

Part B - Telstra Multimedia Access Agreement - Digital Services

The following documents are attached as Part B and comprise the Access Agreement:

- General Terms and Conditions;
- Profile Annex;
- Annex One (Dictionary of Definitions);
- Annex Two (Billing and Payment);
- Annex Three (Operations and Maintenance);
- Annex Four (IT Systems Interface Procedures);
- Annex Five (Digital Channel Allocation Process)*; and
- Digital Services Module.

* There are two versions of Annex Five to be used in the Access Agreement for any access seeker, depending on the date of execution of that Access Agreement:

- (a) Annex Five (Digital Channel Allocation Process - Simulcast Period); will be incorporated within Access Agreements executed during the Simulcast Period; or
- (b) Annex Five (Digital Channel Allocation Process - Post-Simulcast) will be incorporated within Access Agreements executed after the Simulcast End Date.

The relevant Annex Five will be inserted into the Access Agreement prior to its execution.

Dated: _____

TELSTRA MULTIMEDIA ACCESS AGREEMENT

Digital Services

**TELSTRA MULTIMEDIA PTY LIMITED
(ABN 82 069 279 072)
("Telstra")**

**[INSERT FULL NAME OF COMPANY]
(ABN XX XXX XXX XXX)
("Customer")**

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GENERAL TERMS AND CONDITIONS

Parties:

TELSTRA MULTIMEDIA PTY LIMITED (ABN 82 069 279 072) having its registered office at Level 4, 400 George Street, Sydney, New South Wales, 2000 ("**Telstra**")

[INSERT FULL NAME OF COMPANY (ABN XX XXX XXX XXX)] having its registered office at [insert Customer's address] ("**Customer**")]

Simplified outline:

1. Telstra conducts the Digital Channel Allocation Process in accordance with Annex Five for the Available Digital Channels. If the Customer is allocated a Digital Channel it will be supplied Digital Services using that Digital Channel pursuant to the Digital Services Module. If the Customer is not allocated a Digital Channel, this Agreement will terminate.
2. Telstra has no obligation to supply the Digital Services until the conditions precedent set out in the Digital Services Module have been fulfilled, including the completion of any Enhancements and Extensions. The Customer must pay the annual charges for the Digital Services from the date that Telstra notifies the Customer that the Digital Services are available for acquisition.
3. Telstra supplies each Digital Channel in accordance with the Digital Services Module for the Digital Module Term. The Customer can elect to encode its own Customer Input Signal in certain circumstances via the Customer Encoding Election, otherwise Telstra will encode the Customer Input Signal. This Agreement expires at the end of the Digital Module Term unless renewed or terminated earlier.

Note: The Simplified Outline set out in this box is provided for information purposes only, is not legally binding on the Parties and does not affect the interpretation of this Agreement in any way.

Operative provisions:

1 Scope & Structure

Supply of Services

- 1.1 This Agreement sets out the terms and conditions governing the supply of the Digital Services by Telstra to the Customer and, except to the extent expressly stated otherwise in this Agreement, may not be construed as conferring benefits on third parties.
- 1.2 Telstra and the Customer agree to comply with the Digital Channel Allocation Process set out in Annex Five of this Agreement.
- 1.3 Telstra agrees to supply to the Customer, and the Customer agrees to acquire from Telstra, the Digital Services in accordance with this Agreement.

Commencement and Term

- 1.4 This Agreement commences on the date Telstra has accepted the Customer's Application in accordance with paragraph 3.2 of the *Terms and Conditions of Application* set out in the Application Form ("**Commencement Date**").
- 1.5 If the Commencement Date occurs before the Simulcast End Date, then this Agreement will terminate and cease to have any further legal effect if:
- (a) the Digital Channel Allocation Process described in Annex Five of this Agreement has not been Completed within 9 months after the Commencement Date; or
 - (b) the Digital Channel Allocation Process described in Annex Five of this Agreement has been Completed but the Customer has not been a Successful Applicant for at least one of the Available Digital Channels.
- 1.6 This Agreement continues, unless earlier terminated as provided in this Agreement or by operation of Law, until the expiry or termination of the Digital Module Term ("**Term**").

