

OUR CUSTOMER TERMS

CLOUD SERVICES – TELSTRA INFRACO DATA CENTRE SERVICES



CONTENTS

1	ABOUT THIS PART	2
2	INSTALLATION SERVICES.....	2
3	SERVICES	2
4	ANCILLARY SERVICES	7
5	SERVICE LEVEL AGREEMENT.....	8
6	FEES AND INVOICING.....	11
7	INTELLECTUAL PROPERTY	12
8	INDEMNITY	12
9	LIABILITY.....	13
10	PERSONAL PROPERTY SECURITIES ACT (“PPSA”)	14
11	INSURANCE	14
12	SUBCONTRACTING AND LICENSING	14
13	ASSIGNMENT.....	15
14	TERM.....	15
15	TERMINATION	15
16	OBLIGATIONS AT END OF YOUR AGREEMENT TERM	17
17	FORCE MAJEURE	18
18	NO LEASE	18
19	DISPUTE RESOLUTION	18
20	GENERAL	18
21	DEFINITIONS AND INTERPRETATION.....	19

OUR CUSTOMER TERMS

CLOUD SERVICES – TELSTRA INFRACO DATA CENTRE SERVICES



Certain words are used with the specific meanings set in the General Terms part of the Cloud Services section at <http://www.telstra.com.au/customer-terms/business-government/cloud-services/> of Our Customer Terms, or in the General Terms of Our Customer Terms at <http://www.telstra.com.au/customer-terms/business-government/index.htm>

1 ABOUT THIS PART

- 1.1 In addition to this Telstra InfraCo Data Centre Colocation Services section of Our Customer Terms, unless we agree otherwise, the following terms also apply:
- (a) General Terms of Our Customer Terms (see <http://www.telstra.com.au/customer-terms/business-government/index.htm>);
 - (b) General Terms of the Cloud Services section (see <https://www.telstra.com.au/customer-terms/business-government#cloud-services>); and
 - (c) other parts of the Cloud Services section, depending on the nature of the products and services that you receive from us.
- 1.2 For an explanation of the interrelationship between the various sections of Our Customer Terms see clause 1 of the General Terms of the Cloud Services section at the link above.
- 1.3 As part of your product selection under this Telstra InfraCo Data Centre Colocation Services part of the Cloud Services section, we do not monitor or manage any of your other services, including any of your other services provided under the Cloud Services section.
- (a) The terms in these Our Customer Terms apply to Services purchased from 1 April 2025.

2 INSTALLATION SERVICES

- 2.1 We will, subject to the terms and conditions of Your Agreement, commence the Installation Services on Your Agreement Commencement Date.
- 2.2 We will endeavour to complete the Installation Services prior to the Service Commencement Date.

3 SERVICES

Data Centre Space

- 3.1 We will provide the Data Centre Space to you ("**Data Centre Colocation Services**").
- (b) For the purpose of clause 3.1, we shall install one or more Racks and grant to you, for the duration of the Service Term for Data Centre Colocation Services a non-exclusive right to install, inspect, operate, repair and maintain Your Equipment in the Data Centre Space.

Our Representatives

- 3.2 You acknowledge and agree that notices given or rights exercised by us under Your Agreement may be given or exercised (as applicable) by our Representatives, including the

OUR CUSTOMER TERMS

CLOUD SERVICES – TELSTRA INFRACO DATA CENTRE SERVICES



Facility Provider. You must comply with any notice or instruction issued by our Representative or the Facility Provider as though they were notices or instructions issued by us.

- 3.3 You acknowledge that nothing in Your Agreement creates any contractual relationship between you and the Facility Provider, and that the Facility Provider has no liability to you for any damages or losses arising in connection with use of the Data Centre Colocation Services.

Use

- 3.4 You must use the Data Centre Space for the sole purpose of installing, inspecting, repairing and maintaining Your Equipment in the Data Centre Space.

Access

- 3.5 Subject to clauses 3.6, 3.10 and 3.11, you will have 24/7 access to the Data Centre Space for the purpose of exercising your rights specified in clause 3.1.
- 3.6 You must comply with, and must ensure that your Representatives comply with, the Facility Rules.
- 3.7 You are responsible for controlling the use of the access cards assigned to you and your personnel.
- 3.8 You must comply with our directions when accessing the Facility and Data Centre Space including, where we require, having our on-site or security staff escort your authorised personnel whilst on premise.
- 3.9 When accessing the Facility or Data Centre Space, you must ensure that your authorised personnel do not touch, interfere with, or connect anything to any items of equipment (other than Your Equipment or where any relevant equipment has been approved by us in writing in advance).
- 3.10 We may suspend your access to the Data Centre Space or the provision of the Data Centre Colocation Services or may require your Representatives to leave the Data Centre Space and the Facility:
- (a) in an Emergency;
 - (b) in any event or circumstance where we reasonably consider it appropriate to do so;
 - (c) if required to do so by a government agency or any law or court order; or
 - (d) if you or Your Equipment causes Interference, potential Interference or Persistent Interference to the Facility Provider's ability to operate or manage the Data Centre Space or the Facility.
- 3.11 We may refuse access to the Facility or remove from the Facility any of your Representatives whose admission or presence is, or would be, in our reasonable opinion detrimental to the security of the Facility.

