

TELSTRA BUSINESS SERVICES AGREEMENT

Office Use Only

BSA ID Number

Account Manager

Agreement Details

Customer Details			
Customer Name (the "Customer")			
Address for Notices			
Customer's Representative for Notices (Name and Title)			
Customer Invoicing Address (if same as a write "as above")			
Email Address for Invoices			
Email Address for notices which may be submitted by email			

Telstra Details		
Telstra	TELSTRA INCORPORATED	("Telstra")
Address for Notices	40 WALL STREET, 44 th FLOOR, NEW YORK, NY 10005 ATTN: PRESIDENT WITH A COPY TO GENERAL COUNSEL (SAME ADDRESS)	
Email address for billing disputes	Billing_disputes@usa-telstra.com	
Email address for notices which may be submitted by email	Telstra_customer_notices@usa-telstra.com	

Service Schedules and Attachments

- Foreign Carrier Management Service Attachment
- GDC Service Schedule / GDC Facilities Guide
- Global Internet Direct Service Schedule
- Global Voice Over IP Long Distance Inbound/Outbound Service Schedule
- GWAN Solutions Schedule
 - Ethernet Private Line Service Attachment
 - Ethernet Virtual Private Line Service Attachment
 - International Private Line Service Attachment
 - IP Virtual Private Network Service Attachment
 - Virtual Private LAN Service Schedule Attachment
- IP Transit Service Schedule
- Telstra Contract Center Solution Service Schedule
- Telstra International Audio Conferencing Service Schedule
- Telstra Managed Services Schedule
- Voice Service Schedule

Agreement Terms

Telstra agrees to supply the Services to the Customer and the Customer agrees to acquire them from Telstra at the price and on the terms set out or referred to in this "Agreement" which is made up of:

- (a) The Service Schedules referenced above and attached to this Agreement and such additional schedules as may be added from time to time by agreement of the parties;
- (b) These terms and the additional Agreement Terms attached hereto; and
- (c) Any Telstra-provided Order Form submitted by the Customer and accepted by Telstra in accordance with the Agreement Terms (each, an "Order").

In the event of a conflict among any of the components of this Agreement set forth above, the document listed earlier in the list above prevails to the extent of the inconsistency.

Use of Customer-Specific Information that is subject to US Federal Law

In the course of providing Service to Customer, Telstra may obtain and possess certain usage-related information about the quantity and type of the telecommunications services Customer uses that is referred to as customer proprietary network information under United States federal law ("CPNI"). Under United States federal law, Customer has the right, and Telstra has the duty, to protect the confidentiality of Customer's CPNI. Under United States federal law, Telstra may use Customer's CPNI to provide service to the Customer, to bill and collect for such services, to protect Telstra's property rights and as otherwise permitted or required by law. In addition, Telstra may use CPNI to tailor products or services to the Customer, including, by way of example, to make the Customer aware of similar products or services that may be beneficial to the Customer.

Provided Customer has dedicated Telstra account representatives assigned to its account and Customer is able to contact the account representative(s) directly without having to first access a call center, Telstra may, as permitted or required by applicable law, provide Customer CPNI (including Call Detail Records) over the telephone to authorized representatives of Customer. Customer will designate its authorized representatives who are responsible for working with the Telstra account representatives (the "Customer Representatives of Record"). Customer shall notify its Telstra account representative immediately of any changes in Customer Representatives of Record. Telstra may provide CPNI to Customer Representatives of Record by any means not prohibited by applicable laws, rules and regulation, including but not limited to: by telephone in response to a Customer-initiated call; electronically to Customer's e-mail address of record or to any e-mail address provided by a Customer Representative of Record; to Customer's telephone number of record or to any telephone number provided by a Customer Representative of Record; by United States mail to Customer's address of record; or via an online customer portal or other online mechanism (if available from Telstra).

Acceptance by Customer

Executed for Customer by its authorized representative. By signing, the signatory warrants that he/she has authority to sign this Agreement on this Customer's behalf.

Signature _____ Date _____
Print Name _____ Title _____

Acceptance by Telstra Incorporated

Executed for Telstra Incorporated by its authorized representative. By signing, the signatory warrants that he/she has authority to sign this Agreement on Telstra's behalf.

Signature _____ Date _____
Print Name _____ Title _____

Agreement Terms

Capitalized terms used in this Agreement without definitions shall have the meanings set forth in the Definitions Section in Section 14, or in the case of an applicable Service where a definition is supplied in the Service Schedule, such definition shall prevail.

1. Term and Termination

Term

- 1.1. This Agreement begins on the Start Date and continues until terminated in accordance with this Agreement.
- 1.2. After the initial Service Term for a Service, as specified in the Order, the Service Term shall automatically renew for additional consecutive bi-monthly terms or such longer period expressly set forth in the Customer Order (each such period being a "**Renewal Period**"), unless either party provides the other with written notice of its desire not to renew the Service Term at least 60 days prior to the expiration of the initial Service Term, or the then-current Renewal Period, as the case may be.

2. Services

- 2.1. Telstra agrees to supply the Services to the Customer and the Customer agrees to acquire them from Telstra at the prices and on the terms set out or referred to in this Agreement.
- 2.2. If Telstra decides to modify or exit a Service, then Telstra may, by giving the Customer prior reasonable notice:(a) migrate the Customer to the modified service or an alternative service; or (b) cancel the Service. If the proposed modified or alternative service is materially detrimental to the Customer, then the Customer may cancel the Service without the payment of any early termination charges.

