



GLOBAL BUSINESS SERVICES AGREEMENT

AGREEMENT TERMS

1 THIS AGREEMENT

- 1.1 The following stipulations are applicable and valid in the following order of norms:
- (a) each Service Order Form;
 - (b) the Service Schedules;
 - (c) the terms and conditions set out in this document (the **Agreement Terms**) and
 - (d) Legal regulations and industrial specific DIN standards.
- 1.2 In case of contradictions between the contractual documents, priority is determined by the aforementioned norm hierarchy. A document belonging to a subordinate rank can only override a higher ranking if it expressly refers to the provision of the higher ranking document to be transformed and if the higher ranking document provides a corresponding opening clause for the subordinate document.

2 TERM

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 (**Automatic Extension Period**), unless either party notifies the other at least thirty (30) calendar days before any automatic extension that it does not wish the Initial Period and/or any Automatic Extension Period 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

- 3.1 We will:
- (a) provide the Services with reasonable care and skill;
 - (b) provide the Services in accordance with the contractually agreed service levels, however given the nature of telecommunications systems we do not guarantee or warrant that they will be continuous or fault free;
 - (c) warrant that all work we perform in connection with the Services is carried out by competent and suitably qualified personnel; and
 - (d) procure that our Point of Contact (stated under clause 14.7) remotely meet with you regularly (not more than once per month) to discuss the Services and our performance under this Agreement.

4 SERVICE LEVELS

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), identifying the associated trouble ticket number for your claim.
- 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. Further, if you fail to immediately notify us, we are not liable for any damage which could have been avoided if the notice had been given immediately.
- 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), except if stated differently in clause 11 of this Agreement.

5 YOUR COMMITMENT TO US

- 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 anybody else whether authorised or not;
 - (h) must not resell or re-supply a Service to any third party without our consent (which we may give in our absolute discretion and subject to certain conditions);
 - (i) must provide us with any and all information and/or documents specified in any Service Schedule, Service Order Form and/or otherwise required for us for the timely fulfillment of our Services. Subject to clause 11.1, we are not liable for any delay or failure to perform related to your failure to fully cooperate and fully provide all required information in a timely manner; and
 - (j) 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 Any deadlines in this Agreement, any Service Schedule and/or Service Order Form to be complied with from us or our Group Companies are automatically deemed extended by any amount or period of time during which you are not in full compliance with your obligations under clause 5.1.

- 5.3 If you receive equipment from us you will not own it unless we agree to transfer the ownership to you in writing. 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.

6 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, which will ordinarily be billed in advance; and / or
 - (b) variable usage charges, which will 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 Order.
- 6.4 All charges are payable within thirty (30) calendar days of the date of invoice.
- 6.5 All charges for the Services and any other amounts due under this Agreement, are payable in the Specified Currency unless otherwise agreed in writing.
- 6.6 If you genuinely dispute an invoice, you must promptly notify us at GES-IMEABilling_Team@team.telstra.com of the disputed amount (including details of the dispute), and provide us with any other information we reasonably request. If you do not pay any amount by the due date, we may charge you interest (calculated on a daily basis in accordance with German statutory law) on any unpaid amounts at the applicable statutory default interest rate. If we disagree with the disputes raised by you we have a right of retention and may suspend the performance of any Services in whole or in part after giving you a 30 days' prior notice of the suspension. You may avert the exercise of the right of retention by providing security in the amount of 120% of the disputed amount by way of a written, irrevocable, unconditional and unlimited guarantee by a credit institution authorised to do business in Germany or by way of a deposit of money (Section 234 para. 1 and 3 of the German Civil Code). When the security is rendered or we receive the payment, including interest, we shall be obliged to resume performance of the Services.
- 6.7 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.
- 6.8 If we dispute any such disputes raised from you and together or in accordance with Clause 13 are not able to agree on how to proceed, either party may, by notice, refer the dispute to be settled by an independent expert (**Expert**) as follows.
- (a) Each party shall specify in the notice to the other party the questions to be decided by the Expert;
 - (b) If the Expert has not been named in this Agreement or the Schedule, and if the parties fail to agree on the choice of the Expert, either party may request that the Expert shall be named by the chairman of the Chambre of Commerce in Munich. The requesting party shall give a copy of his request to the other party.
 - (c) Each party shall, within seven days after he received notice of the appointment of the Expert, or if the Expert is already appointed, submit to the Expert the documents he wishes to rely on, with a copy to the other Party.
 - (d) Each Party may thereafter, within seven days after he received the other Party's documents, submit such further documents as he wishes to rely on.
 - (e) The Expert shall inform the Parties in writing of his decision, with a brief description of the reasons, no later than 28 days after he received the last documents from the Parties.
 - (f) The Expert shall in his decision determine the sharing of his fee and costs between the Parties. Each party shall bear his own costs.