OUR CUSTOMER TERMS

CLOUD SERVICES – TELSTRA INFRACO DATA CENTRE SERVICES



Power Allocation

- 3.12 Your maximum power allocation will be as set out in your Application Form and is subject to availability. You may request additional power by filling out the required form, and if we agree to that request, we will provide our written consent and we may require you to pay additional Fees.
- 3.13 Subject to clause 3.14, if Your Equipment uses more than the power allocated to your Data Centre Service per your Application Form, we will automatically charge you for your excess usage in accordance with the Power Rate.
- 3.14 Notwithstanding any excess usage charges, we may cancel your Services if you do not comply with the power allocated to you.

Power Balance

- 3.15 You must use reasonable efforts to ensure that your power utilisation is evenly spread across each power feed to the Data Centre Space and, where applicable, between phases on a three-phase supply.
- 3.16 You must ensure that no individual Rack draws in excess of the allocated kW without our prior written agreement.
- 3.17 If in our reasonable opinion there is a material imbalance in your power utilisation, we may give you a notice requiring you to rectify the imbalance.
- 3.18 You must rectify the imbalance as soon as reasonably practicable, but in any event within 7 days of receiving our notice.

Your Equipment

- 3.19 In addition to your obligations set out in Your Agreement, you must comply with the Facility Rules in relation to your installation, use, repair and maintenance of Your Equipment.
- 3.20 You must ensure that the size and weight of Your Equipment does not exceed the maximum size and weight that we specify to you (unless we consent to a different size and weight in which case, you must pay an additional charge and ensure that the size and weight of Your Equipment does not exceed the agreed maximum size and weight).
- 3.21 You must obtain our prior written approval before you connect Your Equipment to any power outlet, network or telecommunications service connection point, or any other equipment. We may revoke this approval where we consider this necessary. If we have not provided approval of the connection or have otherwise revoked our approval for the connection we may disconnect Your Equipment.
- 3.22 You must ensure that Your Equipment is stored within the cabinets that are allocated to you, and unless we agree to install Your Equipment as a part of providing the Services you are responsible for installing Your Equipment.
- 3.23 We may require you to remove any of Your Equipment from the Data Centre Space and the Facility that does not comply with Your Agreement or the Facility Rules.
- 3.24 You are responsible for all loss or damage to Your Equipment however caused, except to the

OUR CUSTOMER TERMS

CLOUD SERVICES – TELSTRA INFRACO DATA CENTRE SERVICES



extent caused by our (or the Facility Provider's) recklessness or unlawful conduct.

- 3.25 If you or Your Equipment causes Interference or has the potential to cause Interference (as reasonably determined by us or the Facility Provider), you within a reasonable time, not to exceed four (4) hours (or such shorter time as necessary in the event of an emergency which threatens the life or physical safety of any person(s) in the Facility) after being notified by email, phone or in writing:
- (a) remove the Interference;
 - (b) provide a plan acceptable to remove the Interference; or
 - (c) authorise us and the Facility Provider to take action to remove the Interference.
- 3.26 If you or Your Equipment has the potential to cause Interference, you must within a reasonable period of time, not to exceed forty-eight (48) hours after being notified by email, phone or in writing:
- (a) remove the potential Interference;
 - (b) provide a plan acceptable to remove or resolve the potential Interference; or
 - (c) authorise us and the Facility Provider to take action to remove the interference.

Repair and maintenance

- 3.27 You must:
- (a) ensure that the Data Centre Space is kept in good repair and condition;
 - (b) ensure that the Data Centre Space is kept clean and tidy and that no flammable or hazardous materials are left or kept in the Data Centre Space or Facility;
 - (c) comply with our requirements and instructions regarding rubbish removal and recycling;
 - (d) inform us in writing of any damage to the Data Centre Space, the Facility or our other property or other property of any third party (including the Facility Provider) immediately upon becoming aware of the damage; and
 - (e) if requested by us, promptly repair damage to the Data Centre Space or the Facility caused or contributed to by you.

Works

- 3.28 You must not carry out alterations, modifications or other works to the Data Centre Space without our prior written approval.
- 3.29 If we give our approval under clause 3.28, we may impose conditions on that approval (including what works are to remain, what are to be removed and what are to be reinstated and to what condition when you vacate the Data Centre Space).
- 3.30 You must not begin to carry out works until you have our approval and have satisfied us

OUR CUSTOMER TERMS

CLOUD SERVICES – TELSTRA INFRACO DATA CENTRE SERVICES



that, in connection with those works:

- (a) you have obtained all consents, permits, approvals, authorities and licences required; and
- (b) all insurances required by applicable laws or that we reasonably require are in place.

3.31 You must carry out works:

- (a) in a proper and workmanlike manner;
- (b) in accordance with any conditions imposed by us when giving our approval;
- (c) in accordance with our requirements and instructions;
- (d) in accordance with all plans, specifications and schedule of finishes approved by us;
- (e) in accordance with all applicable laws and any consents, permits, approvals, authorities and licences required in connection with those works;
- (f) using only contractors approved by us (approval not to be unreasonably withheld); and
- (g) without disturbing or causing interruption to others.

Allocation of Data Centre Space

3.32 We will allocate the Data Centre Space in our sole discretion.

3.33 We will provide you with notice of any modification, substitution, replacement or change to the Data Centre Space as is reasonable in the circumstances.

3.34 We will use reasonable endeavours to minimise any disruption or inconvenience to you during any modification, substitution, replacement or change to the Data Centre Space.

Your general obligations

3.35 You must comply with, and must ensure that your Representatives comply with, the Facility Rules at all times whenever using or accessing a Facility in connection with Your Agreement.