3. Operation of Services

- 3.1. In the case where a Schedule provides that Telstra will resell or arrange for the installation and connection of a local circuit, Telstra will (as required) arrange for such installation and connection at a main distribution frame for the Customer's Premises (the "**Connection Point**"). Telstra is not responsible for connections or cabling beyond the Connection Point. Telstra may, if requested by the Customer and agreed to by Telstra in writing, arrange for the movement of the Connection Point and/or provide additional cabling or connections on a time and materials basis.
- 3.2. Telstra may schedule Planned Network Maintenance from time to time. Telstra will use commercially reasonable efforts to give the Customer at least 40 hours notice of Planned Network Maintenance. In the case of emergency repairs or modification, where possible, Telstra will use commercially reasonable efforts to give the Customer 24 hours advance notice of the interruption. Notice under this Section may be given by telephone, email or fax or, where provided to the Customer, online reporting service.

4. Service Levels for Global Services

- 4.1. Telstra has no liability to the Customer in respect of any guarantees or other obligations under a Service Level where the performance of a Global Service is affected by one or more of the Exclusion Events. When calculating the average performance of the Global Service, any period during which Exclusions Events apply and the performance of the Global Service during that period will be disregarded.
- 4.2. Where Telstra offers Credits in a Service Level the Customer must comply with the claim procedure set out in Section 4.3 to claim a Credit. If the Customer fails to make a claim in accordance with Section 4.3, the Customer is taken to have unconditionally and irrevocably waived its right to claim the Credit and shall have no claim whatsoever against Telstra for its failure to meet such Service Level in such month.

- 4.3. All claims for Credits must be notified by the Customer in writing within 20 days after the end of the month in which the Customer's alleged entitlement to the Credit occurred, and must include the following details:
- (a) relevant dates and times of service difficulty in respect of which a Credit is being claimed, the date and time the Service difficulty was reported to the Service Desk and test or performance data to support the claim;
 - (b) the Customer's contact details; and
 - (c) the Customer's grounds for claiming the Credit.

5. Payment and Invoices

- 5.1. The Customer must pay Telstra for each Service acquired by the Customer the charges set out in the Order and the Service Schedule for that Service.
- 5.2. Telstra will invoice the Customer in arrears for any charges which are usage charges. All other charges will be billable monthly in advance. Installation charges, expedite fees and related non-recurring charges associated with any Order shall be billable upon the date Telstra accepts such Order. Monthly recurring charges shall be billable commencing upon the Service Start Date. Unless otherwise agreed or stated on an invoice, all charges are due and payable within 30 days of the invoice date.
- 5.3. All charges under this Agreement are payable in US Dollars. Any charges denominated in a currency other than US Dollars will be payable in US Dollars calculated using the Specified Exchange Rate.
- 5.4. If the Customer believes in good faith that Telstra's invoice is incorrect and the Customer wishes to dispute such invoice, the Customer must notify the Telstra billing representative in writing at the email address for billing disputes set forth in the Agreement Details, giving detailed particulars of the disputed amounts and attaching any relevant documentation. Telstra will use reasonable efforts to resolve the dispute within thirty (30) days of receipt of the Customer's notice. If Telstra fails to resolve the dispute to the Customer's reasonable satisfaction, the Customer or Telstra may invoke the dispute resolution process as set forth in Section 12. Notwithstanding the notification by the Customer of a disputed invoice, the Customer remains liable to pay all invoices in accordance with this Agreement. Any claim by the Customer related to an invoice must be notified within six-months after the applicable invoice date or otherwise shall be deemed waived, notwithstanding anything contained herein to the contrary.
- 5.5. Telstra may, without prejudice to any of its other rights under this Agreement, charge the Customer interest at the rate of 1.5% per month on any amount unpaid from the due date for payment until the date payment is received by Telstra. Under no circumstances will the amount charged by Telstra exceed the maximum amount chargeable by law.

6. Taxes

- 6.1. The Customer must pay Telstra any Taxes on the provision of Services. Telstra may also collect from the Customer a pro rata portion, including administrative expenses, of any duties, levies, charges, payments or other fees ("Fees") imposed on Telstra by any governmental or quasi-governmental agency, including but not limited to the Federal Communications Commission, state public utilities commissions, and the Universal Service Administrative Company, including but not limited to Fees imposed on Telstra to support universal telecommunications service. Telstra may collect from the Customer that portion of any payments that Telstra makes to other Service Providers which reflect payments that Telstra is required to make to such other Service Providers, whether in the form of a surcharge or otherwise, in connection with Taxes or Fees imposed directly or indirectly on such other Service Providers, including any charges for access to local networks. Telstra may also collect from the Customer administrative expenses associated with such charges. The charges for Services are exclusive of all Taxes, Fees or payments to other Service Providers unless specified otherwise in the Service Schedules.
- 6.2. If at any time an applicable law obliges the Customer to make a deduction or withholding in respect of a payment to Telstra then the Customer must pay Telstra such additional amount as is necessary to ensure that Telstra receives,

after any such deduction or withholding is made, the same amount as Telstra would have received if no such deduction or withholding had been made.