Structure of this Agreement

- 1.7 This Agreement is structured as follows:
- (a) these General Terms and Conditions, including the Profile Annex;
 - (b) Annex One (Dictionary of Definitions), which lists defined terms used in this Agreement; and
 - (c) Annex Two (Billing and Payment) which deals with general operational matters concerning billing and payment;
 - (d) Annex Three (Operations and Maintenance) which deals with general operational matters concerning operations, maintenance and fault reporting; and
 - (e) Annex Four (IT Systems Interface Procedures), which contains standard terms and conditions relating to the interfacing of the Customer's IT systems with those of Telstra;
 - (f) Annex Five (Digital Channel Allocation Process), which contains a mechanism for the allocation of Available Digital Channels; and
 - (g) Digital Services Module.
- 1.8 Unless expressly stated otherwise, the order of precedence between the documents comprising this Agreement is as follows (in descending order of precedence):
- (a) these General Terms and Conditions;
 - (b) the Service Modules;
 - (c) Annex One (Dictionary);
 - (d) Annexes Two to Five; and
 - (e) the Profile Annex.
- 1.9 There is no order of precedence as between different Service Modules and as between Annexes Two to Five.

Access

- 1A Telstra will not engage in conduct for the purpose of preventing or hindering an the Customer's access to a Service in accordance with this Agreement. For the purposes of this clause, 'purpose' is to be interpreted in accordance with section 4F of the TPA.

2 Our Relationship

- 2.1 The relationship of the Parties is one of independent contractors only.
- 2.2 The Customer must not represent that Telstra:
- (a) participates (other than as a supplier) in the provision of the Customer's services to its End Users or that the Customer is approved by, or an agent or dealer of, or affiliated with Telstra;
 - (b) is a supplier to End Users; or
 - (c) has a favoured relationship with the Customer (including providing special pricing or services).
- 2.3 Except where to do so would require the Customer to engage in unethical, misleading or deceptive conduct, the Customer must not, when dealing with End Users, attribute to Telstra:
- (a) blame for a fault or other circumstance;
 - (b) the need for maintenance of a network; or
 - (c) the suspension (or partial suspension) of a Service.

Conditions Precedent Specific to Service Modules

- 2.4 Telstra has no obligation to provide a Service under this Agreement prior to the commencement of the relevant Service Module for that Service and unless and until any conditions precedent set out in the relevant Service Module for that Service have been satisfied. Telstra will make all reasonable endeavours to satisfy any such conditions precedent (including making all reasonable endeavours to obtain the agreement of third parties described in clause 1.18(a) of the Digital Services Module).

3 Managing Financial Exposure

- 3.1 Clause 3 will not apply to the Customer so long as it is listed on the Australian Stock Exchange and has an Acceptable Long Term Credit Rating, unless any of clauses 3.2(a), (b), (c), (d) or (e) apply to the Customer.
- 3.2 Telstra is entitled to review the creditworthiness of the Customer if:
- (a) the Customer enters into a deed of company arrangement; or
 - (b) a Change of Control occurs in respect of the Customer; or
 - (c) the Customer has failed to pay money when due; or
 - (d) the Customer breaches the terms of any Security; or
 - (e) in Telstra's reasonable opinion there has been a material adverse change in the Customer's financial position; or