3.36 You must comply with all applicable laws and must ensure that your Representatives comply with all applicable laws and that you and your Representatives have obtained all relevant consents, permits, approvals, authorities, and licences required.

3.37 You must:

- (a) only use the Service for its intended purpose;
- (b) comply with all relevant technical standards and requirements in the overall operational design, installation, configuration and support of Your Equipment; and
- (c) not use the Service to commit any offence or allow anyone else to do so.

OUR CUSTOMER TERMS

CLOUD SERVICES – TELSTRA INFRACO DATA CENTRE SERVICES



- 3.38 You can specify up to ten (10) Representatives to be to be your authorised personnel who will be granted access to the Facility and your Data Centre Space, unless we agree otherwise. You must confirm to us in writing the status of your authorised personnel every time there is a change in the authorised personnel list and otherwise every three (3) months.
- 3.39 You must not do any act or thing (including in connection with the installation, inspection, operation, repair, maintenance or replacement of Your Equipment):
- (a) in the Facility or the Data Centre Space that is fraudulent or illegal or that, in our reasonable opinion, is dangerous, annoying, offensive or immoral;
 - (b) that interferes with, obstructs access to, damages or overloads the Facility, the Data Centre Space or any property of the Facility Provider;
 - (c) that causes nuisance to or Interference with the use of the Facility or any part of the Facility by us, the Facility Provider or any of our other customers or customers of the Facility Provider (or their customers) and, for the purposes of this clause, Interference shall include technical interference; or
 - (d) that may cause us or the Facility Provider to be in contravention of any applicable law or any approval, licence, consent, authority or permit held or required to be held by us or the Facility Provider.
- 3.40 You warrant that you are compliant with Sanction Laws that are applicable to you.

Our right to enter

- 3.41 We may enter the Data Centre Space in order to provide you the Services and otherwise for the purpose of inspecting and maintaining the Facility and Data Centre Space.
- 3.42 We may enter the Data Centre Space to exercise our rights set out in Your Agreement and the Facility Rules, or as required to comply with applicable laws or in the event of an Emergency.

4 ANCILLARY SERVICES

General

- 4.1 You may from time to time request us to provide Ancillary Services, if available, which may include:
- (a) Cross Connect Services;
 - (b) Remote Hands Services;
 - (c) meeting rooms;
 - (d) storage facilities; or
 - (e) other services that we may agree to provide from time to time.
 - (f) any such request must be made:

OUR CUSTOMER TERMS

CLOUD SERVICES – TELSTRA INFRACO DATA CENTRE SERVICES



- a. on the Application Form if you request the Ancillary Services at the same time as the Data Centre Colocation Services; or
 - b. if you request Ancillary Services after you have submitted the Application Form for the Data Centre Colocation Services, on a Move Add Change (MAC) Form, which we will provide to you on request.
- 4.2 If we agree to provide the Ancillary Services, we will advise you in writing that we accept your request. We are under no obligation to agree to your request.
- 4.3 The terms of Your Agreement shall apply to any Ancillary Services that we agree to provide.
- 4.4 We are not obliged to provide any Ancillary Services requested by you unless and until we advise you in writing that we accept your request, and we may refuse to provide any Ancillary Services to you in our sole discretion.
- 4.5 You must comply with all of our policies, procedures and requirements applicable to the Ancillary Services as available on the Customer Service Management Portal, including the Facility Rules.

Cross Connects

- 4.6 All data connectivity delivered to the Data Centre Space must be delivered by way of a Cross Connect Service provided by us.
- 4.7 If any Cross Connect Service involves Data Centre Space made available by us or the Facility Provider to a third party, you must obtain the consent of the third party to the provision of the Cross Connect Service.
- 4.8 To the extent permitted by law and any other agreement we have with you, we are not under any circumstances liable for any acts or omissions of any carrier or third-party in connection with the supply of any products or services by them to you.
- 4.9 We do not warrant that any Cross Connect Service will be free from interruptions, errors, defects or failures and we do not accept any liability in connection with same.

5 SERVICE LEVEL AGREEMENT

- 5.1 The Service Level Agreement (**SLA**) in this clause 5 sets out:
 - (a) the Service Levels that we will achieve in connection with the provision of the Data Centre Services; and
 - (b) the remedies available to you for any failure by us to achieve the Service Levels.
- 5.2 The remedies set forth in the SLA are your sole and exclusive remedies for any failure by us to achieve the Service Levels.
- 5.3 This SLA covers the following elements of the Data Centre Space:
 - (c) supply of power; and
 - (d) maintenance of temperature.

OUR CUSTOMER TERMS

CLOUD SERVICES – TELSTRA INFRACO DATA CENTRE SERVICES



5.4 This SLA does not apply to any feature of the Data Centre Space or the Data Centre Services not specifically identified in this SLA.

Service Levels

5.5 We will achieve the Service Levels in this Data Centre Space SLA, as set out in the table below (each a **DC Service Level**). If we fail to achieve a DC Service Level (a **DC Failure**), you will be entitled under Your Agreement to a DC Service Credit (each a **DC Service Credit**) as set out in the table below, subject to the terms and conditions of Your Agreement.