7. Obligations of Customer relating to the provision of Services

7.1. The Customer:

- (a) must ensure that all equipment connected to the Services by, or on behalf of the Customer is technically compatible with the relevant Service(s) and that both its Premises and equipment comply with and are used in accordance with all reasonable procedures notified by Telstra and all applicable laws and regulations;
- (b) must provide all information and assistance as is reasonably required by Telstra in order to enable Telstra to meet its obligations under this Agreement and comply with all reasonable directions and instructions of Telstra in relation to the use of the Services;
- (c) must ensure that Telstra or its subcontractors are provided with sufficient and timely access to the Customer's or its User's Premises to enable Telstra to provide the Services in accordance with Telstra's obligations under this Agreement;
- (d) must not alter, tamper, reverse engineer, repair or attempt to repair the Services or cause, or allow, a third party to do any of these acts;
- (e) is solely responsible for selecting, supplying and maintaining its own facilities and equipment and the purpose(s) for which it or its Users acquire and use the Services;
- (f) is solely responsible for the content and security of any data or information which it or its Users send or receive using the Services and must take every reasonable precaution in the use of the Services to prevent contamination of any software or hardware or diffusion of any software or hardware contamination, including computer viruses, worms or trojan horses;
- (g) is solely responsible for any use of the Services or any Facility connected to the Services on its Premises, by it or any third party, whether authorized or not, and indemnifies Telstra against all direct or indirect loss, damage, liability, costs or expenses (including reasonable attorneys' fees) incurred by Telstra (including to a third party) relating to the acts or omissions including fraudulent, negligent, illegal or unauthorized use (including attempted use) by any person (including the Customer) of a Service or a Facility connected to a Service; and
- (h) warrants that it, and its Users will not use the Services for any purpose or in any manner that violates any Applicable Law or otherwise breaches Telstra's Acceptable Usage Policy.

8. Suspension or Cancellation of Services

8.1. Telstra may without notice suspend, limit or cancel the provision of Services to the Customer at any time if:

- (a) there is an emergency or whenever Telstra considers it necessary or reasonable in order to provide resources to emergency and other essential services;
- (b) the supply of a Service is or, in Telstra's reasonable discretion based upon advice of counsel, is likely to become unlawful;
- (c) in the opinion of Telstra, the provision of a Service or continued provision of a Service is liable to cause death or personal injury or damage to property; or
- (d) Regulatory Restrictions apply to the supply and/ or the use of a Service.

8.2. Telstra may suspend, limit or cancel the provision of a Service at any time by notice to the Customer if:

- (a) the Customer defaults in the due payment of any charges for a Service;
- (b) a Service Provider ceases to supply, or gives Telstra notice of its intention to cease to supply, the services necessary for Telstra to supply a Service to the Customer;
- (c) the Customer's or any User's use of a Service interferes with the efficiency of Telstra's, or a Service Provider's, network and Customer fails to rectify the situation; provided that no such notice shall be required if Telstra believes that such continued interference would present a risk of harm or damage to Telstra, its Service Providers or Affiliates, third party network or service providers or its or their respective networks, representatives or customers;
- (d) the Customer or any User violates any Applicable Law or breaches Telstra's Acceptable Usage Policy; provided that no such notice shall be required if Telstra believes that such continued violation or breach would present a risk of harm or damage to Telstra, its Service Providers or Affiliates, third party network or service providers or its or their respective networks, representatives or customers;
- (e) a third party holding an encumbrance takes possession of the whole or a substantial part of the undertaking or property of the Customer, the 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 the Customer; or
- (f) the Customer resells or resupplies a Service without Telstra's written consent; further terms and conditions apply to the supply of Services for resale or resupply and Telstra may require the Customer to enter into a new agreement as a condition of Telstra's consent.

9. Termination

- 9.1. Either party may terminate this Agreement upon written notice to the other if the other party commits a material breach of this Agreement which is not cured within 30 days of being notified to do so. Either party may immediately terminate this Agreement upon written notice if the other party has materially breached Section 10 of this Agreement.
- 9.2. The Customer may only cancel a Service if it has the right to do so under these Agreement Terms or in the Service Schedule relating to that Service. Cancellation may only be effected by an authorized representative of the Customer submitting a Telstra-approved Cancellation Order Form to disconnects@usa.telstra.com or such other email address as the President or Chief Operating Officer of Telstra may notify Customer from time to time (the "Cancellation Mailbox"). Such Cancellation Order shall be deemed received on the first Business Day after its confirmed delivery to the Cancellation Mailbox. Once a Cancellation Order is delivered, it is difficult to revoke and a request to revoke the notice may result in a period of suspended services and additional charges for reinstatement. If Customer's submission includes a question regarding the extent of the cancellation charges or the timing of the cancellation, or if within 2 Business Days after submitting a Cancellation Order Customer requests this information, then, except to the extent expressly directed otherwise by Customer in a subsequent email to the Cancellation Mailbox, Telstra may, in its sole discretion, either proceed with the cancellation or assume that Customer wishes to withdraw its Cancellation Order until such time as Telstra provides such information and Customer resubmits its Cancellation Order to the Cancellation Mailbox.
- 9.3. Subject to Section 9.4, either party may cancel the provision of a Global Service or Global Services under this Agreement at any time by giving the other party written notice; provided that such cancellation shall be effective upon the last day of the third full calendar month after such notice is delivered.

Effect of termination or cancellation of Services

- 9.4. If, during an Installation Period or prior to the expiration of the Service Term for a Service, the provision of a Service is cancelled or the Agreement is terminated by Telstra (excluding pursuant to Section 9.3 or Section 8.1 or 8.2(b) or 8.2 (c)) or by the Customer under Section 9.3 (each an "Early Termination Event"), the Customer must pay Telstra the Early Termination Fee for the Service.

