

Statutory Infrastructure Provider Regime

Terms and Conditions for Connection and Supply of Fibre Access Broadband

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PARTIES

Parties	Telstra Corporation Limited ABN 33 051 775 556 (“Telstra”) [insert counterparty name and ABN] (“Customer”)
Representatives	[insert Telstra Representative] [insert Customer Representative]

1A APPLICATION OF THESE TERMS AND CONDITIONS

- 1A.1 In accordance with Telstra’s obligations under the Telecommunications Act as the Statutory Infrastructure Provider, Telstra is required to connect certain premises to a qualifying fixed telecommunications network and supply eligible services on reasonable request by a carriage service provider.
- 1A.2 The parties have agreed to enter into this agreement under which the Customer may, in accordance with these Terms and Conditions, request that Telstra:
- connect a premises in a Service Area to a qualifying fixed telecommunications network in accordance with section 360P of the Telecommunications Act; or
 - supply an eligible service to a premises in a Service Area in accordance with section 360Q of the Telecommunications Act.
- 1A.3 These Terms and Conditions set out the terms and conditions relating to price, and the other terms and conditions, on which Telstra offers to carry out the connection and supply referred to in clause 1A.2.

1 SUPPLYING THE SERVICE AND TERM

Agreement to supply

- 1.1 Telstra will supply the Service in an accepted order, and the Customer will acquire the Service, on the terms of this agreement which comprises:
- the Product Pricing, which sets out charges and price-related terms;
 - the Product Profile, which sets out specific terms that apply to the Service;
 - these Terms and Conditions, which set out terms that apply generally;
 - Our Customer Terms, where they are specifically incorporated by reference; and
 - any special terms in Service orders that Telstra has accepted.

Term

- 1.2 This agreement starts on the Start Date and continues until it is terminated under clause 10.
- 1.3 Supply of the Service will start on a date that is within the maximum period for supply (as described in the Product Profile), or as otherwise agreed between Telstra and the Customer, and will continue until terminated under clause 10.

Ordering

- 1.4 To acquire, vary or cancel a Service, the Customer must place an order in accordance with Telstra's ordering processes.
- 1.5 Telstra may, acting reasonably, only reject an order if Telstra determines that the request from the Customer is not reasonable.

Provisioning Services

- 1.6 If Telstra accepts an order to provide or vary the Service, Telstra will make the Service available to the Customer.
- 1.7 Telstra is not required to supply the Service unless the Customer has satisfied and continues to satisfy the prerequisites for the Service as specified in the Product Profile or these Terms and Conditions.

Service qualification and feasibility studies

- 1.8 If the Product Profile says that a "service qualification" applies, or may apply, to the Service, Telstra need not supply the Service unless the service qualification has demonstrated that it is technically viable for Telstra to supply the Service.
- 1.9 A successful service qualification or feasibility study does not necessarily mean that the Service can or will be supplied. For example, the available capacity in Telstra's Network may decrease between the time a feasibility study is performed and the time an order for the Service is placed.
- 1.10 Telstra may decide whether a feasibility study should be a "detailed feasibility study", which is an on-site study, or a "desktop feasibility study", which is based on information available in Telstra's systems.

2 CHARGES

Charges and invoicing

- 2.1 Telstra will invoice the Customer for the charges set out in the Product Pricing.
- 2.2 Telstra will not invoice a charge to the Customer if more than 6 months have passed since the charge was incurred unless:
 - (a) Telstra has given notice, during that 6 month period, of the delay in invoicing and the reason for the delay; or
 - (b) the Customer agrees to a longer period.

Fee for Service

- 2.3 Where this agreement states that a "Fee-for-Service" charge applies, the charge will be determined under the "Fee-for-Service" section of OCT, found at <https://www.telstra.com.au/content/dam/tcom/personal/consumer-advice/pdf/ffs.pdf>.
- 2.4 Where this agreement states that the applicable charge will be "based on Telstra's costs", the charge will include any labour, materials and third party costs to Telstra.

Early Termination Charges

- 2.5 In this clause 2.5 "Service Term" means a period specified in the Product Pricing for the Service as a Service Term for the purpose of early termination charges.
- 2.6 The Customer must pay Telstra the "Early Termination Charge" specified in the Product where, during the Service Term of the Service:

- (a) the Customer terminates the Service or this agreement other than:
 - (i) as a result of Telstra's breach of this agreement; or
 - (ii) where these Terms and Conditions specify that Telstra will provide termination payment relief as described in these Terms and Conditions;
- (b) Telstra terminates the Service or this agreement as a result of the Customer's breach;
- (c) installation of the Service has been on hold at the Customer's request for more than 30 days and Telstra decides not to complete the order; or
- (d) the Product Pricing says it is payable for another reason.

2.7 The early termination charge is payable in addition to any other outstanding charges payable by the Customer to Telstra for the Service that accrue up to the time that the early termination charge applies.

Incorrect Callout Charge

2.8 If Telstra attends the premises of the Customer or its End User in response to a fault report, and no fault is found, or the suspected fault is found to be in equipment on the Customer's side of the Network Boundary, the Customer must pay an Incorrect Callout Charge. The amount of the charge is determined in accordance with the "Fee-for-Service" section of OCT. This is found at <https://www.telstra.com.au/content/dam/tcom/personal/consumer-advice/pdf/ffs.pdf>.

Other work that is outside Telstra's normal scope

2.9 In responding to a fault report, if Telstra attempts to remedy:

- (a) a problem with a Customer's equipment; or
- (b) a problem in the Service resulting from a breach of this agreement by the Customer or a negligent act of the Customer, its Resellers or End Users,

then:

- (c) the Fee-for Service section of OCT applies to the work performed by Telstra; and
- (d) Telstra may cease work at any time without incurring any liability for failing to correct the problem.

2.10 Telstra may charge a fee based on the time and materials involved where this agreement does not specify another charge for one of the following services requested by the Customer:

- (a) providing billing information or reports that are additional to, or in a different format, from that normally provided under this agreement;
- (b) provision of Network information or special reports in relation to operations and maintenance activities;
- (c) operations and maintenance involving a call-out after hours (outside 9am - 5pm on Business Days); and
- (d) special Network management.

Reconnection Charges

2.11 If Telstra disconnects an ordered Service as a result of the Customer's breach of this agreement it may require payment of a reconnection charge before reconnecting the Service.

Taxes other than GST

- 2.12 All charges for the Service are inclusive of Taxes unless expressly stated otherwise.
- 2.13 Telstra may change the Product Pricing by giving the Customer at least 1 month's written notice if the change is to recover any increased or newly imposed Tax that relates to the Service (including where the Tax relates to anything used by Telstra in connection with the Service).
- 2.14 Telstra may charge the Customer a charge in relation to the ACT Government Utilities Tax (**ACT Government Utilities Tax Charge**) if the Customer acquires one or more affected services within the ACT Government Area. Telstra will notify the Customer of the applicable ACT Government Utilities Tax Charge amount before it is payable. ACT Government Area means the area of the Australia Capital Territory, including the Jervis Bay area of NSW.

