



# 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 Start Date and continues until it is terminated in accordance with this Agreement.

#### SERVICE TERM

2.2 The term for each Service commences on the Service Start Date and continues for the Initial Period, unless terminated or renewed in accordance with this Agreement (**Service Term**).

2.3 After the Initial Period, the Service Term for each Service will automatically extend on a month-to-month basis on the existing terms, unless either party notifies the other (at least 30 days before any automatic extension) that it does not wish the Initial Period to extend automatically.

### 3 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, however given the nature of telecommunications systems we 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 issue (such as lack of Availability, 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 possible, 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 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; and
- (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).

5.2 If you receive equipment from us you will not own it unless we agree to sell it to you. While our equipment is in your care or on your Premises, you are responsible for any theft or damage. 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

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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) fixed recurring charges and non-recurring charges, which will ordinarily be billed monthly 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 30 days of the date of invoice.
- 6.5 All charges for the Services and any other amounts due under this Agreement, are payable in the Specified Currency unless otherwise agreed in writing.
- 6.6 If you genuinely dispute an invoice, you:
  - (a) must promptly notify us of the disputed amount (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.
- 6.7 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%.
- 6.8 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**

- 6.9 Where agreed 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.
- 6.10 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;
  - (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.

## **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 CANCELLATION OF SERVICES**

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- 8.1 Subject to clause 9, you may cancel a Service at any time by giving us at least 30 days' notice.
- 8.2 We may limit, suspend or cancel 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 any applicable laws, regulations, licence, statutory rules or mandatory codes of conduct;
  - (b) the provision of a Service is likely to cause death or personal injury or damage to property; or
  - (c) you breach our Acceptable Use Policy.
- 8.3 We may limit, suspend or cancel 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) your use of a Service interferes (or threatens to interfere) with the efficiency of our network or the network of a Service Provider; or

- (c) 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.

8.4 Where a Service has been suspended or cancelled 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 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 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.

**9 TERMINATION**

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9.1 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 30 days of receiving a notice to do so, then the other party may terminate this Agreement.

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

- (a) you must pay us all outstanding invoices by the relevant due date and within 30 days of request for payment, all other amounts outstanding as at the date of, or arising as a result of, expiry, termination or cancellation (including any Early Termination Charges);
- (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 we may recover the value of the equipment from you as a debt due to us; and
- (c) all rights a party has accrued before termination or cancellation continue.

9.3 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.

9.4 The Early Termination Charges are a genuine pre-estimate of the loss we are likely to suffer. You acknowledge that the Early Termination Charges payable to us are reasonable and proportionate to our legitimate interests in this Agreement, in the context of the significant investment that we have made in providing the Service(s) to you.

**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 Group Companies, 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 it is in the public domain, other than by a breach of this clause.

10.3 You agree and will ensure that any of your Group Companies, Personnel and any individuals who receive services connected with this Agreement are aware and consent, to our collection, use and disclosure of information about you and each of them in accordance with our Privacy Statement.

- 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.

## **11 LIMITATION OF LIABILITY**

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- 11.1 If we do not meet a service level, we limit our liability to the applicable service level credits.
- 11.2 We accept liability arising from our breach of contract or negligence:
- (a) for any personal injury or death to you and your Personnel in relation to the supply of the Services;
  - (b) for any damage to your real or tangible property resulting from the supply of the Services, but we limit our liability to our choice of repairing or replacing the property or paying the cost of repairing or replacing it; and
  - (c) for any other cost or expense you reasonably incur that is a direct result of, and flows naturally from, such breach of contract or negligence (excluding loss of profits, revenue, business opportunities, likely savings, data and any indirect or consequential loss, costs or damages), but we limit our liability for all such claims in aggregate to the total amount paid or payable by you to us under this Agreement during the first 12 months of this Agreement.
- 11.3 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.
- 11.4 Notwithstanding anything else in this Agreement, our liability will be reduced to the extent the loss or damage is caused, or contributed to, by you, your Personnel or any third party, which is not a Service Provider.

## **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 arises out of any modification of any materials provided by us, relates to services or materials provided by a third party, which is not a Service Provider, in conjunction with the Services, or is caused, or contributed to, by 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.