- (f) the Customer is a proprietary company or is a partnership or is a sole trader and a director, a partner or the principal (as the case requires) of the Customer becomes bankrupt; or
 - (g) the total Charges disputed by the Customer in a 3 month period exceed the total Charges disputed in the previous 3 month period by 20% or more; or
 - (h) the average monthly Charges billed by Telstra to the Customer during any 3 month period exceeds:
 - (i) the face value of the Security; or
 - (ii) if no Security has been provided, the average monthly Charges billed by Telstra to the Customer during the preceding 3 month period; or
 - (i) the Customer ceases to be listed on the Australian Stock Exchange; or
 - (j) the Customer ceases to have an Acceptable Long Term Credit Rating.
- 3.3 If Telstra requires a Credit Report for the purposes of conducting a creditworthiness assessment of the Customer then the Customer agrees to cooperate in the preparation of that report. This cooperation includes the provision of information for the purposes of preparing the report to a suitably qualified third party appointed to prepare the report and the obtaining of written consent from the Customer's owners, partners or directors (as the case requires) to Telstra obtaining, and using the information in the Credit Report.
- 3.4 If the Customer is not, or ceases to be, listed on the Australian Stock Exchange, it must provide, within 15 Business Days of a request by Telstra:
 - (a) a copy of the Customer's most recent annual audited Financial Statements;
 - (b) a copy of the Customer's most recent unaudited Financial Statements; and
 - (c) a certificate of solvency.
- 3.5 By providing its Financial Statements to Telstra under clause 3.4(a) or (b), the Customer warrants that, except to the extent otherwise disclosed in writing to Telstra at the time of provision of those Financial Statements:
 - (a) the Financial Statements were a true and fair statement of the financial position of the Customer as at the date to which they were prepared; and
 - (b) there has been no material adverse change in the Customer's financial position between the date on which those documents were prepared and the date on which they were provided.
- 3.6 If having conducted a creditworthiness assessment of the Customer, Telstra considers that the creditworthiness of the Customer does not meet Telstra's reasonable requirements, or if the Customer fails to comply with clauses 3 or 4, Telstra may require the Customer to provide a new Security or to vary the amount or type of an existing Security.

4 Security for Performance

- 4.1 Where Telstra requests new or varied Security under clause 3.6 the Customer must, in the form and on terms acceptable to Telstra acting reasonably, provide the new or varied Security within 15 Business Days of the request being made. Telstra will be deemed to be acting reasonably under this clause 4.1 if the new or varied Security requested by Telstra is a bank guarantee in the form set out in Attachment B to Annex Five of this Agreement, but with a higher maximum liability sufficient to address Telstra's requirements under clause 3.6.
- 4.2 The Customer must unless otherwise agreed by Telstra:
- (a) maintain any Security provided to Telstra until the expiry of a six month period after the last to occur of:
 - (i) termination or expiry of the Agreement; and
 - (ii) payment to Telstra of all outstanding Charges and other amounts payable by the Customer under the Agreement; and
 - (b) ensure the terms of any Security provided to Telstra are complied with fully.
- 4.3 Telstra may exercise its rights under any Security in respect of any amounts payable by the Customer to Telstra under this Agreement or to compensate itself for any Loss it suffers or incurs as a result of any breach of this Agreement by the Customer.

5 Billing & Payment

Charges

- 5.1 The Customer must pay Telstra the Charges for each Service:
- (a) by the Due Date for the Charges; and
 - (b) subject to clause 17.16 and Annex Two (Billing & Payment), without set-off, counterclaim or deduction.

Charges, Billing & Payment

- 5.2 Telstra will bill and the Customer will pay for Services in accordance with Annex Two (Billing & Payment). The Customer must comply with Annex Two (Billing and Payment) of this Agreement.

6 Network protection and related network matters

Safe operations

- 6.1 Each Party is responsible for the safe operation of its Network and must take all reasonable and necessary steps to ensure that its Network, its Network operations and implementation of this Agreement:
- (a) does not endanger the safety or health of the People or customers of the other Party or any other person; and
 - (b) does not damage, interfere with or cause any deterioration in the operation of the other Party's Network, Facilities or equipment; and
 - (c) does not damage, interfere with (including connecting to, adapting, removing or altering in any way), or cause any deterioration in the

operation of any other person's End User Reception Equipment without the prior written consent of Telstra and the prior written consent of the owner or operator of that End User Reception Equipment (a copy of which is provided to Telstra).

- 6.2 A Party must not interfere with any Carriage Services or Content Services provided by another Party or any other person (except in relation to End User Reception Equipment where consent has been obtained in accordance with clause 6.1(c) and then strictly in accordance with the terms of that consent), but this does not excuse a Party from the performance of any of its obligations, or prevent a Party from exercising its rights, under this Agreement.