No.	DC Service Level	DC Service Credit Payable By Us To You
1	Supply of power Supply of continuous power up to and including at least one of the UPS output boards servicing the Data Centre Space for 100% of the time in any calendar month.	20% of the monthly recurring charges for Data Centre Colocation Services Fees payable in respect of that part of the Data Centre Space affected by the DC Failure for that calendar month. The DC Service Credit amounts do not apply cumulatively.
2	Temperature availability < 18°C for more than 60 mins per calendar day; or > 28°C for more than 60 mins per calendar day. This DC Service Level will not apply, and the DC Service Credit will not be available: A. during any period where Your Equipment exceeds the Power Allocation; or B. during any period where you have not populated the Data Centre Space: (i) within the Rack, with either Your Equipment or blanking panels (or similar item as approved in writing by us or the Facility Provider on our behalf); and (ii) when applicable, if your supplied Racks are installed in a manner that is inconsistent with our or the Facility	10% of the monthly recurring charges for Data Centre Colocation Services Fees payable in respect of that part of the Data Centre Space affected by the DC Failure for that calendar month. The DC Service Credit amounts do not apply cumulatively.

OUR CUSTOMER TERMS

CLOUD SERVICES – TELSTRA INFRACO DATA CENTRE SERVICES



No.	DC Service Level	DC Service Credit Payable By Us To You
	Provider's airflow containment requirements.	

Service Credit requirements

- 5.6 We are not required to provide a DC Service Credit unless the following requirements are met:
- (a) you give us notice of the DC Failure immediately upon becoming aware of the occurrence; and
 - (b) you request the DC Service Credit in respect of the DC Failure within 5 business days of its occurrence, and any such notice must be made in the manner, and include the information, advised by us from time to time.

Service Credit limitations

- 5.7 The maximum of all DC Service Credits required to be provided by us to you in any calendar month is 30% of the relevant Data Centre Colocation Services Fees payable in respect of that part of the Data Centre Space affected by a relevant DC Failure for that calendar month.
- 5.8 DC Service Credits will apply only to future Data Centre Colocation Services provided under Your Agreement. We are not required to provide DC Service Credits to you under Your Agreement against any Services that are provided under any other contract between us and you, nor to provide refunds under Your Agreement. If upon termination of Your Agreement there are outstanding DC Service Credits, such DC Service Credits are forfeited.
- 5.9 Notwithstanding any provision to the contrary in this SLA, the following do not constitute DC Failures (and you will not be entitled to a DC Service Credit):
- (a) failures to achieve Service Levels that occur while any undisputed amount that is due and payable to us remains unpaid outside of any contractual payment terms;
 - (b) failures to achieve Service Levels caused by or in connection with Your Equipment; racks supplied by you; your (including without limitation your Representatives) acts or omissions; or any error in the configuration, a failure or incompatibility in relation to Your Equipment or cabling;
 - (c) failures to achieve Service Levels caused by property of a third party or the acts or omissions of any third party (including without limitation a fault on any third party's network):
 - (i) excluding the Facility Provider and its sub-contractors (if any) unless outside of their reasonable control; and
 - (ii) including our sub-contractors, unless those sub-contractors are acting under our directions or instructions; and
 - (iii) including any owner or operator of any data centre other than the Facility Provider or any network.

OUR CUSTOMER TERMS

CLOUD SERVICES – TELSTRA INFRACO DATA CENTRE SERVICES



- (d) failures to achieve Service Levels caused by you exceeding the Power Allocation;
- (e) failures to achieve Service Levels caused by our exercise of our rights pursuant to clauses 3.10 and 6.6 (Suspension);
- (f) a failure to achieve a Service Level that is recorded by a monitoring or reporting device, but which we or the Facility Provider can demonstrate to our reasonable satisfaction was incorrectly recorded as a Service Level Failure due to a defect in or failure of the monitoring or reporting device; and
- (g) failures to achieve Service Levels caused by Force Majeure Events.

- 5.10 Notwithstanding any provision to the contrary in this SLA, and in addition to the items listed in clause 5.9, failures to achieve Service Levels due to scheduled maintenance notified to you by us, or by the Facility Provider on our behalf, do not constitute DC Failures.
- 5.11 All periods of unavailability must be verified by the Facility Provider, and approved Service Credits will be applied to the invoice for the month following the month in which the Service Credit was approved.
- 5.12 The period of unavailability is measured from when you notify us and the Facility Provider via the service desk of the incident to the time the unavailability has been remedied as confirmed by us.

Rectification of Failures

- 5.13 You must immediately notify us of the DC Failure.
- 5.14 On becoming aware of a DC Failure (including following notification in accordance with clause 5.13), we will:
- (a) where possible, specify to you an estimated time scale for rectification of the DC Failure or the cause of the DC Failure and update you as required until the DC Failure or the cause of the DC Failure is remedied; and
 - (b) use our reasonable endeavours to remedy the DC Failure or the cause of the DC Failure as soon as practicable.

14. FEES AND INVOICING

Payment of Fees

- 6.1 Unless specified otherwise in writing, the Fees will be charged monthly in advance.
- 6.2 Fees that are not recurring will be charged monthly in arrears, except Installation Fees which will be charged in your first invoice.
- 6.3 Fees must be paid by the last day of the month without set-off, counterclaim, withholding or deduction.
- 6.4 We are not responsible for the payment of fees and charges for services provided by third parties contracted by you.

OUR CUSTOMER TERMS

CLOUD SERVICES – TELSTRA INFRACO DATA CENTRE SERVICES



Annual Price Increase

- (c) On the Review Date, the Fees will increase by the greater of 3% or CPI.