- (g) The Expert's decision shall be binding on the Parties unless and until they agree on a different solution or the question is decided by the competent courts in accordance with Clause 14.2 Governing Law.

7 TAXES

- 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

SUSPENSION OR TERMINATION OF SERVICES

- 8.1 Subject to clause 9, you may terminate a Service at any time by giving us at least thirty (30) calendar days' notice.
- 8.2 We may limit, suspend or terminate a Service at any time without a mandatory notice to you, if in our reasonable opinion:
- (a) the supply or use of a Service breaches or is likely to breach Applicable Laws, regulations, licence, statutory rules or mandatory codes of conduct;
 - (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;
 - (d) you breach our Acceptable Use Policy;
 - (e) your use of a Service interferes (or threatens to interfere) with the efficiency of our network or the network of a Service Provider or
 - (f) as specified in other provisions of this Agreement.
- 8.3 Where practicable, we will provide you with as much notice as is reasonably possible before exercising our rights under clause 8.2.
- 8.4 We may limit, suspend or terminate a Service at any time by giving you at least fourteen (14) calendar 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 you resolve to enter into any settlement, moratorium or similar arrangement for the benefit of your creditors, or you are unable to pay your debts when they are due; or
 - (c) if you have resold, resupplied or shared a Service to or with any third party without obtaining our consent.
- 8.5 Where a Service has been suspended or terminated due to your breach under clauses 8.2 or 8.4, we may require you to pay a re-connection charge if the Service is re-connected comprising in particular of:
- (a) demobilisation and remobilisation of personnel and equipment;
 - (b) moving the works, if necessary, so that it does not interfere unreasonably with our other activities, and
 - (c) other expenses incurred by us as a result of suspension of the performance.

- 8.6 If we decide, or are required, 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 three (3) months' notice, 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 without the payment of any Early Termination Charges.

TERMINATION OF AGREEMENT

- 8.7 If a party commits a material breach of this Agreement (including non-payment of any undisputed amounts by the due date) and does not remedy the breach within thirty (30) calendar days of receiving a notice to do so, then the other party may terminate this Agreement without a notice period with immediate effect or a period the party deems reasonable.

9 EFFECT OF TERMINATION

- 9.1 If this Agreement is terminated or a Service is cancelled for any reason:
- (a) you must pay us all outstanding invoices by the relevant due date and within thirty (30) calendar days of request for payment, all other amounts outstanding as at the date of, or arising as a result of, expiry, termination or cancellation (including any Early Termination Charges).
 - (b) you hereby authorise us that we are entitled to enter the Premises and remove any equipment belonging to us which is connected with the affected Service. If we are nonetheless hindered by local employees or your third party service providers to perform such actions you hereby agree to pay Telstra the value of the equipment at the time of original delivery, net depreciation (calculated on a straight line basis), within 30 days from your receipt of our notice in writing (email suffices) that we could not enter the Premises; 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) 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. You reserve the right to prove that the loss we suffered has not occurred or is less than the amount of the Early Termination Charges.

10 CONFIDENTIALITY AND PRIVACY

- 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 Group Companies, 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) to the Expert in accordance with Clause 6.8;
 - (d) if required by law, any Regulatory Authority or stock exchange; or
 - (e) 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 Group Companies, End Users and Personnel to the extent required pursuant to Applicable Law or agreements with such parties.
- 10.4 You acknowledge and agree that we may disclose your confidential information to our Personnel, which may also involve us disclosing, transferring, storing and making your confidential information accessible offshore.
- 10.5 The parties shall comply with the relevant data privacy regulations.
- 10.6 Should we as part of our Services access, use and/or process data belonging to you that are personal data, the parties agree to conclude supplemental regulations (agreement on commissioned data processing) to ensure the requirements under data protection law for this commissioned data processing (*Auftragsdatenverarbeitung*) are met. The agreement on commissioned data processing shall in particular be in conformity with Sec. 11 German Data Protection Act (BDSG) or in future Art. 28 EU General Data Protection Regulation (GDPR) after the GDPR enters into force on 25 May 2018. You undertake to oblige the persons entrusted by you to observe data secrecy in accordance with Sec. 5 German Data Protection Act (BDSG) before commencing the execution of this Agreement.
- 10.7 The processing of your customer's and Personnel's personal data shall take place exclusively in the territory of a member state of the European Union or in another contracting state to the agreement on the European Economic Area (EEA). Data processing in other countries may only take place if the requirements of Sec. 4b German Data Protection Act (BDSG) or Art. 44 to 47 GDPR or an exception in accordance with Sec. 4c German Data Protection Act (BDSG) or Art. 49 GDPR applies.