GST

- 2.15 The charges, and any other amounts, set out in the Product Pricing are exclusive of GST.
- 2.16 Where GST is imposed on a taxable supply made under this agreement and the recipient of that supply receives a tax invoice for that supply, the recipient must pay the GST to the supplier (without deduction or set-off) by the tax invoice due date.
- 2.17 If one party is required to indemnify or reimburse another party (Payee) for any cost, loss or expense, the indemnity or reimbursement payable does not include any amount for which the Payee (or an entity grouped with the Payee for GST purposes) is entitled to an input tax credit, but will be increased under clause 2.16 if the amount payable is consideration for a taxable supply.
- 2.18 In clauses 2.15 to 2.17, terms that are defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the meaning given in that Act.

Payment

- 2.19 The Customer must pay the charges by the due date specified in the invoice. The relevant due date will be no earlier than 30 days after the date the invoice was issued.
- 2.20 The Customer may withhold a disputed amount in an invoice only if:
- (a) the Customer notifies Telstra of the dispute before the due date; and
 - (b) the dispute is about a billing error in the invoice.
- 2.21 The Customer may retain amounts withheld under clause 2.20 only while the parties follow the relevant billing dispute procedures (including the billing dispute procedures on the Customer Portal if applicable) and whether the disputed charge is due and payable has not been agreed or determined.

Interest

- 2.22 Telstra may charge the Customer interest on:
- (a) any undisputed amount; or
 - (b) any disputed amount that is withheld under clause 2.20 and later agreed or determined to have been due and payable,

for each day from the due date until the date that amount is paid in full.

- 2.23 The Customer may charge interest on a disputed charge that is agreed or determined not to have been payable for each day from the date on which Customer paid the charge until the date Telstra refunds the charge.

- 2.24 The interest rate for payment of interest under this agreement will be an annual rate equal to the reference lending rate for corporates as published by Westpac Corporation Limited, currently at <https://www.westpac.com.au/corporate-banking/rates-calculators-tools/credit-debit-rates> / (or, if it ceases to be published, an equivalent index rate nominated by Telstra, acting reasonably) plus 2.5%.

3 SECURITY REQUIREMENTS

Assessing creditworthiness

- 3.1 Telstra may from time to time request the Customer to provide a Certificate of Solvency or any other information and assistance that Telstra requires to assess the Customer's creditworthiness.
- 3.2 If Telstra makes a request under clause 3.1:
- (a) for a Certificate of Solvency, the Customer must provide the Certificate of Solvency within 10 Business Days of that request; or
 - (b) for other information and assistance, the Customer must either provide it, or explain to Telstra why the Customer cannot provide it, within 10 Business Days of that request.

Providing security

- 3.3 Telstra may ask the Customer to provide security in a form and on terms acceptable to Telstra. The Customer must comply with the request if clauses 3.4(a) and (b) apply.
- 3.4 If:
- (a) the request is for an amount that, when considered in aggregate with any current security held by Telstra at the time of the request, does not exceed 2.5 times the average monthly charges invoiced to the Customer in the 3 complete calendar months before the request (after applying any credits, discounts and rebates); and
 - (b) Telstra gives the Customer the option to provide security in the form of a bank guarantee or cash deposit,
- then the Customer must comply with the request within 10 Business Days. If the Customer does not do this, Telstra may do one or more of the following:
- (c) limit, restrict or suspend the Service under clause 9.1(h);
 - (d) terminate the agreement or the Service under clause 10.1; and
 - (e) reject any orders placed by the Customer.
- 3.5 Where Telstra asks the Customer to provide security under clause 3.3 but clauses 3.4(a) and (b) do not apply, if the Customer does not comply with the request within 10 Business Days Telstra may, acting reasonably, reject any orders placed by the Customer under this agreement (and this is Telstra's only remedy for the non-compliance).

Maintaining and enforcing security

- 3.6 The Customer must maintain any bank guarantee or other guarantee, and Telstra may retain any cash deposit provided, under this agreement until 6 months after the Customer makes the final payment required under this agreement. If a liquidator makes a claim to set aside or recover a

payment made under this agreement, Telstra may continue to hold the security as long as necessary to ensure protection in respect of that claim.

- 3.7 Any bank guarantee that expires earlier than the date referred to in clause 3.6 must be replaced by the Customer at least 2 months before expiry. If the Customer does not do so, Telstra may enforce the bank guarantee and hold the proceeds as security.
- 3.8 Telstra may enforce any security provided under this agreement:
- (a) in respect of any amounts payable to Telstra under this agreement;
 - (b) to provide compensation for any liability of the Customer; or
 - (c) to recover, or secure its ability to recover, amounts subject to a claim by a liquidator or other person that any payment to Telstra is void or voidable or otherwise liable to be set aside or recouped,

and otherwise under any separate terms governing enforcement of the security.

Change and return of security

- 3.9 Telstra will reasonably consider any request made by the Customer:
- (a) to change any security maintained under this agreement, including the amount, form and terms of the security; or
 - (b) for Telstra to put in place debtors insurance, at the Customer's cost, or an arrangement for prepayment of charges as a substitute for all or part of the security required under this agreement; or
 - (c) that all or part of the security held by Telstra be returned to the Customer.

Additional recourse where Customer is in breach

- 3.10 If Telstra has a suspension or termination right under this agreement because:
- (a) the Customer suffers an Insolvency Event (clause 10.1(g)); or
 - (b) an administrator, receiver or scheme administrator of the Customer fails to accept liability for ongoing supply within 3 Business Days of a request by Telstra that it do so (clause 10.1(h)); or
 - (c) of a breach of this clause 3; or
 - (d) of a failure to pay an amount required under this agreement,

Telstra may require the Customer to make prepayments, pay on shorter payment terms, or provide additional security or other additional protections as a precondition to Telstra continuing to supply the Service.

4 NETWORK AND SERVICE USE

Use of the Service

4.1 The Customer must:

- (a) ensure that everything connected to Telstra's Network by or on behalf of the Customer:
 - (i) is technically compatible with Telstra's Network;
 - (ii) complies with generally-accepted industry codes or standards; and
 - (iii) otherwise complies with all reasonable procedures, standards or other requirements notified by Telstra from time to time;
- (b) ensure that in using the Service it complies with:
 - (i) the Acceptable Use Policy; and
 - (ii) any provisions in this agreement identified as "restrictions on use";
- (c) not connect anything to Telstra's Network, use the Service or do anything at a Telstra site or facility in a way that:
 - (i) endangers the health or safety of any person or negatively impacts the normal operation of any network or system over which the Service is supplied;
 - (ii) damages or interferes with any Telstra site or facility or telecommunications equipment owned or operated by Telstra or third parties; or
 - (iii) interrupts or degrades the normal operation of the Service or of a product or service supplied by Telstra to another customer or supplied by a Telstra customer;
- (d) arrange for Telstra and its suppliers and contractors to have safe and timely access to the sites of the Customer, its Resellers and End Users so that the Service can be connected and supplied, and any equipment relating to the Service or Telstra's Network can be installed or maintained, repaired, enhanced or removed; and
- (e) give all information and assistance reasonably required by Telstra, and comply with all of Telstra's reasonable directions, to enable Telstra to confirm whether the Customer is complying with this clause 4.1.

End User compliance

4.2 The Customer:

- (a) must use all reasonable endeavours to ensure that its End Users comply with the obligations described in clause 4.1 as if the references in those obligations to "the Customer" were references to "End Users"; and
- (b) must comply with any of Telstra's reasonable directions that are intended to ensure that the Customer's End Users comply with the obligations referred to in clause 4.2(a).