Fee adjustment

6.5 Where the cost of supplying the Services increases due to:

- (a) any increase in the cost of supplying the Services associated with any change in Tax Charge; or
- (b) a material change in the cost of power to us or the Facility Provider (determined by us in our reasonable opinion),

we may, by notice in writing to you, adjust the Fees.

Suspension

6.6 We may:

- (a) suspend your access to the Facility, the Data Centre Space and any other services if an undisputed amount payable under Your Agreement is not paid within seven (7) days of its due date and you fail to pay the amount within seven (7) days of receiving an access suspension notice from us; and
- (b) suspend the provision of power to the Data Centre Space and the provision of all other services to you if an undisputed amount payable under Your Agreement is not paid within fourteen (14) days of its due date and you fail to pay the amount within fourteen (14) days of receiving a service suspension notice from us.

7 INTELLECTUAL PROPERTY

No assignment

7.1 Each party's Material remains the property of that party and nothing in Your Agreement grants the other party any Intellectual Property Rights in the Material or its other Intellectual Property Rights.

Your Material

- 7.2 To the extent reasonably required to allow us to perform and/or deliver the Services, you grant to us a non-exclusive, irrevocable, worldwide, royalty-free licence to exercise and sub-license the Intellectual Property Rights in any of Your Material in connection with us providing any Services to you.
- 7.3 You warrant that use of Your Material by us in accordance with clause 7.2 will not infringe the Intellectual Property Rights or other rights of any third party.

8 INDEMNITY

Customer indemnity

OUR CUSTOMER TERMS

CLOUD SERVICES – TELSTRA INFRACO DATA CENTRE SERVICES



- 8.1 You indemnify us from and against (and must pay for on demand) any claims, liability, loss, damage, costs or expenses (including reasonable legal costs) we incur or suffer arising directly or indirectly, including as a result of any claim by the Facility Provider or the Facility Provider's Representatives or other customers, or third parties from or in connection with:
- (a) any breach of Your Agreement by you;
 - (b) your use (or attempted use) of the Services;
 - (c) the personal injury or death of any person (including any of your Representatives) in connection with Your Equipment, use of the Data Centre Space or use of the Services or any act or omission by you or your Representatives;
 - (d) any fraudulent or unlawful act or omission by you or your personnel under or in connection with Your Agreement;
 - (e) any wrongful or negligent act or omission by you or your Representatives;
 - (f) any claim by a third party that any Material provided by you in connection with Your Agreement infringes the Intellectual Property Rights of a third party; or
 - (g) damage to Your Equipment, the Facility, the Data Centre Space or your other property, our property or any third party's (including the Facility Provider's) property caused by or in connection with any act or omission by you or your Representatives,
- except to the extent caused or contributed by us or the other indemnified persons.

Continuing obligation

- 8.2 Each indemnity contained in Your Agreement is a continuing obligation notwithstanding:
- (a) any settlement of account; or
 - (b) the occurrence of any other thing,
- and it is not necessary for us to incur expense or make payment before enforcing or making a claim under an indemnity.

9 LIABILITY

Our liability to you

- 9.1 Subject to clauses 9.2 and 9.3, our aggregate liability for any loss or damage, however caused (including by our negligence), suffered by you in connection with Your Agreement is limited to:
- (a) where you suffer loss or damage as a result of a failure by us to meet any Service Level, the relevant DC Service Credit specified in the SLA; or
 - (b) in every other case, an amount equal to the Data Centre Colocation Services Fees paid by you to us under Your Agreement in the 12 months prior to you first suffering

OUR CUSTOMER TERMS

CLOUD SERVICES – TELSTRA INFRACO DATA CENTRE SERVICES



loss or damage in connection with Your Agreement.

- 9.2 Subject to clause s 9.1(a) and 9.3, we are not liable for any Consequential Loss, however caused (including by our negligence), suffered or incurred by you in connection with Your Agreement.
- 9.3 Nothing in Your Agreement operates to limit or exclude liability that cannot by law be limited or excluded. Our liability to you for breach of any statutory guarantee or term implied by statute which cannot be excluded is (to the extent permitted to by law) limited to, at our discretion:
- (a) in the case of goods, the replacement, repair or supply of equivalent goods or paying the cost of doing so; and
 - (b) in the case of services, resupply of the services or payment of the cost of having the services resupplied.

When we are not liable

- 9.4 We are only liable to you in the cases set out in clauses 9.1 to 9.3. Otherwise, we are not liable to you in contract, tort (including negligence) or otherwise for any loss or damage.

10 PERSONAL PROPERTY SECURITIES ACT ("PPSA")

- 10.1 You acknowledge and agree that you have no interest or rights in any property or equipment which is not owned by you or right to retain any such equipment, and that we may register our property or equipment and the Facility Provider may register its property or equipment, in accordance with the PPSA. You must not register or attempt to register any interest under the PPSA against any of our property or equipment or that of any third party (including the Facility Provider) situated within the Facility.

11 INSURANCE

- 11.1 You must, at your cost, effect and maintain from a reputable insurance company:
- (a) all insurances required by law, including workers' compensation insurance in accordance with relevant legislation; and
 - (b) public liability insurance (both personal injury and property damage) for an amount of at least \$20 million per event; and
 - (c) all risk property insurance on a replacement cost basis with limits adequate to cover the value of Your Equipment.
- 11.2 If we request, you must provide us with evidence of the currency of the policies referred to in clause 11.1.

12 SUBCONTRACTING AND LICENSING

- 12.1 We may subcontract the performance of any Service, in whole or in part, to any person.
- 12.2 You must not sub-license any Data Centre Space.

