



# 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 between the parts of this Agreement, the document listed earlier in clause 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 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 party (at least 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 OUR COMMITMENT TO YOU

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- 3.1 We will:
- (a) provide the Services with reasonable care and skill;
  - (b) provide the Services in accordance with the Service Levels. Subject to the Service Levels, we will endeavour to provide, but do not guarantee that they will be continuous or fault free;
  - (c) ensure that all work we perform in connection with the Services is carried out by competent and suitably qualified personnel; and
  - (d) meet with you regularly to discuss the Services and our performance under this Agreement.

### 4 SERVICE LEVELS

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#### SERVICE LEVELS

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

## SERVICE LEVEL CREDITS

- 4.2 If we fail to meet a Service Level, you may be entitled to a Service Level Credit. To claim a Service Level Credit, you must notify us of your 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), giving details of:
- (a) the relevant dates and times of the Service failure, the time it was reported to our service desk and any test or performance data to support your claim; and
  - (b) the type of Service failure in breach of agreed Service Levels (such as Unavailability, time to resolve such Service failure, packet loss or transit delay).
- 4.3 If you do not make a claim in accordance with clause 4.2, you cannot make any claim against us in respect of the service failure.
- 4.4 Where the failure of the Service is due to an Exclusion Event, we will not be liable for any failure to meet a Service Level (including the payment of any Service Level Credits).

## MAINTENANCE

- 4.5 From time to time, we may need to schedule maintenance in connection with the Service (**Planned Maintenance**).
- 4.6 Where feasible, we will schedule Planned Maintenance between 1am – 6am local time at the affected Service locations and give you at least 10 days' notice.
- 4.7 Where we need to conduct emergency maintenance repairs and modification to our network or services, we will aim to give you at least 24 hours' notice (**Emergency Maintenance**).

## 5 YOUR COMMITMENT TO US

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- 5.1 You:
- (a) must provide us with all reasonable assistance and access to your Premises, information, network, infrastructure, equipment and systems as required by us to provide the Services;
  - (b) must ensure that all equipment connected to the Services by you, or on your behalf, is technically compatible with the applicable Service and that your Premises and the equipment complies with, and is used, in accordance with all reasonable procedures notified by us 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 our Acceptable Use Policy and Applicable Law when using the Services;
  - (e) are solely responsible for selecting, supplying and maintaining your own facilities and equipment, except where expressly provided otherwise in a Service Schedule;
  - (f) are solely responsible for the content and security of any data or information which you send or receive using the Services, except where expressly provided otherwise in a Service Schedule;
  - (g) are solely responsible for any use of the Services, or any Facility connected to the Services on your Premises, by you or any End User;
  - (h) must not resell or re-supply a Service to any third party, including any Affiliate, unless you first obtain:
    - (1) our consent (which we may give in our absolute discretion and subject to certain conditions); and

- (2) all licences, approvals, certifications and consents required for you to legally resell or resupply the Services;
  - (i) must comply (and must ensure that any person who uses the Services complies) with all Applicable Laws relating to the Services (including in relation to the use of encryption in your network);
  - (j) must not use the Services in any manner, whether directly or indirectly, to menace or harass any person, cause damage or injury to any person or property, incite hatred or in a manner that may infringe any person's rights, including Intellectual Property Rights or in a manner that is prohibited by Applicable Laws;
  - (k) must provide us with all information, records and other relevant materials relating to your Equipment or software interfacing with or connected to the Services as may be reasonably required for us to comply with Applicable Laws;
  - (l) must not establish connection to any Public Switched Telecommunication Network (PSTN) or any other public network in India by using private lines;
  - (m) must not permit origination or termination of voice communication from any telephone (connected to PSTN) in India by using private line connectivity;
  - (n) must follow all instructions provided by the us which relate to the health, safety or the quality of any telecommunications service provided to you;
  - (o) must not use the Services to provide tele-banking, tele-medicine, tele-education, tele-trading, e-commerce, call centre, network operation centre or for other uses that are classified under Indian law as use by an Other Service Provider without first obtaining all relevant regulatory licences, certifications consents and approvals required under Applicable Laws; and
  - (p) must not infringe, violate or misappropriate our Intellectual Property Rights or the Intellectual Property rights of our Service Provider or any third party in performing your obligations or exercising your rights under this Agreement.
- 5.2 If you receive equipment from us you 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 us. While our equipment is in your care or on your Premises, you are responsible for any theft or damage and must keep the equipment free and clear of any lien or other encumbrance. You must ensure that you have the necessary approvals and consents for the equipment to be installed and maintained at your Premises and provide a suitable physical environment for the correct operation of the equipment.
- 5.3 If you use the Services to menace or harass any person, cause damage or injury to any person or property, incite hatred or in a manner that may infringe any person's rights, including Intellectual Property Rights, or in a manner prohibited by Applicable Laws then we reserve the right to remove, amend, modify or copy any such information or provide such information to regulatory authorities if required under Applicable Laws.
- 5.4 You agree to indemnify and keep indemnified us and our affiliates against any claims brought against us by a third party directly as a result of your breach of this clause 5.