Reseller compliance

4.3 The Customer:

- (a) must do everything reasonable in the circumstances to ensure that its Resellers comply with all of the Customer's obligations in this agreement that relate to:

- (i) the use and supply of the Service; and
 - (ii) any activities ancillary to that use or supply,
- as if references in those obligations to “the Customer” were references to “the Reseller”;
and

(b) is liable for any non-compliance by its Resellers with those obligations.

4.4 The obligations referred to in clause 4.3 include the obligations described in clause 4.1 and all obligations relating to the:

- (a) marketing, branding and use of Telstra’s name and intellectual property; and
- (b) use of Customer Accessed Systems.

Supply of information and assistance

4.5 The Customer must give Telstra all information and assistance that Telstra may reasonably require to meet its obligations under this agreement and to connect and supply the Service. This includes information and assistance that Telstra reasonably requires to undertake feasibility studies and service qualifications. The Customer must also give Telstra all information and assistance requested by Telstra to enable compliance with laws related to disaster planning and management.

4.6 If the Customer’s Network is connected to Telstra’s Network and a party:

- (a) intends to implement an outage in, or a change to, its Network; or
- (b) becomes aware of a fault or other event relating to its Network,

that could have a detrimental impact on the other Network, that party must:

- (c) inform the other as soon as practicable in the circumstances (and, where possible, give prior notice);
- (d) take all reasonable steps to minimise all impacts; and
- (e) keep the other party informed of the status of the event and the steps being taken.

This clause does not affect Telstra’s rights to make changes described in clause 5 (Changes to this agreement and to systems).

Access to Customer Accessed Systems

4.7 Telstra may give the Customer access to Customer Accessed Systems to assist in, amongst other things, online ordering, service assurance and billing functions.

4.8 If Telstra gives the Customer a user name, password or other means of authenticating users of a Customer Accessed System, any person who obtains that means of authentication from the Customer (directly or indirectly), and uses the Customer Accessed System with that authentication, is taken to be authorised by the Customer to do so until the Customer notifies Telstra otherwise.

4.9 When using a Customer Accessed System, the Customer must comply with any terms of use that are published on the Customer Portal or otherwise advised to the Customer. Telstra may suspend or withdraw access without prior notice if the Customer does not comply.

4.10 Telstra does not guarantee that any Customer Accessed System or any other systems or processes used by Telstra, will be continuously available, fault free, or secure, or that accurate

information will be received from Customer Accessed Systems or any other systems or processes used by Telstra.

Title to equipment, Network Boundary Point, equipment space and power

- 4.11 Unless expressly stated in this agreement:
- (a) where Telstra installs or provides any equipment as part of the supply of a Service:
 - (i) Telstra or its supplier retains all right, title and interest in that equipment and may register its interest on the PPSR; and
 - (ii) the Customer must pay the reasonable costs of repairing or replacing equipment lost or damaged (fair wear and tear excepted) while in the effective control of the Customer, its Resellers, End Users, contractors or agents;
 - (b) Telstra is not required to provide anything on the Customer side of the “Network Boundary Point” identified in the Product Profile; and
 - (c) where Telstra installs or provides any equipment at the Customer’s, Reseller’s or End User’s premises as part of the supply of a Service:
 - (i) Telstra is not responsible for supplying any electrical power required to operate that equipment; and
 - (ii) Customer must ensure that there is adequate space to install that equipment.

Compliance with Operational Documents

- 4.12 Any failure by the Customer to comply with any requirements in an Operational Document may negatively impact on Telstra’s provision of, or ability to provide, the Service (including the quality and timeliness of the Service).
- 4.13 The Customer releases Telstra from any obligation or liability (including obligations to meet service levels or liability for payment of rebates or compensation, such as compensation under the Customer Service Guarantee Standard made under the *Telecommunications (Consumer Protection and Service Standards) Act 1999*), to the extent that the obligation or liability was caused or contributed to by the Customer’s failure to comply with requirements in an Operational Document that have been notified to the Customer.

5 CHANGES TO THIS AGREEMENT AND TO SYSTEMS

Introduction and General Principles

- 5.1 Unless expressly stated in this agreement, this agreement can only be varied by a written agreement between the parties.
- 5.2 However, Telstra may make changes as set out in the following provisions:

Item that Telstra may change	Provision permitting change
Product Pricing	Clause 5.5
Product Profile	Clause 5.6
Terms for the Service (normally)	Clause 5.7
The Service, due to urgent requirements or to implement Network upgrades	Clauses 5.8 and 5.9

Item that Telstra may change	Provision permitting change
“Our Customer Terms”	Clause 5.10
Telstra systems and processes (that are not “Customer Accessed Systems”)	Clause 5.13
Customer Accessed Systems and terms of use of Customer Accessed Systems	Clause 5.13
Service details in Specifications	Clause 5.14
Acceptable Use Policy	Clause 5.16

5.3 If Telstra exercises a unilateral right to change this agreement and the change(s) have a material detrimental impact on the Customer, then the Customer may immediately terminate:

(a) the agreement; or

(b) if the change(s) to the agreement change the terms of the Service, the Service,

on implementation of the change and Telstra will provide termination payment relief as specified in clause 10.5 or 10.6 (as applicable) of these Terms and Conditions.

5.4 A change that is detrimental to all or a significant number of the Customer’s End Users is deemed to have a material detrimental impact on the Customer.

Changes to the Product Pricing

5.5 Telstra may change the Product Pricing by giving the Customer the following notice:

Change criteria	Minimum notice period
(a) Change does not have an adverse impact on the Customer	1 month
(b) Tax changes	1 month
(c) OCT charges	Reasonable notice – see General Terms (OCT clause)
(d) All other Pricing Catalogue changes	2 months

Changes to the Product Profile

5.6 Telstra may change the Product Profile by giving the Customer the following notice:

Change type	Minimum notice period
(a) Change required to remove a Service from the Product Profile so that the Customer can no longer order the Service (i.e. a “cease sale”)	6 months
(b) Change that has a material detrimental impact on the Customer	6 months
(c) All other Product Profile changes	1 month

Changes to the Service

5.7 The Service is governed by the terms of the Product Profile that apply at the Start Date. Telstra may subsequently change those terms by giving the Customer the following notice:

Change type	Minimum notice period
(a) Change that has a material detrimental impact on the Customer	6 months
(b) All other changes to the terms of the Service	1 month

Urgent Changes to the Service

- 5.8 Telstra may change the Service in an emergency, to comply with a law, to protect security or to prevent fraud. If this happens, Telstra will give notice of that change to the Customer as soon as practicable in the circumstances (and, if possible, before the change). If the circumstance which required the change no longer exists, Telstra will restore the Service where reasonably practicable.

Network Upgrades

- 5.9 Telstra may change, suspend or terminate, the Service to maintain or implement an upgrade, enhancement, or reconfiguration to any part of Telstra's Network on no less than 6 months' prior notice or, if another notice period is specified in the relevant Product Profile for the Service, that other notice period.

Changing Our Customer Terms (OCT)

- 5.10 Telstra may, by giving reasonable notice:
- (a) change a provision of OCT incorporated in this agreement (which may include removing the Service so that the Customer can no longer order the Service, or terminating the Service, where it ceases to be available under OCT); or
 - (b) add, delete or change a reference to a provision of OCT in this agreement to reflect changes that Telstra makes to OCT.
- 5.11 Where this agreement states that an amount is charged in accordance with OCT:
- (a) the charge will change when Telstra changes OCT; and
 - (b) no discounts, bundles, plan based packages or rebates apply.