OUR CUSTOMER TERMS

CLOUD SERVICES – TELSTRA INFRACO DATA CENTRE SERVICES



13 ASSIGNMENT

- 13.1 You must not assign, in whole or in part, or novate your rights and obligations under Your Agreement without our prior written consent.
- 13.2 We may assign, in whole or in part, or novate our rights and obligations under Your Agreement.

14 TERM

Term of Your Agreement

- 14.1 Your Agreement commences on Your Agreement Commencement Date and continues until termination or expiry of the Service Term for Data Centre Colocation Services ("**Your Agreement Term**").

Service Term

- 14.2 Each Service commences on the Service Commencement Date and continues for the Minimum Term.
- 14.3 After expiry of the Minimum Term, the Service automatically extends on a month-to-month basis on the existing terms (including price), unless either party notifies the other (at least 30 days before any automatic extension) that it does not wish the Service to extend automatically.

15 TERMINATION

Termination by us

- 15.1 We may terminate Your Agreement by written notice to you if:
- (a) you fail to pay any undisputed amount payable under Your Agreement within 30 days of its due date;
 - (b) you fail to pay any undisputed amount payable under Your Agreement on or before its due date on more than three (3) occasions in any rolling twelve (12) month period;
 - (c) you commit a material breach of Your Agreement which is incapable of remedy, or you commit a material breach of Your Agreement which is capable of remedy and you fail to remedy the breach within 30 days of receiving a notice from us requiring you to do so;
 - (d) 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;
 - (e) a Force Majeure Event prevents us from performing all or substantially all of our obligations under Your Agreement for a period exceeding 60 days;
 - (f) a Change in Law makes it commercially unviable (in our reasonable opinion), or illegal, for us to continue to provide the Services;

OUR CUSTOMER TERMS

CLOUD SERVICES – TELSTRA INFRACO DATA CENTRE SERVICES



- (g) we or the Facility Provider cease to have the right to use the Facility; or
- (h) you are not in compliance with the Sanction Laws that are applicable to you.

Migration

15.2 If the Facility is sold or otherwise disposed of by the Facility Provider, on your request we will use reasonable endeavours to assist you to transfer Your Agreement to, or enter into a new agreement with, any new owner, lessee or licensee of the Facility.

Early Termination Charge

15.3 If during the Minimum Term a Service is cancelled or terminated for any reason other than for our material breach, we may charge you any waived Fee(s) (such as, for the purposes of illustration and without limitation, installation or other ancillary fees) for the cancelled or terminated Service(s) and an amount calculated as follows:

When the event occurs	Early Termination Charge
After we have approved your order but before the Service has been delivered	A charge equal to: (a) the costs reasonably incurred by us up to the date of termination or cancellation of the order; and (b) any amounts payable by us to a third party service provider (from whom we acquire the Service, or component of the Service, for the purpose of reselling the Service to you) for the termination or cancellation of the Service prior to the end of the Minimum Term. which will not exceed an amount equal to 25% of the fixed recurring monthly Fees multiplied by the number of months in the Minimum Term.
After the Service has been delivered but before the end of the Minimum Term	The difference between the fixed recurring monthly Fees already paid by you and those that are payable for the remainder of the Minimum Term. Amount payable will be calculated as follows: $A \times B \times 25\%$ A. = the average Fees paid or payable each month by you for the Service(s) up to the date of cancellation.

OUR CUSTOMER TERMS

CLOUD SERVICES – TELSTRA INFRACO DATA CENTRE SERVICES



	B. = the number of months (or part of a month) remaining in the Minimum Term for the relevant Service(s).
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15.4 You acknowledge that the amount in clause 15.3 is a genuine pre-estimate of the loss we are likely to suffer.

Consequences of termination

15.5 Termination of Your Agreement does not affect any accrued rights or remedies of a party.

16 OBLIGATIONS AT END OF YOUR AGREEMENT TERM

16.1 On or before the Exit Date you must:

- (a) remove Your Equipment from the Data Centre Space and the Facility and bear all costs incurred by you associated with such removal;
- (b) repair any damage to the Data Centre Space or the Facility caused by the removal of Your Equipment;
- (c) if and to the extent requested by us, remove any works carried out on the Data Centre Space and make good the Data Centre Space to the condition it was in prior to the works being carried out (and in carrying out any such works, you must comply with the terms of Your Agreement);
- (d) deliver up the Data Centre Space in a condition that is consistent with you having complied with your obligations under Your Agreement;
- (e) deliver any of our confidential information to us; and
- (f) return our and the Facility Provider's property, including but not limited to IDACs, power rails and structured cabling.

16.2 If you do not remove Your Equipment in accordance with clause 1.1(a), we may treat it as abandoned and deal with it in any way we see fit.

16.3 For the purposes of this clause 16, the Exit Date is:

- (a) if Your Agreement expires – the date of expiry;
- (b) if Your Agreement is terminated under clause 15 – the date of termination.

16.4 In complying with your obligations under this clause 16, you must not disturb or cause

OUR CUSTOMER TERMS

CLOUD SERVICES – TELSTRA INFRACO DATA CENTRE SERVICES



interruption to us, the Facility Provider or other users of the Facility.

17 FORCE MAJEURE

17.1 Neither party will be:

- (a) in breach of Your Agreement as a result of; or
- (b) liable for,

any failure or delay in the performance of its obligations under Your Agreement to the extent that such failure or delay is wholly or partially caused, directly or indirectly, by a Force Majeure Event. This clause does not relieve you from making any payment as required under Your Agreement.