#### **INDIA KNOW YOUR CUSTOMER REQUIREMENTS**

- 5.5 You acknowledge that we are required by Indian telecommunications regulation to procure certain documents from users of local Indian services (including you).
- 5.6 You shall provide to us within 15 days of the execution of this Agreement or upon our request:
- (a) evidence that you are operating from the site to which we are delivering the Indian Service in the form of either:
    - (1) if your registered address is the same address to which we are delivering the Indian Service, a copy of the entity's Certificate of Incorporation issued by the Registrar of Companies, Ministry of Corporate Affairs, India; or

- (2) utility bill, PAN card or other evidence showing that you are operating at the relevant site.
  - (b) if you are acquiring Services from us in the capacity as an Other Service Provider, a copy of your Other Services Provider certificate issued by the Department of Telecommunications, India for the relevant site; and
  - (c) any other documentation or information reasonably required by us to enable us to comply with our obligations under Applicable Law.
- 5.7 Clauses 5.5 to 5.7, both included, are a material term of this Agreement.

## **6 PAYMENT AND SECURITY DEPOSIT**

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### **PAYMENT**

- 6.1 You must pay us the charges set out in this Agreement for the Services.
- 6.2 The charges for the Services will consist of:
- (a) monthly recurring charges and non-recurring charges as set out in the Service Order Form (where applicable), which will ordinarily be billed in advance or in arrears respectively; and / or
  - (b) variable usage charges as set out in the Service Order Form (where applicable), which will ordinarily be billed monthly in arrears.
- 6.3 We will commence billing you for each Service on the Service Start Date, or as set out in the Service Order Form.
- 6.4 A softcopy of the invoice may either be provided to you or made available to you for download on the T-Connect Portal.
- 6.5 All charges are payable within 30 days of the date of invoice.
- 6.6 All charges for the Services and any other amounts due under this Agreement, are payable in the Specified Currency unless otherwise agreed in writing.
- 6.7 If you genuinely dispute an invoice, you:
- (a) must promptly notify us of the disputed amount in writing (including details of the dispute), and provide us with any other information we reasonably request; and
  - (b) do not need to pay the disputed amount until the dispute is resolved provided you notify us before the due date, however you must pay all undisputed amounts by the due date.
- 6.8 If you do not pay any undisputed amount by the due date, we may charge you interest (calculated on a daily basis) on any unpaid amounts at a monthly rate of 1%.
- 6.9 You may only make a claim that the charges on an invoice for the Services are incorrect within 12 months of the invoice due date.

### **BILL SPLITTING**

- 6.10 Where agreed in writing by you and us, a billing agent or member of our group (**Billing Entity**) will send invoices for Services nominated by you to you or another member of your group (**Billed Entity**) provided that the Billing Entity and the Billed Entity are in the same country.
- 6.11 For such invoices:
- (a) all Services remain supplied to you by us under this Agreement and only you and us have rights against, and owe obligations to, each other in relation to the Services; and

- (b) all invoices will be deemed to have been sent to you by us and you remain solely liable for payment of all invoices to us in accordance with this Agreement.

#### **SECURITY DEPOSIT (WHERE APPLICABLE)**

- 6.12 Where agreed between both parties in writing (which may be included in a Service Order Form for example), you will provide us with a security deposit equivalent to an agreed multiple of the monthly recurring charges due to us for the Services, which shall be held by us for the performance of your obligations under this Agreement (including, without limitation, payment of undisputed charges) (**Security Requirement**). We may increase the Security Requirement if you purchase additional services from us.
- 6.13 If you fail to pay any undisputed charges by the due date:
- (a) we may apply the Security Requirement, or part of it, in satisfaction of the unpaid charges; and
  - (b) you shall immediately restore or procure the restoration of the Security Requirement to the required level.
- 6.14 On termination of this Agreement or the relevant Services, we may apply the Security Requirement, or part of it, in satisfaction of any unpaid charges, provided that within 30 days after receiving payment in full for all charges, the Security Requirement (or any balance) shall be released to you without interest.