- 5.12 Telstra will give notice of changes to OCT under these Terms and Conditions.

Changes to Telstra systems and processes and changes to Customer Accessed Systems

- 5.13 As set out in the table below, Telstra may:
- (a) withdraw access to a Customer Accessed System, change a Customer Accessed System or change the terms of use of a Customer Accessed System; and
 - (b) change any of Telstra's other systems and processes.

Telstra's online ordering and e-commerce system, currently called LinxOnline™ (being a Customer Accessed System)	
Scenario	Minimum notice period
Withdrawing access to the system or a "LOL Module" as defined in the applicable terms of use	6 months

Change to a configuration or deployment of a patch or maintenance release. However, a new software release will be subject to the longer notice period set out below	Telstra will endeavour to give 6 weeks' notice.
Change to deal with an emergency	Telstra will give notice as soon as practicable in the circumstances (and, if possible, before implementation of the change)
Other changes, including a new software release	3 months Telstra will negotiate in good faith with the Customer about any concerns raised by the Customer about those changes
Other Customer Accessed Systems	
Scenario	Minimum notice period
Withdrawal or change that will have a material detrimental impact on the Customer	20 Business Days
Other changes/withdrawals	In accordance with the terms of use for that Customer Accessed System.
	If there are no relevant terms of use, then Telstra will give notice as soon as practicable in the circumstances (and, if possible, before implementation of the change)
Other Telstra systems and processes	
Scenario	Minimum notice period
Change that will have a material detrimental impact on the Customer	20 Business Days
Other changes	Telstra is not required to provide any notice and Telstra may make these changes in its absolute discretion

Changes to Service details in Specifications

- 5.14 Telstra will give at least 20 Business Days' notice before changing details of a Service that are set out in a Specification if Telstra believes that the change will have a material detrimental impact on the Customer.
- 5.15 However, where the details of a Service are also set out in the Product Profile then Telstra will give notice of a change to the details of that Service under clauses 5.6 or 5.7 (where applicable) instead of clause 5.14.

Changes to Acceptable Use Policy

- 5.16 Telstra will give at least 20 Business Days' notice of any changes to the Acceptable Use Policy.

6 INFORMATION MANAGEMENT

Defined Terms

- 6.1 In this clause:
- Aggregated Service Information** means information about the Service, supplied to the Customer, of a confidential or commercially sensitive nature, that:

- (a) is aggregated; and
- (b) identifies the Customer or enables the identity of the Customer to be ascertained.

Confidential Information of a party means all information of a confidential or commercially sensitive nature relating to that party which is disclosed by it to the other party for the purposes of or in the course of performing this agreement, but does not include:

- (a) information that is or becomes public (other than through breach of either this agreement by the other party or an obligation of confidence to a third party);
- (b) information that is obtained by, or disclosed to, the other party other than by the party to whom the information relates (except where the other party knew or should reasonably have known that the information was obtained in breach of an obligation of confidentiality);
- (c) information that was already known to the other party at the time of disclosure by the party (unless the other party knew or should reasonably have known that the information was obtained in breach of an obligation of confidentiality);
- (d) Non-identifying Aggregated Information; or
- (e) Transfer Information.

End User Details means Confidential Information of a party identifying that party's End User, such as name, address, contact details and other identifying information relating to that End User.

Non-identifying Aggregated Information means information of a party that:

- (a) is aggregated;
- (b) does not identify the Customer or its End Users; and
- (c) does not enable the identity of the Customer to be ascertained.

People of a party means that party's directors, officers, employees, agents, contractors, advisers and representatives. **Person** has the corresponding meaning.

Regulator means:

- (a) a minister responsible for administering the Telecommunications Act Part XIB or XIC of the CCA and any Commonwealth Government department, the ACMA, the ACCC, the TUSMA or any other body which has a statutory responsibility for regulating the telecommunications industry; or
- (b) the police or another law enforcement body.

Transfer Information means information relating to a transfer of services on Telstra's Network, or a port transaction between Telstra's Network and another carrier's network, where both Telstra and the Customer are a party to the transfer or port and one is the gaining carriage service provider and the other is the losing carriage service provider.

Wholesale Business Purposes means a Telstra wholesale business purpose and includes the following purposes:

- (a) making decisions about the terms on which Telstra will provide services to wholesale customers or a particular wholesale customer, including under a whole of business service arrangement;

- (b) making decisions about current or proposed wholesale products or offers, including whether and on what terms to sell or offer products on a wholesale basis; and
- (c) understanding the impact on Telstra of current or proposed wholesale products, offers or bids.

Use and disclosure of Confidential Information

6.2 A party must not disclose to someone other than its People, the other party's Confidential Information except:

- (a) with the prior written consent of the other party; or
- (b) to perform or exercise rights under this agreement; or
- (c) to obtain professional advice; or
- (d) to its auditor to perform its audit functions; or
- (e) to comply with any law, industry code or court order; or
- (f) for use in legal proceedings; or
- (g) in any submissions to a Regulator or as directed by, requested by, or required under any agreement with or undertaking to, a Regulator; or
- (h) to comply with the listing rules of any securities exchange where the party's securities are listed or quoted or to comply with obligations to report to shareholders; or
- (i) to protect the safety of equipment or any person; or
- (j) in an emergency; or
- (k) for disaster planning purposes; or
- (l) for administrative purposes such as processing service transfers and porting transactions involving the Customer; or
- (m) as otherwise permitted under this clause 6 or this agreement.

If clause 6.2 (e) or (g) applies then, except in respect of any disclosure made to the ACCC under the Competition and Consumer Act 2010, the disclosing party must notify the other party as soon as possible that it will disclose the information.

6.3 A party must not use the other party's Confidential Information except:

- (a) in circumstances referred to in clause 6.2; or
- (b) where the information is Confidential Information of both parties, in which case it may be used for any purpose; or
- (c) to create Aggregated Service Information and Non-identifying Aggregated Information; or
- (d) as otherwise permitted under this clause 6 or this agreement,

but unless otherwise stated, it may only be disclosed to someone other than its People as permitted by clause 6.2.

6.4 Telstra may use the Customer's Confidential Information:

- (a) for billing purposes; or

- (b) for planning, provisioning, operating, maintaining, enhancing or reconfiguring Telstra's Network; or
 - (c) for credit management, including disclosure to a credit reporting agency or to Telstra's collection agent; or
 - (d) for other wholesale business purposes except where the information is End User Details.
- 6.5 A party may disclose the other party's Confidential Information to its People as long as the person is subject to an obligation to the party to keep the information confidential.
- 6.6 Not used.
- 6.7 Where an End User acquires services from both parties, the End User Details are the Confidential Information of both parties.
- 6.8 Aggregated Services Information is the information of both parties and may be used by either party for any purpose, but it may only be disclosed by a party to someone other than its People as permitted by this clause 6.
- 6.9 Telstra may disclose the Customer's Confidential Information:
- (a) to a Related Body Corporate or any of its rating agencies; or
 - (b) to any person in connection with any of Telstra or its Related Body Corporate's actual or potential financing, risk transfer, monetisation or similar transactions,

provided those persons are subject to an obligation to the party to keep the information confidential.