11 LIMITATION OF LIABILITY

- 11.1 If we fail to meet a service level, we limit our liability to the applicable service level credit.
- 11.2 Each party's liability for damages, irrespective of the legal grounds, in particular due to impossibility, delay, defective or incorrect delivery, breach of contract, breach of duties during contractual negotiations and tort in accordance with German law is limited to direct damages.
- 11.3 Neither party is liable for any indirect damages, in particular but not limited to that loss of profit (*entgangener Gewinn*), revenue, likely savings, failed expenses (*fehlgeschlagene Aufwendungen*), consequential damages, costs or loss of business opportunities or liable for slight negligence.
- 11.4 In no event shall a party be liable for more than a sum equal to the net order amount invoiced within the last twelve (12) contractual months prior to the occurrence of the damage, from the sum of all claims, irrespective of the legal grounds, in particular for breach of obligations arising from the contractual relationship, from warranties, from guarantees, from strict liability and from tort, which are asserted against the other party or its vicarious agents or assistants from or in connection with the performance of the contract, unless section 11.5 applies.
- 11.5 Limitations and exclusions of liability according to this Clause 11 shall not apply:
- (a) to the indemnity we provide under clause 12.1;
 - (b) to your liability to pay charges to us under this Agreement;
 - (c) if liability is mandatory by law, such as under the Product Liability Act or in cases of intent or fraudulent misconduct; and/or
 - (d) to your liability for breach of clause 5.1(j).
- 11.6 Furthermore, the limitations and exclusions set out in this Clause 11 shall not apply in the event of culpable breach of cardinal obligations under the contract or for damages arising from injury to life, limb and health. Cardinal obligations are fundamental rights and obligations that are material for the purpose of this Agreement and on the fulfillment of which either party may therefore rely. In case of a slightly negligent breach of cardinal obligations, liability shall be limited to the typical foreseeable damage.
- 11.7 The exclusion of our liability to grant a service credit in the event of an Exclusion Event does not apply if clause 11.5 or 11.6 applies.
- 11.8 Section 377 of the German Commercial Code (HGB) shall apply to our services insofar as the provisions of the law on sales (*Kaufrecht*) pursuant to the German Civil Code (BGB) are applicable.

- 11.9 Section 254 of the German Civil Code applies and causes that each party's liability will be reduced to the extent the loss or damage is caused, or contributed to, by the other party and/or its Personnel.
- 11.10 The limitations of liability under this Clause 11 applies mutatis mutandis to our Group Companies should any of our Group Companies render the relevant Services.
- 11.11 To the extent our Services are rendered to your Group Companies you will undertake to procure that your Group Companies acknowledge and agree to the Limitation of Liability as stipulated in this Clause 11 in writing. Further, you will indemnify us or any of our Group Companies from any damage claims any of your Group Companies will or may make against us or any of our Group Companies under this Agreement or in connection with rendered Services in excess of the limitations agreed in this Clause 11.

12 THIRD PARTY IP CLAIMS

- 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, not accepting the alleged Intellectual Property Right Infringement 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

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 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 (seven) 7 calendar days of the date of the notice (or another agreed period) to try to resolve the dispute.

14 GENERAL

ENTIRE AGREEMENT

- 14.1 This Agreement constitutes the entire agreement between the parties about the Services, and supersedes any previous agreement or representation relating to the Services.

GOVERNING LAW

- 14.2 This Agreement is governed by the law of Germany. The United Nations Convention on the International Sale of Goods (UNCISG) is not applicable. Each party submits to the non-exclusive jurisdiction of the courts of Munich and the courts of appeal from them.

INTERPRETATION

14.3 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;
- (d) "includes", "including", "for example", "such as" and similar terms are not words of limitation; and
- (e) the headings are for reference only and shall not affect the interpretation of this Agreement.

NOTICES

- 14.4 Any notice regarding a breach or termination of this Agreement must be in writing and hand-delivered or sent by certified mail (return receipt requested), registered mail or express courier to the other party's contact person specified in the Service Order Form. For the avoidance of doubt, any notice to cancel a Service by you for reasons other than breach must be served in accordance with clause 9.3. 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.
- 14.5 Either party may change its notice details at any time by notifying the other party in accordance with clause 14.4.