#### **7 TAXES**

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- 7.1 You 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 you are required to make a Tax Deduction by law, you must pay us an additional amount so that, after making any Tax Deduction, we are 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 clause 9, you may terminate a Service without cause at any time by giving us at least 30 days' notice.
- 8.2 We may limit, suspend or terminate a Service at any time without notice to you, if in our reasonable opinion:
- (a) the supply or use of a Service breaches or is likely to breach Applicable Laws;
  - (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 Government Body;
  - (c) the provision of a Service is likely to cause death or personal injury or damage to property; or
  - (d) you breach our Acceptable Use Policy.
- 8.3 We may limit, suspend or terminate a Service at any time by giving you at least 14 days' notice, if:
- (a) you do not pay any undisputed amounts due for that Service by the due date;
  - (b) an administrator, receiver, liquidator or provisional liquidator is appointed to you or a petition filed or notice given in connection therewith or a winding up, or you make a proposal for or resolve to enter into any settlement, moratorium or similar

arrangement for the benefit of your creditors or any class thereof, or you are unable to pay your debts when they are due; or

- (c) you have resold, resupplied or shared a Service to or with any third party without obtaining our consent.

8.4 Where a Service has been suspended or terminated due to your breach under clauses 8.2 or 8.3, we may require you to pay a re-connection charge if the Service is re-connected.

8.5 If we need to modify or exit a Service from the market, then we may migrate you to the modified service or an alternative service after giving you at least 3 months' notice in case of any material modifications or cancel the Service after giving you at least 6 months' notice. If the service to which we propose you migrate is detrimental to you, you may cancel the Service effective upon the proposed date of migration without the payment of any Early Termination Charges by providing us with written notice delivered within 45 days from our written notice of migration.

## **TERMINATION OF AGREEMENT**

8.6 If a party commits a material breach of this Agreement (including non-payment of any amounts not disputed in accordance with clause 6.7 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 or the relevant Service.

## **9 EFFECT OF TERMINATION**

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9.1 If this Agreement is terminated or a Service is cancelled for any reason:

- (a) you must pay us all outstanding amounts (including Early Termination Charges) due to us within 30 days of the termination notice;
- (b) we may, after providing reasonable notice to you, enter the Premises and remove any equipment belonging to us which is connected with the affected Service. If we are unable to gain access to the Premises, you will be required to pay us 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 continue.

9.2 If this Agreement terminates for any reason, clauses 5 (Your commitment to us), 9 (Termination), 10 (Confidentiality and Privacy), 11 (Limitation of liability), 12 (Third Party IP claims), 13 (Dispute Resolution), 14 (General) and 15 (Definitions) and similar clauses included in a Service Schedule shall continue in full force and effect.

9.3 The Early Termination Charges are a genuine pre-estimate of the loss we are likely to suffer.

## **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 our 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, employees, Personnel, professional advisers and our 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 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 it is in the public domain, other than by a breach of this clause.
- 10.3 You are responsible for providing a copy of our Privacy Statement to your Affiliates, End Users and Personnel to the extent required pursuant to Applicable Law or agreements with such parties.
- 10.4 You acknowledge and agree that disclosing your confidential information to those parties contemplated in clause 10.2(a) above may also involve us disclosing, transferring, storing and making your confidential information accessible offshore.