Other information

- 6.10 Although Transfer Information is not Confidential Information, a party may not disclose Transfer Information to someone other than its People, unless the party would be permitted to disclose the other party's Confidential Information in the relevant circumstances.
- 6.11 Each party may use information about the terms of this agreement for the purpose of making decisions about whether, and on what terms, to sell products on a wholesale or retail basis.
- 6.12 A party may use information derived from its Network about calls made or received by its End Users for any purpose but if it is Confidential Information of the other party it can only be disclosed to someone other than its People as permitted by this clause 6.

No other rights obligations or remedies

- 6.13 The rights, obligations and remedies in relation to Confidential Information (as defined in this agreement and at law) as set out in this agreement are exhaustive and are to the exclusion of any rights, obligations or remedies at common law or in equity.

Public statements

- 6.14 A party must not make any public statements about this agreement without the prior written consent of the other party, which may be withheld in its discretion.

Contact with End Users

- 6.15 Telstra will not discuss with an End User the products and services supplied to that End User by the Customer except:
- (a) with the Customer's prior consent; or

- (b) to perform, exercise rights under, or as permitted by, this agreement.
- 6.16 Telstra may contact and deal directly with End Users (including as authorised agents of the Customer) in an emergency, to protect the safety of persons, equipment or networks, or to connect or repair the Service where it is supplied for emergency management and disaster planning purposes.
- 6.17 If Telstra has a right under this agreement to suspend or terminate the Service, Telstra may contact an End User to inform the End User:
 - (a) of the expected time and date for suspension or termination of their service; and
 - (b) if the Customer's Service is being terminated, that the End User's service will no longer operate unless it is transferred to another service provider before termination.

Privacy

- 6.18 Where a party is a small business operator under the *Privacy Act 1988* (Cth) (the Privacy Act), that party must choose to be treated as an organisation bound by the Privacy Act under section 6EA of the Privacy Act during the term of this agreement.
- 6.19 Where a party (First Party) discloses Personal Information to the other party (Second Party) under this agreement, the First Party must first make the relevant individual aware of the matters required by Australian Privacy Principle 5.1 in respect of the disclosure to and use by the Second Party of that Personal Information for the purposes of this agreement.

Intellectual property

- 6.20 Nothing in this agreement transfers to, or gives a party any ownership rights in or to, any of the other party's or any third party's intellectual property rights.
- 6.21 A party must not use the name, trade name or logo of the other party or its suppliers without that party's prior written consent.

Statements about Telstra

- 6.22 Unless expressly stated in this agreement, or unless the Customer is under an obligation at law, the Customer must not refer to Telstra or use any part of the name of a Service when marketing or making statements about a Service or a service derived from the Service.

7 DISPUTES

- 7.1 Disputes and complaints will be managed as follows:
 - (a) Disputes about whether an invoice contains a billing error, will be managed under the billing dispute procedures on the Customer Portal or otherwise advised to the Customer.
 - (b) Complaints or disputes under clause 32 of the "Migration Plan", as defined in section 577BE of the Telecommunications Act, will be managed under the Migration Plan.
 - (c) Any other dispute relating to this agreement will be managed under clauses 7.2 to 7.5.

Resolving the dispute

- 7.2 The parties will use all reasonable endeavours to resolve any dispute arising under this agreement without resorting to litigation.
- 7.3 If the parties cannot resolve a dispute within 10 Business Days of first attempting to do so, either party may notify the other of a formal dispute. Each party must then nominate a senior individual

within their respective organisations to meet and to try to resolve the dispute within 10 Business Days of the notice.

Access to the courts

- 7.4 If the dispute remains unresolved, either party may initiate court proceedings for that dispute.
- 7.5 Urgent injunctive or declaratory relief is available at any time to the parties, despite the provisions above.

No other dispute right

- 7.6 For clarity, the parties acknowledge that if this agreement allows a party to make any change to this agreement (including changing any applicable charge), then that party may do so without giving rise to a right for the other party to dispute the change, provided that it has been made in accordance with the terms of this agreement.

8 RISK ALLOCATION

Service Levels

- 8.1 Telstra does not guarantee that the Service will be continuous or fault free.
- 8.2 References in this agreement or an Operational Document to any performance related capability for a Service or Customer Accessed System are targets and not guarantees. This includes any references to transmission rates, coverage, delivery times and availability.

Liability Cap

- 8.3 Each party limits its aggregate Liability arising in each Contract Year to the greater of \$1 million or the Capped Fee Amount. In this clause 8.3:

Contract Year means each 12 month period starting on the Start Date or an anniversary of the Start Date; and

Capped Fee Amount means the lesser of:

- (a) the aggregate amount billed by Telstra (less any rebate Telstra paid the Customer for failure to meet a Service Level) in the 12 complete calendar months before the first Liability (ie cause of action) arises in the Contract Year; and
 - (b) \$20 million.
- 8.4 Where multiple Liabilities (i.e. causes of action) arise from the same event or circumstance, for the purposes of clause 8.3 all Liabilities are deemed to arise when the first Liability arises.

Exceptions to Liability Cap

- 8.5 The limitation in clause 8.3 does not apply to:
 - (a) Liability for any death or personal injury, or damage to any real or tangible property; or
 - (b) a party's obligation to pay charges (or other amounts in the Product Pricing) under this agreement.

Exclusion of Liability

- 8.6 To the extent permitted by law:

- (a) a party has no Liability to the other party to the extent that the Liability is fairly and reasonably considered to arise other than naturally (according to the usual course of things) from the fact, matter or circumstance giving rise to the relevant claim;
- (b) a party has no Liability to the other party to the extent that the Liability is for:
 - (i) loss of profit; or
 - (ii) loss of revenue; or
 - (iii) loss of business opportunities; or
 - (iv) loss of anticipated savings or loss of data;even if any of that loss is fairly and reasonably considered to arise naturally (according to the usual course of things) from the fact, matter or circumstance giving rise to the relevant claim; and
- (c) each party excludes all representations, conditions, warranties or guarantees implied or imposed by law.

- 8.7 Where a party breaches any representation, condition, warranty or guarantee implied or imposed by law that cannot lawfully be excluded but can be limited, a party's Liability is limited, at that party's option, to:
- (a) in the case of services, re-supplying or paying the cost of re-supplying those services; and
 - (b) in the case of goods, repairing, replacing or paying the cost of repairing or replacing those goods.

Force majeure

- 8.8 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 a Force Majeure Event:
- (a) that obligation is suspended to the extent, and for so long as, that party is affected by the Force Majeure Event; and
 - (b) the non-performing party must:
 - (i) promptly give the other party notice of the event and an estimate of the impact of the Force Majeure Event on performance and anticipated delay;
 - (ii) 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
 - (iii) resume compliance as soon as practicable after the event no longer affects the non-performing party.

