exceptions in the preceding sentence caused by the Customer, its Affiliates, End Users, subcontractors or agents. Where any person makes a claim for Intellectual Property Right infringement in connection with the provision of Services or materials (including Facilities) by Telstra, Telstra may modify, replace, limit, suspend or cancel the Services or materials, if required, in response to the claim.

## **13 DISPUTE RESOLUTION**

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### **RESOLVING DISPUTES**

- 13.1 The parties agree to try to resolve in good faith any disputes or claims concerning this Agreement. Each party must follow the procedures in this Section 13 before starting court proceedings (except for urgent injunctive or declaratory relief).
- 13.2 If a dispute or claim arises between the parties that cannot be resolved promptly between Telstra's contact person and Customer's contact person, either party may notify the other party of a formal dispute. The parties must each nominate a senior executive to meet within 7 days of the date of the notice (or another agreed period) to try 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 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 law includes any law in force which regulates the supply or use of the Services, and includes any applicable lawful determination, decision or direction of a government body, obligations under any telecommunications licence, any binding industry standard or industry code and any applicable international convention or agreement;
  - (c) a reference to a statute, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
  - (d) a reference to a party includes a reference to the party's executors, administrators, successors and assigns;
  - (e) the singular includes the plural, and vice versa;

- (f) “includes”, “including”, “for example”, “such as” and similar terms are not words of limitation; and
- (g) 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 contact person specified in the Applicable Order, in the case of the Customer and, in the case of Telstra to 40 Wall Street, 44th Floor, New York, NY 10005, Attn: President, with a copy to Legal Department at the same address. For the avoidance of doubt, any notice to cancel a Service by Customer for reasons other than breach must be served in accordance with Section 9.3.
- 14.5 All other notices and consents must be in writing and sent by email or regular mail to the other party’s contact person specified in the Applicable Order, in the case of the Customer and, in the case of Telstra to: 40 Wall Street, 44th Floor, New York, NY 10005, Attn: President, with a copy to Legal Department at the same address and for email: GES-IUSTelstra\_Customer\_Notices@team.telstra.com. 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 of this Agreement.

#### **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 will not be unreasonably withheld, provided that Telstra may, without Customer’s written consent, assign or novate any or all of its rights and obligations under this Agreement to another Affiliate or to a third party acquiring substantially all of the assets associated with the performance of such obligations and may assign its receivables 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.

- 14.14 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**

- 14.15 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.
- 14.16 Provided a party has complied with its obligations under Section 14.15, if a Force Majeure Event occurs which has a material adverse effect on the Service, and continues for a period of 30 consecutive days, then either party may cancel the affected Service by giving the other party at least 7 days' notice.

#### **REGULATED US SERVICES**

- 14.17 The parties acknowledge that Customer may order a Telstra service which is classified as a United States (**US**) common carrier service. In the course of providing such a Service, Telstra may obtain and possess certain usage-related information about the quantity and type of such services that is referred to as customer proprietary network information under US federal law (**CPNI**). Under US federal law, Customer has the right, and Telstra has the duty, to protect the confidentiality of Customer's CPNI. Telstra agrees to use CPNI only in accordance with US law. Telstra currently provides Customer a dedicated account representative assigned to its account. Customer agrees that the Telstra dedicated account representative or its delegate may use any means to provide CPNI (including Call Detail Records) to any representative of Customer. Customer authorizes Telstra to share CPNI (including Call Detail Records) with other Telstra Affiliates for any lawful purpose, including without limitation for provisioning, supporting billing and collecting charges for the Services and to develop, identify, offer, and provide products and services that may benefit Customer; provided those Affiliates first agree to observe the confidentiality of the information in accordance with Section 10.
- 14.18 Customer certifies that more than 10 percent of the traffic to be transmitted over any regulated telecommunications Service within the United States is and will be interstate in nature (i.e. the traffic originates and terminates in different states).

#### **THIRD PARTY RIGHTS**

- 14.19 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**

- 14.20 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 Order** means the Order Form in which these Agreement Terms are incorporated by reference.
- 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.

**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 date that Telstra accepts the Applicable Order.

**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 law, accesses any Service without the knowledge of Customer due to Telstra's gross negligence or misconduct.

**Exclusion Event** means:

- (a) 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;
- (b) 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;
- (c) any scheduled or emergency repairs or maintenance to Services or associated networks or services; or
- (d) 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.

**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.

**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, excluding patents.

**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 <https://www.telstra.com.au/privacy/privacy-statement>.

**Provisioning Fault** has the meaning set out in the specific Service Schedule.

**Regulatory Authority** means any government agency or authority with jurisdiction to regulate the Services.

**Service** means the service set out or referred to in a Service Order Form and the applicable 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 cancel 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 its Affiliate acquires 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 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 law or a government authority or agency, including but not limited to 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.

**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.