- 9.5. The Customer agrees that the Early Termination Fee represents a genuine pre-estimate of the loss or damage Telstra is likely to suffer as a result of early termination of the Service.

Consequences of expiration or termination

- 9.6. If this Agreement or any Service Term is terminated or expires:
- (a) the Customer must pay Telstra all outstanding invoices by the due date and all amounts incurred up to the date of expiration or termination and other outstanding amounts within 30 days of the date of an invoice for those amounts (including any applicable Early Termination Fees).
 - (b) Telstra or its Service Provider, as the case may be, may enter the Premises and remove any Facility belonging to Telstra or a Service Provider connected with the applicable Service or Services. If Telstra or its Service Provider is unable to gain access to the Premises it may recover the value of the Facility from the Customer as a debt due to Telstra;
 - (c) such expiration or termination will not prejudice any rights which have accrued to either party prior to such expiration or termination; and
 - (d) Sections 7.1(g), 9, 10, 11 and 13 shall survive the termination and continue in full force; provided that in the case of the termination or expiration of a Service Term, all of the other provisions of the Agreement shall also continue in full force except as they relate to the terminated Service.

10. Confidentiality

Confidential Information

- 10.1. The Customer and Telstra must treat as confidential information:
- (a) the provisions of this Agreement; and
 - (b) all information provided to it (the “**receiving party**”) by the other party (and in the case of Telstra, by its Service Providers, Affiliates, agents or representatives) under this Agreement, including without limitation in the case of the Customer, Telstra’s technical, operational, marketing, billing, pricing and commercial information in relation to the supply of Services.
- 10.2. Notwithstanding the foregoing, confidential information shall not include information that: (a) is independently developed by the receiving party; or (b) is lawfully received by the receiving party free of any obligation to keep it confidential; or (c) becomes generally available to the public other than by breach of this Agreement.

Disclosure

- 10.3. A party must not disclose the other party’s confidential information to any person except:
- (a) to its employees (which for Telstra includes its Affiliates’ and Service Providers’ employees) on a ‘need-to-know’ basis and to its legal and financial advisers, provided that each such employee and adviser first agree to observe the confidentiality of the information;
 - (b) with the other party’s prior written consent; or
 - (c) if required by law, any stock exchange, or any Regulatory Authority.

11. Limitation of Liability

- 11.1. AS FAR AS THE LAW PERMITS, AND UNLESS OTHERWISE SPECIFIED IN THIS SECTION 11, TELSTRA EXCLUDES ALL LIABILITY IN TORT (INCLUDING NEGLIGENCE), CONTRACT, STATUTE OR OTHERWISE FOR

ANY DIRECT OR INDIRECT LOSS, DAMAGE, COST OR EXPENSE (INCLUDING LOSS OF PROFITS, LOSS OF ANTICIPATED SAVINGS, COST OF PURCHASING REPLACEMENT SERVICES, ECONOMIC LOSS OR ANY SPECIAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGE), WHETHER OR NOT SUCH LOSSES WERE FORESEEABLE, INCURRED BY CUSTOMER OR A THIRD PARTY IN CONNECTION WITH ANY OF THE SERVICES OR ANY ACT OR OMISSION BY TELSTRA UNDER OR IN RELATION TO THIS AGREEMENT.

- 11.2. TELSTRA MAKES NO WARRANTY, EITHER EXPRESS OR IMPLIED, CONCERNING TELSTRA'S FACILITIES OR SERVICES, 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. TELSTRA DOES NOT AUTHORIZE ANYONE TO MAKE A WARRANTY OF ANY KIND ON ITS BEHALF AND THE CUSTOMER SHOULD NOT RELY ON ANY SUCH STATEMENT.
- 11.3. Despite anything else in this Section 11, Telstra accepts liability:
- (a) for the Customer's proven direct damages resulting from the bodily injury or death directly caused by any negligence by Telstra directly in relation to the supply of the Services; or
 - (b) for the Customer's proven direct damages resulting from real or tangible property damage directly caused by Telstra's negligence in relation to the supply of the Services, but limits its liability to proven direct damages not to exceed per claim, or in the aggregate for all claims arising during any twelve-month period, to the aggregate amount of Monthly Recurring Charges paid by the Customer for the applicable Services during such twelve-month period.
- 11.4. In the event that Telstra fails to meet a Service Level set forth in a Service Schedule, the Customer acknowledges that the Customer's sole and exclusive remedy for such failure, if any, are set out in the Service Level, and under no circumstance shall failure to meet such Service Level be deemed a breach of the Agreement by Telstra. Telstra shall have no other liability for the performance or nonperformance of the Services.
- 11.5. Telstra is not liable for any loss, damage, liability, cost or expense arising out of or relating in whole or in part to the interoperability, access or interconnection of the Services with applications, equipment, services, content or networks provided by the Customer or third parties; service levels, delays or interruptions (other than for Credits explicitly set forth in a Service Schedule, subject to the terms and conditions contained therein) or lost or altered messages or transmissions; or, unauthorized access to or theft, alteration, loss or destruction of the Customer, or its Users' or third parties' applications, content, data, programs, information, network or systems.
- 11.6. These limitations of liability shall survive failure of any exclusive remedies provided in this Agreement. For purposes of all limitations of liability and Customer indemnification obligations set forth in this Agreement, "Telstra" means Telstra, its Affiliates and suppliers, and its and their respective employees, directors, officers, agents, representatives, subcontractors, interconnection service providers and suppliers.