18 NO LEASE

18.1 Your Agreement is a services agreement and is not intended to and will not constitute a lease of any real or personal property. In particular, you acknowledge and agree that you have not been granted any real property interest in the Facility or the Data Centre Space and you have no rights as a tenant or otherwise under any real property or landlord/tenant laws.

19 DISPUTE RESOLUTION

- 19.1 The parties agree to use best endeavours to resolve in good faith any dispute concerning Your Agreement. Each party must follow the procedures in this clause 19 before starting arbitration or court proceedings (except for urgent injunctive or declaratory relief).
- 19.2 If a dispute 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. Each party must nominate a senior executive to meet within 7 days of the notice (or another agreed period) to try and resolve the dispute.
- 19.3 The parties will continue performing their respective obligations under Your Agreement while the dispute is being resolved, unless and until such obligations are terminated or expire in accordance with Your Agreement.
- 19.4 Each party must bear its own costs of complying with this clause.

20 GENERAL

- 20.1 Each provision of Your Agreement will be read and construed as a separate and severable provision or part and if any provision is void or otherwise unenforceable for any reason, that provision will be severed and the remainder of the provision will be read and construed as if the severable provision had never existed.
- 20.2 A right under Your Agreement may only be waived in writing signed by the party granting the waiver, and is effective only to the extent specifically set out in the waiver.
- 20.3 All terms of Your Agreement which by their nature should survive expiry or termination shall survive expiry or termination (as the case may be).

OUR CUSTOMER TERMS

CLOUD SERVICES – TELSTRA INFRACO DATA CENTRE SERVICES



21 DEFINITIONS AND INTERPRETATION

Definitions

The following words have the meanings set out below:

Ancillary Services	means Cross Connect Services; Remote Hands Services; and any other services that we may agree to provide from time to time.
Ancillary Services Fees	means the fees for Ancillary Services specified in the Application Form or the Move Add Change (MAC) Form (as applicable), or as otherwise agreed by the parties.
Application Form	means the application form submitted by you to order Services.
Blocks	means an agreed number of Racks, the specifics of which are outlined in the applicable Application Form.
Change in Law	means any present or future law, regulation, treaty, order or official directive or request (which, if not having the force of law, would be complied with by a responsible provider of services similar to the Services) that commences, is introduced, or changes, after the date of Your Agreement.
Consequential Loss	means (a) loss of revenue; (b) loss of reputation; (c) loss of profits; (d) indirect or consequential loss; (e) loss of bargain; (f) loss of actual or anticipated savings; (g) economic loss; (h) lost opportunities, including opportunities to enter into arrangements with third parties; (i) loss, corruption or interception of data; and (j) any indirect or consequential loss or damage.
Corporations Act	means <i>Corporations Act 2001</i> (Cth).
CPI	means the Consumer Price Index (Weighted Average Eight Capital Cities) published by the Australian Bureau of Statistics and calculated as the percentage increase between the CPI for the Quarter ending 31 March that most recently precedes the previous Review Date and the CPI for the Quarter ending 31 March that most recently precedes the current Review Date.
Cross Connect	means a cross connection between the Data Centre Space and any other space in the Facility (whether or not that space is provided by us or the Facility Provider to you or to a third party (including to a carrier)).
Cross Connect Service	means the installation and ongoing provision of a Cross Connect that you request us to provide, and that we agree to provide, to you in accordance with clause 4.

OUR CUSTOMER TERMS

CLOUD SERVICES – TELSTRA INFRACO DATA CENTRE SERVICES



Customer Service Management Portal	means our secure web portal hosting the Facility Rules and other materials which is available to you upon request from your Telstra representative and your customer welcome pack.
Data Centre Colocation Services	has the meaning given to it in clause 3.1.
Data Centre Colocation Services Fees	means the Fees for Data Centre Colocation Services described in the Application Form.
Data Centre Space	means, in respect of Your Agreement, the exact location in the Facility made available to you to access and use as identified in your Application Form.
Early Termination Charge	means a fee that we are entitled to charge in accordance with clause 15.3.
Emergency	means any event or circumstance which in our reasonable opinion endangers or threatens to endanger the safety or health of any person or destroys or damages or threatens to destroy or damage the Facility or any part of the Facility, or the property of any other party.
Exit Date	has the meaning given to it in clause 16.3.
Facility	means the data centre facility specified in the Application Form (as changed in accordance with clause 3.33 or another provision of this Agreement) and includes all fixtures, fittings, plant, machinery, equipment or other property of us or the Facility Provider in or on the Facility.
Facility Provider	means Telstra Corporation Limited, ABN 33 051 775 556.
Facility Rules	means rules described in the technical and other reference documents applicable to your access and use of the Data Centre Space, the Facility and the Data Centre Colocation Services, as available on the Customer Service Management Portal and as amended or replaced by us from time to time and including (without limitation): (a) access protocols; i. identification ii. security passes iii. footwear iv. Representatives

OUR CUSTOMER TERMS

CLOUD SERVICES – TELSTRA INFRACO DATA CENTRE SERVICES



- v. Government issued photo ID
 - vi. approved appointment requested via protocols advised by the Facility Provider.
- (b) work approvals
- (c) delivery
- (d) site safety
- (e) any action that interferes, obstructs, damages, overloads, contravenes with the Facility Provider's or a third party's property or space
- (f) compliance with applicable:
 - i. federal, state, local laws, regulations
 - ii. consents, licences, permits, approvals; and
 - iii. technical qualifications, standards, processes.