## **11 LIMITATION OF LIABILITY**

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- 11.1 If we fail to meet a Service Level, we limit our liability to the applicable Service Level Credits.
- 11.2 Unless otherwise stated in this Agreement, each party accepts liability arising from its breach of contract or negligence:
  - (a) for any personal injury or death of the other party or its Personnel in relation to the supply or the receipt of the Services;
  - (b) for any damage to the other party's real or tangible property resulting from the supply of the Services, but limits its liability to its choice of repairing or replacing the property or paying the cost of repairing or replacing it; and
  - (c) unless clause 11.1, 11.2(a) or 11.2(b) applies, for any other cost or expense the other party reasonably incurs that is a direct result of, and flows naturally from, such breach of contract or negligence, a party's liability for all claims under this Agreement is 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 you to us for the applicable service during the 12 months preceding the month in which the damaged occurred. The limitation of liability in this clause 11.2(c) does not apply to:
    - (1) the indemnity we provide under clause 12.1;
    - (2) your liability for breach of clause 5.1(p); and/or
    - (3) your liability to pay charges to us under this Agreement.
- 11.3 Under no circumstances will the parties be liable to each other for any special, aggravated, indirect or consequential losses, costs or damages (including but not limited to, loss of profits, revenue, business opportunities, likely savings, loss of data or diminution in value, or anticipated savings), or punitive damages.
- 11.4 Other than for the liability we accept under clauses 11.1 and 11.2, we exclude all other warranties, rights, remedies and liability to you or a third party for breach of contract, tort (including negligence) or breach of any other law. For any liability which cannot lawfully be excluded, but can be limited, our liability is limited to our choice of re-supplying or paying the cost of re-supplying services and repairing, replacing or paying the cost of repairing or replacing goods.
- 11.5 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, their Personnel or their Related Companies (and in our case, your End User).

## **12 THIRD PARTY IP CLAIMS**

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- 12.1 We indemnify you against any direct loss, damage, liability, costs or expenses incurred by you as a result of a claim by a third party against you that your use of the Services or any

material provided by us under this Agreement infringes the Intellectual Property Rights of the third party, subject to you promptly notifying us of the claim, allowing us (at our option) to direct any defence and settlement of the claim, and providing us with all necessary assistance relating to the claim. This indemnity does not apply to the extent the claim: (a) arises out of any modification of any materials provided by us; (b) relates to services or materials provided in conjunction with the Services by a third party which is not a Service Provider; or (c) is caused, or contributed to, by you or your Personnel.

- 12.2 Where any person makes a claim for Intellectual Property Right infringement in connection with the provision of Services or materials (including Facilities) by us, we may modify, replace, limit, suspend or cancel the Services or materials, if required, in response to the claim.
- 12.3 You indemnify us against any loss, damage, liability, costs or expenses incurred by us as a result of a claim by a third party against us that the Services infringe the Intellectual Property Rights or patents of such third party; to the extent such claim: (a) arises from any modification of any Telstra Materials or 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 you or your Personnel, Affiliates or End Users.

## **13 DISPUTE RESOLUTION**

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### **RESOLVING DISPUTES**

- 13.1 The parties agree to use reasonable endeavours to resolve in good faith any disputes or claims concerning this Agreement. Each party must follow the procedures in this clause 13 before starting arbitration or 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 our contact person and your 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.

### **ARBITRATION**

- 13.3 Any dispute arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration administered by the Singapore International Arbitration Centre (**SIAC**) in accordance with the Arbitration Rules of the Singapore International Arbitration Centre (**SIAC Rules**) for the time being in force, which rules are deemed to be incorporated by reference in this clause.
- 13.4 The seat of the arbitration shall be Singapore.
- 13.5 The Tribunal shall consist of 3 arbitrators.
- 13.6 The language of the arbitration shall be English.

## **14 GENERAL**

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### **ANTI-SLAVERY, ANTI-BRIBERY AND ANTI-CORRUPTION**

- 14.1 In performing their respective obligations under this Agreement, each party must act in accordance with any anti-slavery, anti-bribery and anti-corruption laws that applies to them in jurisdictions where the Services are provided under this Agreement.
- 14.2 We will act in accordance with:
- (a) Our [Modern Slavery Act statement](#) which sets out an overview of our supply chain and how we disclose any material incidents in our annual Modern Slavery Act statement; and
  - (b) Our [Supplier Code of Conduct](#), which covers our expectations of our own suppliers.



## **ENTIRE AGREEMENT**

- 14.3 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**

- 14.4 This Agreement is governed by the laws of India.

## **INTERPRETATION**

- 14.5 In this Agreement:
- (a) a reference to this Agreement includes all its parts described in clause 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; and
  - (d) "includes", "including", "for example", "such as" and similar terms are not words of limitation.

## **NOTICES**

- 14.6 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 Service Order Form.
- 14.7 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 Service Order Form.
- 14.8 Either party may change its notice details at any time by notifying the other party in accordance with clause 14.7.