12. Dispute Resolution

- 12.1. The parties agree to try to resolve in good faith any disputes or claims arising out of or related to this Agreement. Each party must follow the procedures in this Section 12 before starting arbitration or court proceedings (except as provided for in Section 12.4).
- 12.2. If a dispute or claim arises between the parties that cannot be resolved promptly between the Telstra contact person and the Customer's contact person (including a dispute regarding an invoice in accordance with Section 5.4), 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 giving of such notice (or another agreed period) to try and resolve the dispute.
- 12.3. If the dispute remains unresolved after following the procedure in Section 12.2, either party may pursue any available remedies.

- 12.4. Nothing in Section 12 shall be construed to preclude either party from seeking injunctive or other urgent equitable relief in a court of competent jurisdiction, during the pendency of the mediation or otherwise.

13. General

Entire Agreement

- 13.1. This Agreement constitutes the entire Agreement about the Services between the Customer and Telstra and supersedes all prior agreements, proposals, representations, negotiations and discussions between the parties, whether written or oral, concerning the Services, or the rights and obligations relating to the Services. This Agreement shall not be modified, or supplemented by any written or oral statements, proposals, representations, advertisements, service descriptions or customer purchase order forms not expressly set forth in this Agreement. Any amendment, modification or supplement to this Agreement must be in a writing executed by duly authorized representatives of each party.

Governing law

- 13.2. The substantive laws of the State of New York (and not its conflicts of law principles) govern all matters arising out of, or relating to, this Agreement and all of the transactions it contemplates, including without limitation its validity, interpretation, construction, performance and enforcement. The parties agree to commence any action or proceeding against one another in New York City, New York metropolitan area, or as otherwise agreed and waive any and all objections to that venue. 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

- 13.3. In this Agreement:
- (a) a reference to this Agreement includes all its parts described in the Agreement Details, and includes any amendment to or replacement of them;
 - (b) a reference to a statute, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
 - (c) the singular includes the plural, and vice versa;
 - (d) "includes", "including", "for example", "such as" and similar terms are not used, and are not to be interpreted as, words of limitation;
 - (e) unless otherwise indicated, a reference to a day is to a calendar day; and
 - (f) unless otherwise indicated, all dollar amounts are US Dollars.

Notices

- 13.4. Notice of any circumstance with respect to termination of this Agreement, a material breach or event of default shall be sufficiently given if delivered in hard-copy written form personally, by express delivery service (confirmation of receipt requested) or by certified mail, return receipt requested to the address set forth in the Agreement Details Section of this Agreement. In all other circumstances, notice may also be delivered by email to the address set forth in the Agreement Details Section of this Agreement. Either party may at any time, and from time to time, revise its notice address upon notice to the other delivered in accordance with this Section.

Severability

- 13.5. If any Section or part of any Section is held by the 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 and the parties shall promptly negotiate to replace such portions that cannot be implemented as agreed and that are essential parts of this Agreement. The negotiations shall be conducted in good faith and shall

preserve the intention of the parties as expressed in this Agreement to the extent possible, and in a manner that preserves the equities of the bargain. In the event that notwithstanding such efforts, the parties are unable to reach agreement within 60 days, then either party may cancel this Agreement upon 30 days' notice to the other.

Waiver of rights

- 13.6. A condition of this Agreement, or a right created by it, may only be waived by a writing executed by an authorized representative of the party against whom the waiver is to be enforced.
- 13.7. A waiver of a breach of this Agreement does not waive any other breach and the failure to exercise or any delay in exercising a right or remedy provided by the Agreement or by law does not constitute a waiver of the right or remedy.

Warranties

- 13.8. The Customer and Telstra each warrants to the other that:
- (a) entering into and performing its obligations under the Agreement do not breach any of its contractual obligations to any other person; and
 - (b) it has not relied on any representations or warranties by the other party other than those in the Agreement.

Assignment

- 13.9. Neither the Customer nor Telstra may assign its rights under this Agreement without the prior written consent of the other, which will not unreasonably be withheld, except that either party may, without the other party's consent, assign this Agreement to a present or future Affiliate or successor, provided that such Affiliate or successor is not a competitor of the other party and any such assignment by Customer shall be contingent upon Telstra determining the assignee to be creditworthy and in compliance with any eligibility criteria for the Services.

Force majeure

- 13.10. Neither party is liable for not performing an obligation in whole or in part, or for not performing it on time (except an obligation to pay money) or any loss or damage due to a Force Majeure Event.
- 13.11. If a Force Majeure Event occurs, the affected party must: (a) give the other party notice of the event promptly and an estimate of the non-performance and delay; (b) take all reasonable steps to overcome the effects of the event (but this does not require the settlement of industrial disputes or other claims on unreasonable terms); and (c) resume compliance as soon as practicable after the event no longer affects either party.

Agency

- 13.12. The Customer may appoint a third party to act on its behalf in relation to the Agreement only if and for so long as Telstra consents to it doing so. Telstra may impose conditions on the giving of its consent and may withdraw its consent at any time. Telstra will not unreasonably withhold consent, impose conditions or withdraw consent.
- 13.13. Telstra may provide some or all of the services the Customer has requested directly as a carrier, or by subcontracting the services to other service providers or by procuring those services from one or more other carriers on the Customer's behalf as its agent. Where Telstra procures services as the Customer's agent (the "Third-Party Services") the Customer agrees that it shall be separately liable to the carrier(s) from which those Third-Party Services are procured (the "TP Carrier") for any and all charges, including any Taxes, that are assessed for those Third-Party Services and shall comply with the applicable terms and conditions imposed by such TP Carrier; provided that in certain locations Telstra may be able to provide single end ordering, single end billing, and single end fault reporting for such Third-Party Services under the terms and conditions of the attached FCMS Schedule. Telstra may charge the Customer a management fee for providing such billing services and other management services related to such Third Party-Services, which fees may be included in the charge that Telstra bills the Customer for the Third Party Services. The Customer may be required to execute, or arrange for the

execution by the appropriate local entity who is acquiring the Third Party Services in the applicable location of, the appropriate warranty or letter of agency to order these services.