9 SUSPENSION, LIMITATION OR RESTRICTION OF THE SERVICE

Rights to limit, restrict or suspend the Service

- 9.1 Telstra may immediately limit, restrict or suspend the supply of the Service (or part of the Service) if any of the following occurs:
- (a) a prerequisite for the supply of the Service, as contemplated in clause 1.6 ("Provisioning Services"), is no longer being satisfied; or

- (b) the Customer breaches clause 4.1 ("Use of the Services"); or
- (c) a Reseller fails to comply with obligations described in clause 4.3(a) ("Reseller compliance"); or
- (d) an End User fails to comply with obligations described in clause 4.2(a) ("End User compliance") in relation to the Service; or
- (e) Telstra is entitled to terminate this agreement or the Service "for cause" under clause 10.1(g) ("Termination of this agreement or the Service") or clause 10.1(h) ("Termination of the Service"); or
- (f) the Customer suffers an Insolvency Event; or
- (g) an administrator, receiver or scheme administrator is appointed to the Customer, and that administrator, receiver or scheme administrator does not accept personal liability for the ongoing supply of the Service by Telstra within 3 Business Days of Telstra's request that they do so; or
- (h) the Customer fails to:
 - (i) provide a Certificate of Solvency under clause 3.1;
 - (ii) comply with a request for new or revised security under clause 3.4; or
 - (iii) maintain security for the period described in clause 3.6; or
- (i) an emergency necessitates limitation, restriction or suspension of the Service (including to support emergency and other essential services); or
- (j) the supply of the Service poses a threat to safety of persons, a hazard to equipment or other property or a threat to normal network operation or integrity; or
- (k) the use, sale, promotion or resupply of the Service (or any service derived from the Service) is, or is likely to become, unlawful.

9.2 If Telstra exercises a right under clause 9.1, it will:

- (a) give the Customer as much notice as is reasonable in the circumstances. In some circumstances it may not be practicable to give notice in advance of Telstra's exercise of this right. In this case, Telstra will notify the Customer as soon as practicable after exercising this right;
- (b) not be limited in exercising any other rights; and
- (c) exercise those rights only for so long as the event or circumstance giving rise to that right continues (as long as the Customer pays any disconnection and reconnection charges that may be payable in those circumstances).
- (d) If Telstra exercises a right under clause 9.1 in any of the circumstances set out in 9.1(a), (j) or (k) and the Customer, a Reseller or an End User was not to any extent responsible for the circumstance, then the Customer may immediately terminate the Service and Telstra will provide termination payment relief as specified in clause 10.5 of these Terms and Conditions.

10 TERMINATION

Terminating this agreement or the Service

10.1 A party may terminate this agreement or the supply of the Service in the following circumstances:

Termination type	Right to terminate this agreement or the Service
(a) Termination of this agreement “for convenience” (exercised by the Customer)	The Customer may terminate this agreement at any time without cause by giving Telstra at least 6 months’ notice. When that notice takes effect, this agreement will terminate as will the Service.
(b) Termination of this agreement by Telstra because Telstra is no longer the Statutory Infrastructure Provider for a Service Area or is not otherwise required to connect the relevant premises or supply the Service under s360P or s360Q of the Act	Telstra may terminate this agreement where it is no longer the Statutory Infrastructure Provider for a Service Area (or not otherwise required to connect the relevant premises or supply the Service) by giving the Customer at least 1 month’s notice.
(c) Termination of this agreement by Telstra where there have been no approved orders or no active Service under the agreement for a period.	Telstra may terminate this agreement where: <ul style="list-style-type: none">(i) there have been no approved orders under this agreement; or(ii) there is no active Service under this agreement, by giving the Customer at least 1 months’ notice.
(d) Termination of this agreement “for convenience” (exercised by Telstra)	Telstra may terminate this agreement at any time without cause by giving the Customer at least 6 months’ notice. However, the terms of this agreement will continue to apply to the Service until the Service is terminated under another part of this agreement. For example, terms of this agreement that provide for the provision of new Services will not apply, but terms of this agreement that relate to service quality or payment will apply to the Services.
(e) Termination of the Service “for convenience” (exercised by the Customer)	The Customer may terminate the Service without cause by giving Telstra at least 1 month’s notice.
(f) Termination of the Service “for convenience” (exercised by Telstra)	Telstra may terminate the Service without cause by giving the Customer at least 12 months’ notice.
(g) Termination of this agreement or the Service “for cause” (exercised by either party)	A party may terminate this agreement or the Service immediately on notice to the other if: <ul style="list-style-type: none">(i) the other party suffers an Insolvency Event; or(ii) the other party commits a material breach of this agreement and the breach is not capable of remedy; or(iii) the other party commits a material breach of this agreement that is capable of remedy and fails to

Termination type	Right to terminate this agreement or the Service
	<p>remedy that breach within 10 Business Days of receiving notice from the terminating party to do so; or</p> <p>(iv) in any 6 month period:</p> <ul style="list-style-type: none"> • a party validly issues 2 or more notices requiring the other party to remedy a material breach of this agreement, and the other party commits a third material breach of this agreement; or • the other party fails to pay any amount due under this agreement (excluding disputed amounts withheld by the Customer under clause 2.20) by the due date on 3 or more occasions; or <p>(v) a Force Majeure Event substantially and adversely affects the ability of the other party to perform obligations under this agreement continuously for a period of 30 days or more.</p>
(h) Termination of the Service “for cause” (exercised by Telstra)	<p>In addition to the termination rights in clause 10.1(g) above, Telstra may terminate the Service on 10 Business Days’ notice if:</p> <p>(i) a prerequisite for the supply of the Service, as contemplated in clause 1.6 (“Provisioning Services”), is no longer being satisfied; or</p> <p>(ii) the Customer breaches clause 4.1 (“Use of the Services”) in relation to the Service, provided it is reasonable to terminate the Service, having regard to the impact or potential impact on Telstra’s Network; or</p> <p>(iii) a Reseller fails to comply with the obligations described in clause 4.3(a) (“Reseller compliance”) in relation to the Service, provided it is reasonable to terminate the Service, having regard to any impact or potential impact on Telstra’s Network or Telstra’s legitimate business interests; or</p> <p>(iv) an End User fails to comply with the obligations described in clause 4.2(a) (“End User compliance”) in relation to the Service, provided it is reasonable to terminate the Service, having regard to any impact or potential impact on Telstra’s Network; or</p> <p>(v) the Customer fails to:</p> <ul style="list-style-type: none"> • provide a Certificate of Solvency under clause 3.1; • comply with a request for new or revised security as described in clause 3.4; or • maintain security for the period described in clause 3.6; or

Termination type	Right to terminate this agreement or the Service
	<p>(vi) the use, sale, promotion or resupply of the Service (or any service derived from the Service) is, or is likely to become, unlawful; or</p> <p>(vii) the Service has been restricted, limited or suspended by Telstra under clause 9.1 of this agreement for a period of 30 days or more.</p>
(i) Termination of this agreement or the Service “for cause” (exercised by Telstra)	Telstra may terminate this agreement or the Service immediately on notice to the Customer if Telstra has a right to suspend the Service under clause 9.1(g).