## **VARIATIONS**

- 14.9 Any amendment, modification or supplement to this Agreement must be in writing and executed by duly authorised representatives of each party, except where expressly stated otherwise.

## **ELECTRONIC SIGNATURES**

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

## **SEVERABILITY**

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

## **WAIVER OF RIGHTS**

- 14.12 No waiver under this Agreement is effective unless it is in writing, identified as a waiver to this Agreement, and signed by an authorised 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.
- 14.13 A waiver or a right or remedy provided under this Agreement does not waive, nor shall it prevent or restrict any further exercise of that or any other subsequent right or remedy.

## WARRANTIES

- 14.14 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.
- 14.15 You warrant that you have not relied on any representations or warranties by us, or any other person on our behalf, other than those specifically provided under clause 14.14 of this Agreement.

## ASSIGNMENT AND AGENCY

- 14.16 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* 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, provided that such Affiliate:
- (a) has sufficient resources and financial capacity to perform its obligations under this Agreement; and
  - (b) is not (i) a Sanctioned Party, (ii) located, organised 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 clauses (a) or (b) of this Section 14.16.
- 14.17 Notwithstanding the foregoing, we may assign: (a) any or all of our 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 our rights and obligations with respect to our receivables under this Agreement to our financing partner in circumstances where you do not pay any undisputed invoices on time in accordance with this Agreement, and this does not prevent us to take other actions as set out in this Agreement in relation to non-payment of undisputed invoices.
- 14.18 You may appoint a third party to act on your behalf in relation to this Agreement provided that we may refuse to deal with the third party if it is a competitor or on reasonable grounds relating to the conduct of the third party.

## FORCE MAJEURE

- 14.19 If a party is unable to perform or is delayed in performing an obligation under this Agreement 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. For the avoidance of doubt:
- (a) you must pay us for all Services provided up to the date of suspension or termination of the Services due to Force Majeure Event; and
  - (b) your obligation to pay us during the Force Majeure Event for Services provided up to the date of suspension or termination shall continue.
- 14.20 If a Force Majeure Event occurs, the affected party must:
- (a) use reasonable efforts to give the other party notice of the event;
  - (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.
- 14.21 Provided a party has complied with its obligations under clause 14.20, 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.

## EXPORT RESTRICTIONS

- 14.22 The Services, including any software, documentation, and any related technical data included with, or contained in, such Services, and any products utilizing any such Services, software, documentation, or technical data (collectively, **Regulated Services**) may be subject to applicable US and non-U.S. export control and economic sanctions laws and regulations, including but not limited to the U.S. Department of Commerce Bureau of Industry and Security's Export Administration Regulations, Regulation (EU) 2021/821 of 20 May 2021 setting up a Union regime for the control of exports, brokering, technical assistance, transit and transfer of dual-use items (recast), the UK's retained EU Council Regulation 428/2009 and the economic sanctions programs administered by the U.S. Department of Treasury Office of Foreign Asset Control, relevant authorities of the European Union and its Member States, the United Kingdom's HM Treasury and the United Kingdom's Department for International Trade (collectively **Trade Control Laws**).
- 14.23 You agree to (and procure any Affiliate and/or End User agrees to): (i) comply with all applicable Trade Control Laws related to the Services and Regulated Services (or the use thereof); and (ii) ensure that you (and any Affiliate and/or End User) do not act (or omit to act) in any way which may expose us to breaching Trade Control Laws or any enforcement or other adverse action thereunder. In particular, you must not, and must not permit any third parties (including any Affiliate and/or End User) to, directly or indirectly, import, export, reexport, or release any Services or Regulated Services to any jurisdiction or country to which, or any party to whom, the import, export, reexport, or release of any Services or Regulated Services is prohibited by applicable Trade Control Laws.
- 14.24 You must complete all required undertakings (including obtaining any necessary export or import license or other governmental approval), prior to importing, exporting, reexporting, or releasing any Services or Regulated Services. You must provide prior written notice of the need to comply with such laws and regulations to us and to any End User or person, firm, or entity which you have reason to believe is obtaining any such Services or Regulated Services from you with the intent to import, export or reexport.
- 14.25 You agree to notify us immediately in writing if you identify or suspect any breach or risk of breach of clause 14.21-14.23 above.
- 14.26 You are responsible for any breach of this clause 14.21-14.25 by your successors and permitted assigns, Affiliates, End Users, Personnel, directors, customers, distributors, resellers or vendors.