- 13.14. For services Telstra procures as its agent: (i) Telstra shall not be liable for any interruptions in service provided by another carrier; and (ii) Telstra makes no warranties regarding services provided by other carriers.
- 13.15. If Telstra ceases procuring certain services as the Customer's agent and instead provides those services directly to the Customer as a carrier, the Customer will be liable directly to Telstra for payment for those services and those services will be governed by the relevant tariff or contract.

Third party rights and Marketing

- 13.16. A person who is not a party to the Agreement has no rights under any applicable legislation to enforce any term or condition in the Agreement. This Agreement does not provide any third party (including Users or Affiliates) with any remedy, claim, liability, reimbursement, cause of action or other right or privilege.
- 13.17. Customer shall reasonably cooperate with Telstra in the event that Telstra wishes to publicize the execution of this Agreement. Customer shall have the right to pre-approve any portion of any press release that refers to Customer by name, which approval shall not be unreasonably withheld or delayed. Telstra may provide Customer as a contact name for sales and marketing opportunities

14. Definitions

Acceptable Usage Policy – means Telstra's acceptable usage policy, as may be amended from time to time upon notice by Telstra, which notice may be provided, notwithstanding anything contained herein to the contrary, by email, posting on a Telstra web site or in any manner permitted under this Agreement. The Customer acknowledges having read and understood the current Acceptable Usage Policy, which is currently located at <http://www.telstrainternational.com/legal/americas/acceptable-use-policy/>.

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

Agreement Details – means the Agreement details set forth at the front of this Agreement.

Applicable Law – means any law in force in a jurisdiction where the Services are being supplied or used or which regulates the supply or use of the Services and includes: (a) any applicable lawful determination, decision or direction of a court or government agency; (b) any applicable obligations under any telecommunications licence, any binding industry standard or industry code; and (c) any applicable international convention or agreement.

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

Business Day - means any day other than a Saturday, Sunday or recognized public holiday in the State of New York or, in the case of the Service Schedule, the applicable location where Service is being provided.

Credit – means the sole financial remedy for failure to meet a Service Level(s) set forth in the applicable Service Schedule(s), calculated in accordance with such Schedule and this Agreement; provided that not all Services are subject to Service Levels and not all Service Levels may give rise to Credits.

Early Termination Fee - means the early termination fee for a Service (if any) set out or referred to in the Service Schedule (or, if none is specified, an amount equal to the charges which would have applied to each terminated Services for the then-current Service Term had the Services not been terminated, plus any deinstallation or other non-recurring Charges set forth in the Schedules).

Exclusion Events - means: (a) fault(s) caused or contributed to by a local access service (also known as a local circuit), whether that local access service is provided by Telstra or a third party, between the Customer's site and Telstra's exchange, or Telstra's Service Provider's exchange; (b) any fault or lack of Availability caused by the simultaneous failure of two or more international submarine cable systems not wholly-owned or operated by Telstra or its Service Provider for the Service where the fault or lack of Availability would not have occurred if only one such cable system had failed; (c) any fault, lack of Availability or failure, caused or contributed to by: (i) an act or omission of the Customer, a third party (excluding Telstra's Service Provider), or any of their respective agents, contractors or customers; (ii) the Customer's Premises, Telstra's ability to access such Premises or unavailability of necessary cabling facilities at such Premises; or (iii) any Customer or third party (excluding Telstra's Service Provider) equipment or software; (d) a fault reported by the Customer but not confirmed by Telstra nor any relevant third party operator as a valid fault; (e) Planned Network Maintenance and emergency repairs and modifications as described in Section 3.2; (f) unavailability of permits or licenses from third parties necessary for supply of the Global

Service, including road digging permits and licenses from a building owner or manager; or (g) Force Majeure Event, suspension in accordance with the terms of this Agreement, or local in-country practices, any national laws, customs or regulations.

Facility – in relation to facilities in Australia is defined in the the Telecommunications Act 1997 (Cth) of the Commonwealth of Australia and includes any line, equipment, tower, mast, antenna, tunnel, hole, pit or pole used in connection with a Service, and in relation to facilities outside Australia includes line, equipment, tower, mast, antenna, tunnel, hole, pit or pole used in connection with a Service.

Force Majeure Event – means any of the following events with respect to a party: fire, explosion, power blackout, flood, embargoes, labor disputes, war, acts of God, acts or omissions of carriers, Service Providers or suppliers, acts of Regulatory Authorities or other causes beyond such party's reasonable control, whether or not similar to the foregoing.

Global Service - means any services (other than Australian domestic services), as are further described in the Service Schedule for the relevant Global Service which a Customer may order from Telstra, and Telstra may agree to provide under this Agreement from time to time.

Global Service Interruption - means an interruption that results in the total disruption of the Global Service such that the Global Service is unable to send and receive data between locations on the Global Service and which is documented in a Telstra trouble ticket other than a trouble ticket opened: (a) later than 72 hours after the disruption occurs; or (b) for degraded service, such as slow data transmission.