Consequences of termination

- 10.2 On termination of this agreement, the Customer must pay Telstra all amounts owed up to the date of termination. Where the Service continues beyond that date, all relevant provisions of this agreement continue to apply including provisions relating to payment for the Service and, on termination of the Service, any outstanding amount for the Service becomes immediately due and payable.
- 10.3 On termination of the Service:
- (a) a party must promptly disconnect its Network from the other party’s Network, or remove any of its equipment, where the Network or equipment is no longer required for the Services. The parties must give each other all reasonable assistance (including complying with any reasonable instructions) to facilitate this; and
 - (b) subject to clause 10.5, the Customer must pay early termination charges where specified in the Product Pricing.
- 10.4 If Telstra exercises a right to terminate the Service and the Customer, a Reseller or an End User was not to any extent responsible for the circumstances giving rise to the right, then Telstra will provide termination payment relief as specified in clause 10.5 or 10.6 (as applicable) of these Terms and Conditions.
- 10.5 Where these Terms and Conditions specify that Telstra will provide termination payment relief for termination of the Service, termination payment relief means that:
- (a) no early termination fee will be payable by the Customer in respect of the terminated Service;
 - (b) Telstra will waive any minimum spend or similar spend commitments by a proportion referable to the extent that they relate to the terminated Service; and
 - (c) Telstra will refund to the Customer any unused charges paid by the Customer in advance in proportion to the extent that they relate to the terminated Service.
- 10.6 Where these Terms and Conditions specify that Telstra will provide termination payment relief for termination of this agreement, termination payment relief means that:
- (a) no early termination fees will be payable by the Customer;
 - (b) Telstra will waive any payments due to be made by the Customer on the termination of the agreement under any arrangements relating to minimum spend or similar spend commitments; and
 - (c) Telstra will refund to the Customer any unused charges paid by the Customer in advance.

- 10.7 Termination of this agreement does not affect any rights or obligations of the parties under clauses 3, 6, 7, 8, 10 and 12 or clauses which by their nature survive termination. This does not limit clause 10.1(d) which describes the terms that will continue to apply to those Services ordered before Telstra terminates this agreement for convenience.

11 AGENCY

- 11.1 The Customer may appoint a third party to act on the Customer's behalf (Agent) in relation to this agreement, but only with Telstra's prior written consent. Telstra's consent may be subject to conditions.
- 11.2 If the Customer appoints an Agent, the Customer:
- (a) remains liable for all of its obligations under this agreement;
 - (b) is bound by anything the Agent does or does not do in exercising rights for the Customer. In this respect, the Customer agrees that the Agent has authority to perform obligations under this agreement;
 - (c) acknowledges that Telstra may deal with the Customer, the Agent or both;
 - (d) is liable to Telstra for all of Telstra's costs and losses resulting from the appointment of the Agent or arising from any act or omission of the Agent in connection with this agreement (whether or not the act or omission was within the Agent's authority), as if it was an act or omission of the Customer;
 - (e) must ensure that the Agent complies with all terms of this agreement relevant to the activities of the Agent as if references to "the Customer" in those terms referred to the Agent. If Telstra requires, the Customer must ensure that the Agent also enters into an agreement with Telstra or provides an undertaking to Telstra under which the Agent commits to complying with all terms of this agreement relevant to its activities. The terms of any agreement or undertaking will be reasonably determined by Telstra;
 - (f) must ensure that only the Customer brings any claim or makes any demand against Telstra in connection with this agreement;
 - (g) must give Telstra notice as soon as it becomes aware of a Change of Control of the Agent. For the purposes of this clause, the reference to "the Customer" in the definition of Change of Control will refer to the Agent; and
 - (h) must give Telstra reasonable notice of any variation or withdrawal of the Agent's authority.
- 11.3 Telstra may, acting reasonably, withdraw its approval of the Agent by giving 10 Business Days' notice. Telstra may then insist on dealing only with the Customer and not the Agent.

12 GENERAL

Notices

- 12.1 Each party must nominate a representative to receive notices on its behalf under this agreement, and notify the other party of any changes to the details of that representative or replacement of that representative with a new representative.
- 12.2 Unless otherwise specified, all notices given under this agreement must be in writing and delivered by hand or email to the nominated representative.

12.3 Telstra may give notice of changes to a document that has been published on the Customer Portal, by sending a notice that includes a link to a copy of the latest amended document on the Customer Portal.

12.4 A notice will be deemed given as follows:

Method of delivery	When notice is given
By hand	On delivery to the nominated address (or if delivery is outside working hours (addressee's time), or not on a working day, at the start of the next working day).
By email	<p>At the time of successful receipt by the recipient at the nominated email address (and if receipt is outside working hours (addressee's time) or not on a working day, at the start of the next working day).</p> <p>Successful receipt may be evidenced by (without limitation):</p> <ul style="list-style-type: none">• the transmission of an electronic read receipt from the recipient; or• other acknowledgment of receipt by the recipient (whether electronic or otherwise), <p>but where an "out of office" reply is delivered to the sender's email, the email will not be taken to be received.</p>

Transfer of this agreement

12.5 The Customer may not assign or transfer its rights or obligations under this agreement without Telstra's prior written consent, which must not be unreasonably withheld. However, reasonable conditions may be specified as part of any such consent, for example the provision of additional security. Telstra may do any of the following without the Customer's consent:

- (a) novate this agreement to another Telstra Group Entity that has sufficient financial capacity to perform its obligations under this Agreement, in which case you must undertake all actions reasonably requested by us to effect that novation;
- (b) assign, transfer or otherwise deal with, or grant security or create an interest or trust in or over all or any part of this agreement of Telstra's rights, receivables or interests in connection with this agreement or any related assets to or with any person; and
- (c) all things required or desirable to give effect to clauses 12.5(a) and (b).

Set off

12.6 The Customer may not exercise any right to set off or withhold any amount payable to Telstra under this agreement except as expressly permitted under this agreement. Telstra may set off any money due and payable to Telstra by the Customer only if:

- (a) Telstra has the right to suspend a Service under clause 9.1(b) to (h), or to terminate this agreement or a Service "for cause" under clause 10.1; or
- (b) this agreement has been terminated.

Change of control

12.7 The Customer must promptly provide Telstra with notice of any actual and where possible without breach of a duty of confidentiality, any expected Change of Control. This notice must include all relevant facts giving rise to the Change of Control and the identity of the new controlling entity (and its ultimate parent company).

- 12.8 When a Change of Control occurs and Telstra believes that the change will or may adversely affect Telstra, Telstra may by giving notice do one or more of the following:
- (a) cease supplying the Service to the Customer;
 - (b) cease making the Service available for the Customer to order; and
 - (c) terminate this agreement.

Telstra will act reasonably and to the extent permitted by law when exercising its rights under this clause.

Relationship of the parties

- 12.9 Unless expressly stated, nothing in this agreement imposes any fiduciary duties or gives a party authority to bind the other party.

End User consents and authorities

- 12.10 Where the Customer provides information about an End User, the Customer warrants that the End User has consented to:

- (a) the Customer disclosing the information; and
- (b) Telstra disclosing and using the information,

to enable Telstra to provide the relevant Service and exercise its rights and perform its obligations under this agreement.

- 12.11 Where the Customer issues an instruction to Telstra to do anything (including transfer of a Service), the Customer warrants that it has obtained any required authority and consent from its End User and that the instruction is correct.

Entire Agreement

- 12.12 This agreement is the entire agreement between the parties about the Services.

- 12.13 Where this agreement specifies terms of supply (including charges) for a declared service (as given meaning by section 152AL of the *Competition and Consumer Act 2010* (Cth) (Declared Service) then, unless expressly stated:

- (a) those specified terms of supply are all of the terms on which Telstra will supply that Declared Service for the purposes of Part XIC of the *Competition and Consumer Act 2010* (Cth); and
- (b) the provisions of any access determination or binding rules of conduct made or issued by the ACCC under Part XIC of the *Competition and Consumer Act 2010* (Cth) relating to that Declared Service are to be taken as inconsistent with this agreement.