## THIRD PARTY RIGHTS

- 14.27 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

- 14.28 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 our Acceptable Usage Policy (**AUP**) as amended by us from time to time, which is available at <https://www.telstra.com.hk/en/legal/acceptable-use-policy>.

**Affiliate(s)** means any entity that controls, is controlled by or is under common control with a party.

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

**Applicable Law** means:

- (a) a reference to law which includes any law in force which regulates the supply or use of the Services or Regulated 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; and
- (b) a reference to a statute, code or other law which include regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them.

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

**Early Termination Charge** means any early termination or downgrade charges for a Service set out or referred to in the Service Schedule or Service Order Form.

**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.

**Emergency Maintenance** has the meaning set out in clause 4.7.

**End User** means anyone, including your Affiliates, who use or access any Service or Regulated Service purchased by you under this Agreement with or without your express authorization or permission, except that "End User" shall not include any unauthorized party who, in violation of law, accesses any Service or Regulated Service without your knowledge due to our 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 us 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 us or our Service Providers, or which is caused or contributed to by (i) an act or omission of you, your Personnel or any third party, or (ii) your Site or a third party Site (including access to such Site and availability of cabling facilities at such Site), equipment or software;
- (c) Planned Maintenance or Emergency Maintenance; 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.

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

**Initial Period** means the minimum period for which you 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 (as amended), excluding patents.

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

**Planned Maintenance** means the meaning set out in clause 4.5

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

**Privacy Statement** means our privacy statement as amended by us from time to time, which is available at [Tel.st/privacy-policy](https://www.telstra.com.au/privacy-policy).

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

**Regulated Services** means the meaning set out in clause 14.21.

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

**Sanctioned Party** means:

- (a) any person or entity that is designated for export controls or sanctions restrictions under any sanctions, export control, or import laws, or other regulations, orders, directives, designations, licences, or decisions which are 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 or United Nations Security Council or any other relevant authority, including, without limitation, those included in lists published by the United States Office of Foreign Assets Control (OFAC) and those designated as such under the United States List of Specially Designated Nationals and Blocked Persons, Foreign Sanctions Evaders List, Entity List, Denied Persons List, Debarred List, Australia's Consolidated List, the UK Consolidated List and the EU Consolidated List of Persons, Groups, and Entities Subject to EU Financial Sanctions; 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).

**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, set out in the relevant Service Schedule that you are entitled to for our failure to meet the Service Levels specified thereunder.

**Service Order Form** means:

- (a) our service order form (in electronic or hard copy) that you submit to us and we accept to order a new Service or to vary, reconfigure, renew or cancel an existing Service; or

- (b) any statement of work agreed by you and us and executed by your and our respective authorised representative setting out the scope of any professional or consulting services that we provide to you under this Agreement.

**Service Provider** means a service provider who provides services to us in connection with the Services (which may include a Telstra Affiliate), excluding any service providers from whom Telstra or a Telstra Affiliate acquires Services as an agent.

**Service Schedule** means a schedule setting out the terms of your Service which may either be appended to this Agreement and/ or a Service Order Form or incorporated by reference and located at [telstra.com.hk/en/service-terms](https://telstra.com.hk/en/service-terms).

**Service Start Date** means:

- (a) if a Service Schedule specifies an acceptance test period, the date you accept or are deemed to accept the Service pursuant to that Service Schedule. You are deemed to accept the Service on the expiry of the test period unless you have notified us, and we have confirmed the existence, of a Provisioning Fault during the acceptance test period; or
- (b) if no acceptance test period is specified, the first day that the Service is installed and ready-for-use, as determined by us.

**Service Term** has the meaning set out in clause 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 any related interest, penalties, fines or other charges or expenses, but excluding income tax or capital gains tax.

**T-Connect Portal** means the portal setting out the softcopy of the invoices. The link to such portal is to be provided by us to you separately.

**Trade Control Laws** means the meaning set out in clause 14.21.

**Unavailable** means an unplanned outage that results in the total disruption of a Service, such that the Service is unable to send and receive data.

**Unavailability** means the number of minutes in a month during which a Service is Unavailable, commencing when a trouble ticket has been logged by our service desk and excluding any period during which an Exclusion Event applies.