A Global Service Interruption commences when the trouble ticket for it is opened. Trouble tickets will be opened at the time the Customer notifies Telstra of the disruption by notice in writing or by telephone to the Service Desk or Telstra otherwise opens a trouble ticket in relation to the disruption.

Government Body - means any government or governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity.

Installation Period - means the period between the date Telstra accepts Customer's order for a Global Service and the Service Start Date.

Planned Network Maintenance - means network maintenance scheduled from time to time in each location where a Global Service is provided.

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

Regulatory Authority - means any Government Body with jurisdiction to regulate the Services.

Regulatory Restriction – means (a) legal or regulatory restrictions; (b) restrictions due to domestic or foreign government policy; (c) other restrictions imposed on telecommunication operators in relation to providing telecommunication services (including, without limitation, licensing requirements and restrictions relating to reselling services), which operate such that the Agreement or any action taken or required to be taken in accordance with the Agreement, including without limitation the provision of the Services to the Customer, contravenes or may contravene any provision of any applicable law in force in the jurisdiction where the Services are being supplied or used.

Service Provider - means a service provider from whom Telstra acquires any Global Service for the purpose of reselling the Global Service to the Customer, and may include Telstra Corporation Limited. Service Provider does not include service providers from whom Telstra acquires services as an agent for the Customer.

Service Schedules – means the Schedules attached to this Agreement or executed by the Customer and Telstra in connection with an order or otherwise.

Service Start Date – means, with respect to any Service, the first day that such Service is installed and ready-for-use as determined by Telstra in accordance with this Agreement, whether or not any associated Customer or third-party equipment, software or services (including, without limitation, any Customer-supplied local access services) are installed or ready-for-use.

Service Term - means the initial Service Term referenced in the applicable Order and any Renewal Period for the applicable Services. The initial Service Term commences upon the Service Start Date.

Services – means the Global Services and any other services as are further described in the Service Schedule for the relevant Global Service which a Customer may order from Telstra, and Telstra may agree to provide under this Agreement from time to time.

Specified Exchange Rate - means the Noon Buying Rate as published by the Federal Bank of New York on the penultimate Business Day of each month.

Start Date – means the later of the dates appearing with the authorized signatures set forth in the Agreement Details except to the extent that the parties expressly specify an alternative Start Date in the Agreement Details.

Tax - means any tax (excluding income tax or capital gains tax payable by Telstra or a Service Provider), value added taxes, levy, charge, duty (including customs duty or stamp duty), excise, sales tax, impost, fee, deduction, compulsory loan, and other similar taxes that is assessed, levied, imposed or collected by any Government Body now and at any time in the future and includes (but is not limited to) any interest, fine, penalty, charge, fee or other amount imposed on, or in respect of, any of the above. It also includes taxes which are replacement taxes for the taxes referred to above.

Telstra – means Telstra Incorporated, a Delaware corporation and includes successors and assigns.

Telstra Corporation Limited – means Telstra Corporation Limited (ABN 33 051 775 556)

Unavailability - means the number of minutes in a month during which the Global Service is subject to a Global Service Interruption but does not include any period during which an Exclusion Event applies.

User – means anyone, including Customer Affiliates, who uses or accesses any Service purchased by Customer under this Agreement, except that "User" shall not include any unauthorized party who, in violation of law, accesses any Service without the knowledge of Customer and after Customer has taken all commercially reasonable safeguards to prevent such unauthorized access.

Telstra Business Services Agreement

Foreign Carrier Management Service ("FCMS")

Attachment

1 Requirement for FCMS

- 1.1 This Attachment only applies if Telstra provides our Foreign Carrier Management Service to Customer.
- 1.2 In certain jurisdictions (including India) Telstra is unable, for legal, regulatory or Foreign Carrier policy reasons, to supply a WAN Type to Customer (**Foreign Jurisdictions**).

2 Provision of FCMS

- 2.1 In some Foreign Jurisdictions Telstra has relationships with carriers (**Foreign Carrier**) which enable traffic to be transmitted between a WAN Type provided by Telstra and a corresponding type of service provided by the Foreign Carrier (**Foreign Carrier's Service**). The Foreign Carrier's Service may be, where the WAN Type is:
- (a) an IPL, ATM or Frame Relay Half Circuit, a corresponding half circuit using the same transmission technology at the Z end;
 - (b) IP VPN, an IP VPN port and local circuit capable of communicating with the IP VPN GWAN Services provided by Telstra; or
 - (c) the Z end of any other transmission technology types advised by Telstra from time to time.
- 2.2 To assist Customer to obtain and manage a Foreign Carrier's Service Telstra can provide our Foreign Carrier Management Service (**FCMS**).
- 2.3 FCMS provides single end ordering, single end billing and single end fault reporting for the Foreign Carrier's Service as set out below:
- (a) Single end ordering: Telstra will assist Customer to obtain a Foreign Carrier's Service from a Foreign Carrier by ordering, assisting with arrangement of installation and, at the end of the relevant term, terminating the Foreign Carrier's Service on Customer's behalf;
 - (b) Single end billing: Telstra will bill Customer the charges for each Foreign Carrier's Service and pay those charges to the Foreign Carrier on Customer's behalf. The charges for each Foreign Carrier's Service are determined by the Foreign Carrier and are payable in accordance with the Foreign Carrier's terms and conditions. If the Foreign Carrier varies the charges for the Foreign Carrier's Service, Telstra will make a corresponding variation to the charges billed pursuant to this clause for that Foreign Carrier's Service. If Telstra reasonably considers it necessary for regulatory reasons, Telstra may cease providing single end billing and Customer will have to pay the charges for each Foreign Carrier's Service directly to the Foreign Carrier;
 - (c) Single end fault reporting: Customer may report faults on each Foreign Carrier's Service to Telstra and Telstra will seek to resolve those faults with the Foreign Carrier and recover from the Foreign Carrier, on Customer's behalf, any rebates due to Customer under Customer's contract with the Foreign Carrier. Telstra will credit Customer's invoices for any rebates Telstra receives from the Foreign Carrier. Telstra has no liability to Customer, any party occupying the premises where the Foreign Carrier's Service terminates (**End User**) or any other party in respect of the performance of each Foreign Carrier's Service or the ability to claim rebates under Customer's contract with the Foreign Carrier.
- 2.4 Telstra may, in our sole discretion, offer Service Levels (including rebates) over the Foreign Carrier's Service. If Telstra does so:
- (a) this is our commercial decision and does not make us the supplier of the Foreign Carrier's Service; and
 - (b) Telstra may retain any rebates received under clause 2.3(c) above.
- 2.5 Foreign Carrier's Services in respect of which Telstra provides FCMS are set out in the Order.
- 2.6 Notwithstanding anything to the contrary in this Agreement, any IPL, ATM or Frame Relay WAN Type Half