Application of Our Customer Terms (OCT)

- 12.14 Where this agreement states that a provision of OCT applies to a Service, that provision will form part of this agreement as if incorporated in this agreement (subject to variation under clause 5.10).

Operational Documents

- 12.15 The Operational Documents do not form part of this agreement. However, see clause 4.12 for the relevance of Operational Documents to the Services.

Governing law

- 12.16 This agreement is governed by the laws of Victoria, Australia. Each party submits to the non-exclusive jurisdiction of the courts of that place and the courts of appeal from them.

Negotiating changes to this agreement

- 12.17 At any time, a party (the First Party) may propose changes to this agreement by notice to the other party (the Second Party).
- 12.18 If the Second Party receives a notice under clause 12.17, then the Second Party will:
- (a) consider the proposed changes in good faith; and
 - (b) negotiate the proposed changes with the First Party in good faith for a reasonable period not exceeding 20 Business Days.
- 12.19 Any changes negotiated under clauses 12.17 and 12.19 will not take effect unless this agreement is varied under clause 5.1
- 12.20 If the process under clauses 12.17 and 12.19 does not result in a written variation to this agreement, this is not a dispute for the purposes of this agreement.
- 12.21 The words “in good faith” in clause 12.18 mean promptly, honestly and not perversely, capriciously or irrationally, but do not mean that a party is required to act in the interests of the other party.

Invalid or void clauses to be read down or removed

- 12.22 If any clause, or part of any clause, is void, invalid or unenforceable, that clause or that part of a clause:
- (a) will be read down to the minimum extent necessary to achieve its validity, if applicable; and
 - (b) in any other case, will be removed from this agreement,
- without invalidating or affecting the remainder of this agreement.

13 DEFINITIONS AND INTERPRETATION

Definitions

- 13.1 In this agreement, the following definitions apply:

Acceptable Use Policy means the Telstra Acceptable Use Policy available on the Customer Portal or accessible via URL:
https://www.telstrawholesale.com.au/content/dam/tw/products/data_ip/Telstra%20Wholesale%20Internet/Documents/twi_acceptable_use_policy.pdf or a replacement URL, as amended by Telstra from time to time.

Business Day means any day other than Saturday, Sunday or a public holiday in both Melbourne and Sydney.

Certificate of Solvency means a letter, signed by the Customer’s company secretary, chief executive officer, director, partner or proprietor (as required by Telstra) no later than 7 days before it is received by Telstra, stating without any qualifications, assumptions or limitations that the Customer is not at that time subject to an Insolvency Event and there are no known events or circumstances which would likely result in an Insolvency Event.

Change of Control means an event that causes the ability to control the management and policies of the Customer to pass to a person or persons who did not have the ability to control immediately before that event.

Customer Accessed System means any information system that Telstra allows the Customer to access and use.

Customer Portal means the web-based portal operated by Telstra for the purposes of engaging in business transactions with the Customer.

End User means a person who is the ultimate recipient or user of a Service, a resold Service or a service derived from either.

Force Majeure Event means an event beyond a party's reasonable control.

Insolvency Event means, in relation to a party:

- (a) the appointment of an administrator, receiver, liquidator or provisional liquidator to that party; or
- (b) that party resolves to enter into any settlement, moratorium or similar arrangement for the benefit of its creditors; or
- (c) that party executes a deed of company arrangement (or that party's creditors resolve that the party execute a deed of company arrangement); or
- (d) that party is unable to pay its debts when they are due; or
- (e) any of the events in paragraphs (a) to (d) above occurs in respect of a party's parent company.

Liability (of a party) means any liability of that party (whether arising under contract, tort (including negligence), indemnity, statute or in any other way) under or in connection with this agreement.

Network of a party means:

- (a) in the case of Telstra, the network used by Telstra to provide Services (including any network of Telstra's supplier); and
- (b) in the case of the Customer, its network and any network of its customers that is connected to the Customer's network.

OCT or Our Customer Terms means Telstra's standard form of agreement identified as "Our Customer Terms" (or other name notified by Telstra), available on Telstra's website.

Operational Documents means the Specifications, manuals and other ancillary documents relating to this agreement or the Services, available on the Customer Portal or otherwise notified to Customer, as varied or replaced by Telstra from time to time.

Product Pricing means the document titled "Product Pricing" forming part of this agreement

Product Profile means the document titled "Product Profile" forming part of this agreement.

Related Body Corporate has the meaning it has in the *Corporations Act 2001* (Cth), but as if each reference to a "body corporate" includes a proprietary company, a partnership or a trust.

Reseller means any person who acquires a resold Service (or a service derived from a Service) who is not an End User.

Service Level means a service level set out in the Product Profile or any other part of this agreement.

Service Area means the parts of Telstra's South Brisbane Fibre Network and Velocity Fibre Networks in respect of which a declaration made by Telstra under section 360H of the Telecommunications Act or a declaration made by the Minister that specifies Telstra as the statutory infrastructure provider under section 360L of the Telecommunications Act is in force.

Service means the Fibre Access Broadband service supplied, or to be supplied, under this agreement.

Specifications means any specifications for a Service developed by Telstra and available on the Customer Portal or otherwise notified to Customer, as varied or replaced by Telstra from time to time.

Start Date means the start date set out on the "Details" page at the front of this agreement.

Subsidiary of an entity has the meaning given to that term in the *Corporations Act 2001* (Cth), but includes:

- (a) a partnership in which the entity has, in aggregate, a direct or indirect interest of over 50% in the partnership or which is controlled by the entity; and
- (b) a trust in which the entity has, in aggregate, a direct or indirect interest of over 50% of the issued units of the trust.

Telecommunications Act means the *Telecommunications Act 1997* (Cth).

Telstra Group Entities means any of the following entities:

- (a) Telstra;
- (b) a Subsidiary of Telstra or a Subsidiary of a Related Body Corporate of Telstra; or
- (c) a Related Body Corporate of Telstra.

Terms and Conditions means this document.

Interpretation

13.2 In this agreement:

- (a) a reference to an agreement, document, manual or other instrument includes any variation or replacement of any of them;
- (b) a reference to a statute, code or other law includes regulations and other instruments under it and amendments, re-enactments or replacements of any of them;
- (c) where this agreement contains a hyperlink or reference to a Telstra website, that reference includes any replacement hyperlink or website;
- (d) all dollar amounts are expressed in Australian dollars unless expressly specified;
- (e) headings and diagrams are for convenience only and do not affect the interpretation of this agreement;
- (f) a reference to a party includes a reference to the party's successors and assigns;
- (g) a reference to a:

- (i) Telstra site includes a reference to a Telstra owned site and a Telstra operated site;
- (ii) Telstra facility includes a reference to a Telstra owned facility and a Telstra operated facility;
- (h) the singular includes the plural, and vice versa;
- (i) "includes", "including", "for example", "such as" and similar terms are not words of limitation; and
- (j) unless expressly stated otherwise, if there is any inconsistency between the following documents, the order of precedence is as follows:
 - (i) the Product Pricing ;
 - (ii) the Product Profile;
 - (iii) these Terms and Conditions;
 - (iv) Our Customer Terms; and
 - (v) Service orders.

13.3 An inconsistency only arises under this agreement where two agreement components, which may be two separate documents or two separate terms within a document, are unable to be read as operating in conjunction with each other.