Disruption and Faults

- 6.3 The Customer must take reasonable steps to manage, notify and correct faults arising in its Customer Equipment, Facilities and Network which affect the provision of the Services by Telstra or which affect any other person to whom Telstra provides services. The Customer has responsibility for its own service backup (including, but not limited to redundancy capabilities) sufficient to maintain its services. The Customer will comply with Annex Three (Operations and Maintenance) of this Agreement.
- 6.4 Telstra will manage the Telstra HFC Network to reasonably minimise disruption to the Services and, in the event of interruption or failure of a Service, will restore that Service as soon as is reasonably practical in accordance with the procedures set out in Annex Three (Operations and Maintenance).

Customer equipment

- 6.5 The Customer must at its own expense:
- (a) ensure that any:
 - (i) Customer Equipment (other than STUs and Fly Cables that are owned, operated or controlled by FOXTEL or that are used by the Customer pursuant to a right arising under an arrangement with a Third Party Customer) connected directly or indirectly to a Telstra Facility or Telstra Equipment;
 - (ii) signal delivered to a Telstra Facility or Telstra Equipment by the Customer; and
 - (iii) interface between Customer Equipment and a Telstra Facility or Telstra Equipment,complies at all times with this Agreement;
 - (b) upon reasonable notice by Telstra, permit Telstra (acting reasonably) to inspect any Customer Equipment, and the Customer must co-operate with Telstra in good faith in relation to any technical tests conducted by Telstra on the Customer Equipment, Customer Input Signal, or Carried Signal, to ensure that the Customer Equipment, Customer Input Signal and Carried Signal comply at all times with this Agreement; and
 - (c) deliver the Customer Input Signal to each of the Interconnection Points via the Customer Landlines in accordance with this Agreement.
- 6.6 In addition to any other remedy available to Telstra, if Customer Equipment connected directly or indirectly to a Telstra Facility or Telstra Equipment does not comply with this Agreement, Telstra may immediately and without notice

disconnect such equipment from the relevant Telstra Facility or Telstra Equipment, and the Customer will be liable for Telstra's costs of effecting such disconnection. Any reconnection may only be made once compliance with this Agreement is achieved, and shall be the Customer's sole responsibility and at the Customer's sole expense.

Customer network responsibilities

- 6.7 The Customer is solely responsible at its own expense for:
- (a) selecting, supplying and maintaining Customer Equipment;
 - (b) the results and consequences of its use of the Services, and the use by each End User of an End User Service;
 - (c) the content of any data, information or other thing transmitted, sent or received by any person using the Services, and the consequences of such transmission, sending or receipt;
 - (d) the provision, delivery to the relevant Telstra Facilities employed in the provision of the Services, testing and monitoring of any content, data, information or other thing carried by means of the Services;
 - (e) dealing with End User complaints and End User fault reports; and
 - (f) conducting a thorough diagnoses to isolate the source, nature or cause of any fault reported by an End User and, where Telstra is not required to rectify that fault under this Agreement, taking any steps required to address those faults.
- 6.8 The Customer must instruct End Users to report all complaints and faults to the Customer, not to Telstra. Telstra shall be entitled to charge the Customer a Charge in accordance with the relevant Service Module in respect of any End User communications directly to Telstra.

Network and equipment modifications

- 6.9 This Agreement does not limit any right of Telstra to modify, change or substitute technology underlying the Services to improve the functionality or performance of the Services or Telstra HFC Network. However, if any modifications will materially adverse affect the functionality or performance of the Services supplied to the Customer to a greater extent than any other recipient of similar services provided by means of the same technology, then clause 14 of these General Terms and Conditions will apply to that modification as if that modification were a variation to a Specification that required at least 30 Business Days notice before the variation took effect. For the avoidance of doubt, such modifications may include replacement of elements of Telstra HFC Network infrastructure or systems with alternate technology.
- 6.10 Unless expressly provided otherwise, nothing in this Agreement may be construed to preclude Telstra from using, modifying or substituting such of its equipment for other of its equipment as reasonably required to provide the Services.

Prohibited Traffic

- 6.11 The Customer must not deliver Prohibited Traffic to Telstra's Network.
- 6.12 Telstra may take action, without notice to the Customer, to prevent Prohibited Traffic delivered by the Customer entering Telstra's Network. Telstra may charge the Customer any costs, charges and expenses reasonably incurred by Telstra in taking such preventative action. Such action may include, but is

not limited to, suspending the supply of Services or giving instructions to the Customer regarding how to prevent Prohibited Traffic delivered by the Customer from entering Telstra's Network. The Customer must obey any such instructions of Telstra which are reasonable in the circumstances.