## **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 If the dispute or claim (including any dispute, controversy, difference or claim arising out of or relating to this Agreement, including the existence, validity, interpretation, performance, breach or termination

thereof or any dispute regarding non-contractual obligations arising out of or relating to it) remains unresolved, it shall be referred to and finally resolved by arbitration administered by Singapore International Arbitration Centre (SIAC) under the UNCITRAL Arbitration Rules in force when the Notice of Arbitration is submitted and in accordance with its Practice Note on UNCITRAL cases. The place of arbitration shall be Singapore. The appointing authority is the President or Vice-President of SIAC Court of Arbitration. The language used in the arbitration proceedings will be English. The number of arbitrators will be three.

## **14 GENERAL**

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### **ENTIRE AGREEMENT**

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

### **GOVERNING LAW**

14.2 This Agreement is governed by the laws of the Philippines. Each party submits to the non-exclusive jurisdiction of the courts of Manila 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 law includes any law in force which regulates the supply or use of the Services, and includes any applicable lawful determination, decision or direction of a government body, obligations under any telecommunications licence, any binding industry standard or industry code and any applicable international convention or agreement;
- (c) a reference to a statute, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (d) a reference to a party includes a reference to the party's executors, administrators, successors and assigns;
- (e) the singular includes the plural, and vice versa; and
- (f) "includes", "including", "for example", "such as" and similar terms are not words of limitation.

### **NOTICES**

14.4 Any notice regarding a breach or termination of this Agreement must be in writing and hand-delivered or sent by certified mail (return receipt requested), registered mail or express courier to the other party's contact person specified in the Applicable Order in the case of the Customer and, in the case of Telstra to: 15F Zuellig Building, Makati Avenue corners Paseo de Roxas & Sta. Potenciana Sts., Makati City, Metro Manila, Philippines, 1225.

14.5 All other notices and consents must be in writing and sent by email or regular mail to the other party's contact person specified in the Applicable Order, in the case of the Customer and, in the case of Telstra to: 15F Zuellig Building, Makati Avenue corners Paseo de Roxas & Sta. Potenciana Sts., Makati City, Metro Manila, Philippines, 1225

14.6 Either party may change its notice details at any time by notifying the other party in accordance with clause 14.5.

### **VARIATIONS**

14.7 This Agreement may only be varied by written agreement between the parties, except where expressly stated otherwise.

### **ELECTRONIC SIGNATURES**

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

**SEVERABILITY**

- 14.9 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**

- 14.10 A right created by this Agreement may only be waived in writing by the party giving the waiver, and the failure to exercise or any delay in exercising a right or remedy provided by this Agreement or by law does not waive the right or remedy.
- 14.11 A waiver of a breach of this Agreement does not waive any other breach.

**WARRANTIES**

- 14.12 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.
- 14.13 You warrant that you have not relied on any representations or warranties by us other than those in this Agreement.

**ASSIGNMENT AND AGENCY**

- 14.14 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 we may assign our rights under this Agreement to another Group Company without your written consent. Notwithstanding the foregoing, we may assign our receivables to our financing partner only 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.
- 14.15 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**

- 14.16 If a party is unable to perform or is delayed in performing an obligation under this Agreement (other than an obligation to pay money) because of an event beyond that party's reasonable control (**Force Majeure Event**), that obligation is suspended but only so far and for so long as it is affected by the Force Majeure Event.
- 14.17 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.
- 14.18 Provided a party has complied with its obligations under clause 14.17, 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.

**THIRD PARTY RIGHTS**

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

**COUNTERPARTS**

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

**15 DEFINITIONS**

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 <http://www.telstra.com/acceptable-use-policy>.

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

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

**Business Day** means any day other than a Saturday, Sunday or 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 date that Telstra accepts the Applicable Order.

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

**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 which is caused or contributed to by an act or omission of you, your Personnel or any third party (excluding a Service Provider), your Site (including access to your Site and availability of cabling facilities at your Site), equipment or software provided by you;
- (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.

**Group Company** means:

- (a) in relation to us, Telstra Corporation Limited (ABN 33 051 775 556) 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 as defined by Article 2 of the World Intellectual Property Organisation Convention of July 1967, excluding patents.

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

**Planned Maintenance** has 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 <https://www.telstra.com.au/privacy/privacy-statement> or <https://www.telstra.com.au/privacy>.

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

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

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

**Service Order Form** 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 (which may include a Telstra Group Company), excluding any service providers from whom a Telstra Group Company acquires Services as an agent.

**Service Schedule** means a Schedule attached or added to this Agreement, or otherwise available at <https://www.telstra.com.sg/en/service-terms> and <https://www.telstra.com.hk/en/service-terms> in respect of a Service.

**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.

**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.