Fees

means:

- (a) the Installation Fees;
- (b) the Data Centre Colocation Services Fees;
- (c) the Ancillary Services Fees; and
- (d) any other fees as agreed between the parties.

Force Majeure Event

means any occurrence or omission outside a party's control and includes:

- (a) an Emergency;
- (b) a physical natural disaster including fire, flood, lightning or earthquake;
- (c) war or other state of armed hostilities (whether war is declared or not), insurrection, riot, civil commotion, act of public enemies, national emergency (whether in fact or in law) or declaration of martial law;
- (d) epidemic or quarantine restriction;

OUR CUSTOMER TERMS

CLOUD SERVICES – TELSTRA INFRACO DATA CENTRE SERVICES



- (e) ionising radiation or contamination by radioactivity from any nuclear waste or from combustion of nuclear fuel;
- (f) confiscation, nationalisation, requisition, expropriation, prohibition, embargo, restraint or damage to property by or under the order of any government agency;
- (g) law taking effect after the date of Your Agreement; and
- (h) strike, lock-out, stoppage, labour dispute or shortage including industrial disputes that are specific to a party or the party's subcontractors.

GST	has the meaning it has in the GST Act.
GST Act	means A New Tax System (Goods and Services Tax) Act 1999 (Cth).
IDAC	means an access card issued by us or the Facility Provider to enable access to the Data Centre Space.
Installation Fee	means the Installation Fee specified in the Application Form.
Installation Services	means preparation, establishment, and provisioning of the Data Centre Space by us.
Intellectual Property Rights	means all industrial and intellectual property rights, both in Australia and throughout the world, including, without limitation, any copyright, trade or service marks, patents, registered and unregistered trademarks, registered designs, trade secrets, knowhow, moral rights, rights in relation to semiconductors and circuit layouts, formulations, components, concentrations, protocols, trade, business or company name, indication or source or appellation of origin, or other proprietary right, or right to registration of such rights.
Interference	means any act or omission that materially interferes with the Facility Provider's ability to operate or maintain the Facility or with the Facility Provider's other customers' ability to use the Facility.
Material	includes documents, software, object code, source code, configurations, equipment, reports, technical information, studies, plans, charts, drawings, calculations, tables, schedules and data stored by any means.
Minimum Term	in respect of a Service, means the minimum term for that Service specified in the Application Form.
Move Add Change (MAC) Form	means the form by which you request us to provide Ancillary Services after the date of submitting the Application Form available from your Telstra Representative and the Customer Service Management Portal.
Our Material	means any Material provided or to which access is given by us to you for the purposes of Your Agreement.

OUR CUSTOMER TERMS

CLOUD SERVICES – TELSTRA INFRACO DATA CENTRE SERVICES



Persistent Interference	means Interference which continues for at least 10 business days or occurs more than three (3) times in any twelve (12) month period.
Power Allocation	means, in respect of the Data Centre Space, the Power Allocation for that Data Centre Space specified in the Application Form.
Power Rate	means the per kW rate specified in the Application Form.
Quarter	means the three month period ending 31 March, 30 June, 30 September or 31 December.
Rack	means a physical rack with an agreed Power Allocation, the specific details of which are outlined in the applicable Application Form.
Remote Hands Services	means minor technical services that you request us to provide, and that we agree to provide, as set out in the Facility Provider's Remote Hands Services description document as amended from time to time. It does not include services or work that requires a greater level of skill than the services described in that document.
Representative	of a party means an employee, agent, officer, director, auditor, adviser, partner, associate, consultant, joint venturer or sub-contractor or authorised personnel of that party or of a related body corporate (as defined in the Corporations Act) of that party.
Review Date	means 1 July in each year of Your Agreement Term.
Sanction Laws	mean all applicable sanction or embargo laws and regulations from time to time, including trade and economic sanctions.
Service Commencement Date	means, in respect of Your Agreement, the date which is calculated by reference to Your Agreement Commencement Date plus the applicable timeframe for delivery of the Installation Services as set out in the Service Delivery Table, or such other later date as agreed between the parties.
Service Delivery Table	means the timeframe for performance of the Installation Services by us, as amended from time to time.
Service Level Agreement or SLA	means the Service Level Agreement in clause 5.
Service Levels	has the meaning given to it in the Service Level Agreement.
Service Term	means, in respect of a Service, the Minimum Term and any extension of the term in accordance with clause 14.3.

OUR CUSTOMER TERMS

CLOUD SERVICES – TELSTRA INFRACO DATA CENTRE SERVICES



Services	means Data Centre Colocation Services and Ancillary Services.
Tax Charge	means any tax, duty or governmental charge relating to carbon, emissions, trading scheme, pollution, electricity, carbon dioxide, greenhouse gas or similar emissions or other regulatory charges or schemes.
Your Agreement	means the contract formed between you and us when we accept your Application Form.
Your Agreement Commencement Date	means the date we accept your Application Form.
Your Agreement Term	has the meaning given to it in clause 14.1.
Your Equipment	means all hardware, software, accessories, tools and other information technology and telecommunications equipment owned, leased, licensed, controlled or otherwise used by or in the possession of you or your Representatives from time to time, which is located in the Facility, including the Data Centre Space.
Your Material	means any Material provided or to which access is given by the you to us for the purposes of Your Agreement.