POINT OF CONTACT

- 14.6 Your point of contact is the person specified in the Applicable Order.
- 14.7 Our point of contact is the person specified in the Applicable Order.

VARIATIONS

- 14.8 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. This also applies to a change of this clause 14.8.

ELECTRONIC SIGNATURES

- 14.9 The parties agree that an electronic signature shall have the same effect as a handwritten signature to the extent permissible by statutory law.

SEVERABILITY

- 14.10 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. The Parties undertake to procure that the invalid or unenforceable provision is substituted with a provision that comes as close as possible to the meaning and purpose of the invalid provision in a way that is legally and economically permissible. The same shall apply in case of a gap.

WAIVER OF RIGHTS

- 14.11 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.
- 14.12 A waiver of 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

- 14.13 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.
- 14.14 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 14.133 of this Agreement.
- 14.15 Subject to sections 11.55 and 11.66 of this Agreement and to the extent the provisions of the law on sales (*Kaufrecht*) or of order (*Werkvertragsrecht*) apply, the warranty period is twelve (12) months as of receipt of the asset or service, respectively.

The remediation of a defect in accordance with the provisions of the law on sales (*Kaufrecht*) or on orders (*Werkvertragsrecht*) due to subsequent performance (*Nacherfüllung*) can cause a restart of the warranty period concerning the claim to remedy a defect but in no event will a warranty period last longer than 18 months as of the beginning of the rendering of the relevant (defective) Service.

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 with our prior written consent, which will not be unreasonably withheld. We may withdraw our consent 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 (other than an obligation to pay money) because of an event beyond that party's reasonable control such as fire, earthquake, landslide, storm, flood and other natural disasters, war, mobilisation or military call up of a comparable scope, requisition, seizure, currency and trade restrictions, insurrection and civil commotion, shortage of transport, general shortage of materials, restrictions in the use of power and defects or delays by subcontractors caused by such circumstances (**Force Majeure Event**), that obligation is suspended but only so far and for so long as it is affected by the Force Majeure Event.
- 14.20 If a Force Majeure Event occurs, the affected party must:
- (a) promptly give the other party notice of the event 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.

- 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 calendar days, then either party may cancel the affected Service by giving the other party at least 7 calendar days' notice.

THIRD PARTY RIGHTS

- 14.22 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

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

EXPORT RESTRICTIONS

- 14.24 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**).
- 14.25 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.
- 14.26 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.
- 14.27 You agree to notify us immediately in writing if you identify or suspect any breach or risk of breach of clause 14.23 -14.25 above.
- 14.28 You are responsible for any breach of this clause 14.23-14.27 by your successors and permitted assigns, Affiliates, End Users, Personnel, directors, customers, distributors, resellers or vendors.

15 DEFINITIONS

- 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.co.uk/en/legal/acceptable-use-policy>.

Automatic Extension Period has the meaning set out in clause 2.3.

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 or, if none is specified, an amount equal to the charges which would have applied to each terminated Service for the then-current Service Term had the Services not been terminated, plus any de-installation or other non-recurring charges set forth in the Service Schedule or Service Order Form. The Early Termination Charges are a genuine pre-estimate of the loss we are likely to suffer in the context of the significant investment that we have made in order to provide the Service(s) to you.

Effective Date means the earlier of:

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

End User means anyone, including your Group Companies, who use or access any Service purchased by you under this Agreement with or without your express authorisation or permission, except that "End User" shall not include any unauthorised party who, in violation of law, accesses any 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) any scheduled or emergency repairs or maintenance to Services or associated network or services; or
- (d) a Force Majeure Event.

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

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

Group Company means:

- (a) in relation to us, Telstra Limited (ABN 64 086 174 781) and each of its affiliates, subsidiaries and related bodies corporate; and
- (b) in relation to you, your affiliates, subsidiaries, controlling company or companies under common control.

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.

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

Premises or **Sites** means any land, building, structure, vehicle or vessel which is owned, leased or occupied by 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://tel.st/privacy-policy)

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

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

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 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 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, excluding any service providers from whom Telstra or a Telstra Group Company acquires Services as an agent.

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

Service Start Date means:

- (a) if a Service Schedule specifies an acceptance test period, the date 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 Pound Sterling (GBP) 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.

Unavailable or **Unavailability** 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 commences when a trouble ticket has been logged by our service desk, and excludes any period during which an Exclusion Event applies.