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Circuit from, IP VPN WAN Type or any other WAN Type in, India, Papua New Guinea or Fiji set out in the Order is a Foreign Carrier's Service to which FCMS applies.

- 2.7 Where Telstra provides FCMS it forms part of the GWAN Service to which the FCMS relates.
- 2.8 If a Foreign Carrier cancels the provision of the services it provides to Telstra to enable us to provide FCMS to Customer Telstra may cancel any FCMS with effect from a date no later than the date such cancellation by the Foreign Carrier takes effect.

3 Foreign Carrier's Service

- 3.1 The Foreign Carrier's Service is:
- (a) acquired by Customer directly from the Foreign Carrier;
 - (b) provided by the Foreign Carrier and subject to the Foreign Carrier's own terms and conditions (including any applicable service level guarantee and early termination fees); and
 - (c) for the avoidance of doubt, a Foreign Carrier's Service for which Telstra provides FCMS does not form part of the GWAN Service and is not provided to Customer by Telstra.

4 Appointment

- 4.1 Where Customer requests Telstra to provide FCMS, Customer appoints, or if required by Telstra will have any applicable End User appoint, Telstra or another member of the Telstra Group nominated by Telstra, to act as agent (the **Agent**) to order, arrange installation of, terminate, pay charges and resolve faults on each Foreign Carrier's Service as contemplated by clause 2.3 of this Attachment.
- 4.2 The Foreign Carrier may require that a warranty of agency, or similar document, be signed by Customer or the End User rather than Customer. If the Foreign Carrier requires that the warranty of agency, or similar document, be signed by the End-User, Customer must procure that the End User does so.
- 4.3 If another member of the Telstra Group is the Agent or if the Agent is appointed as agent for the End User, FCMS remains supplied by us to Customer on the terms and conditions of this Agreement.
- 4.4 Where Telstra or another member of the Telstra Group are the Agent of the End User, Customer is solely responsible for ensuring that the End User agrees and understands that:
- (a) FCMS is being provided by us to Customer and by Customer to the End User;
 - (b) the End User must deal only with Customer in relation to the FCMS; and
 - (c) Telstra and the other member of the Telstra Group, where applicable have no liability whatsoever to the End User or any other party.
- 4.5 Regardless of whether or not Telstra is the Agent, Telstra is not liable for any acts or omissions in respect of FCMS provided by Telstra, including Telstra's appointment as Agent of Customer or the End User, except in the case of Telstra's willful neglect or willful default. Customer agrees to indemnify Telstra on demand against, and to hold Telstra harmless from and against, all damages, liabilities, costs, claims, demands, charges and expenses arising in any way out of Telstra's appointment or performance of duties as agent for Customer or the End User or the supply by Telstra of FCMS to Customer, including any claim made by the End User against Telstra.
- 4.6 Where another member of the Telstra Group is the Agent, the Agent is not liable for any acts or omissions in respect of FCMS provided by the Agent, including the Agent's appointment as Agent of Customer or the End User, except in the case of the Agent's willful neglect or willful default. In consideration of the Agent agreeing to act as agent, Customer agrees to indemnify the Agent on demand against, and to hold the Agent harmless from and against, all damages, liabilities, costs, claims, demands, charges and expenses arising in any way out of the

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Foreign Carrier Management Service (“FCMS”)

Attachment

Agent’s appointment or performance of duties as agent for Customer or the End User, including any claim made by the End User against the Agent. The rights and remedies under this clause 4.6 may be exercised by Telstra for and on behalf of the Agent. The benefit of Customer’s obligations under this clause 4.6 in respect of the Agent is deemed to inure to the Agent, and Telstra is authorised to enforce those duties and obligations on the Agent’s behalf.

5 Management fee and Taxes

- 5.1 Customer acknowledges that Telstra may charge Customer a management fee for providing FCMS and include this in the Single End Billing charges.
- 5.2 All Taxes on charges for a Foreign Carrier’s Service are payable by Customer. Customer indemnifies Telstra against any Tax liability Telstra incurs in relation to the Foreign Carrier’s Service or charges payable in respect of the Foreign Carrier’s Service.