End User Reception Equipment

- 6.13 In addition to the obligations in clause 6.1, where the Customer provides its own End User Reception Equipment, the Customer must obtain the prior written consent of the owner or operator of any existing End User Reception Equipment to connect to, adapt, remove or alter in any way the other person's End User Reception Equipment. The Customer must provide proof of such written consent to Telstra on demand.

7 Branding and Intellectual Property

Branding

- 7.1 A Party must not:
- (a) use a name, logo, trademark or Look of the other Party without that Party's prior written consent (neither Party will unreasonably withhold its consent where the other Party proposes to do no more than make a factual statement to the effect that, in the case of the Customer, subscribers receiving services via the Telstra HFC network can now get the Customer's service or, in the case of Telstra, that the Customer's services are now carried by the Telstra HFC network); or
 - (b) infringe the other Party's Intellectual Property Rights.
- 7.2 The Customer must not remove any of Telstra's name, logos, distinctive orange and blue colours, get up or trade marks from anything without Telstra's prior written consent.
- 7.3 The Customer must not brand or hold-out any Service as being its own without Telstra's prior written consent.

Intellectual Property

- 7.4 Any Intellectual Property in the documents (present and future) comprising this Agreement is owned by Telstra.
- 7.5 Unless otherwise agreed in writing, a Party has no rights in respect of any Intellectual Property of the other Party.
- 7.6 If the Customer becomes aware of any infringement or threatened infringement of any Telstra's Intellectual Property Rights, under this Agreement, the Customer must promptly notify Telstra identifying (if possible) the infringer and the infringement or potential infringement.
- 7.7 Telstra may take such steps and proceedings as it considers necessary or desirable to protect its Intellectual Property Rights, and the rights of any third party to which services are supplied using the intellectual property to which the Intellectual Property Rights relate, and the Customer must render all reasonable assistance in connection with those steps or proceedings at its own expense.

8 Use of Information

When confidential information can be used

- 8.1 A Party must not, without the prior written consent of the other Party, use or disclose that other Party's Confidential Information except:

- (a) to the extent necessary to perform this Agreement or exercise any rights under this Agreement; or
- (b) to the extent necessary to obtain professional advice in relation to matters arising under or in connection with this Agreement; or
- (c) to the extent necessary to comply with any law, court order or a binding directive of a Regulator; or
- (d) to the extent necessary to protect the safety of personnel or equipment; or
- (e) to the extent necessary to comply with the listing rules of any stock exchange where the Party's securities are listed or quoted; or
- (f) as specifically permitted by this Agreement.

If paragraph (c) applies, the disclosing Party must notify the other Party as soon as possible that it is required to disclose the Confidential Information and, if requested by the other Party, use reasonable endeavours to assist the other Party to protect the confidentiality of the information.

- 8.2 Without limiting clause 8.1, Telstra may use or disclose Confidential Information of the Customer for the purposes of billing, or for planning, provisioning, operating, maintaining or reconfiguring Telstra's Network and may disclose Confidential Information to Telstra Corporation and its respective People.

Disclosing confidential information internally

- 8.3 A Party may not disclose to any of its People the other Party's Confidential Information as permitted under this clause 8 unless it has first required the person to keep such information confidential.

Disclosing confidential information to third parties

- 8.4 Except where clause 8.1 applies, if a Party wishes to disclose to persons other than its People, the other Party's Confidential Information it must, after obtaining the written consent of the other Party and before disclosure of the Confidential Information:
- (a) inform the person of the confidential nature of the information and the confidentiality obligations contained in this clause 8; and
 - (b) obtain a written undertaking from the person to comply with the confidentiality requirements of this Agreement and, on request, give a copy of that undertaking to the other Party.

Disclosure under Telstra Corporation Act

- 8.5 Telstra may disclose Confidential Information of the Customer as required or authorised by the *Telstra Corporation Act 1991 (Cth)*.

Co-operation

- 8.6 Each Party must co-operate with the other Party to protect the other Party's Confidential Information and to enforce that other Party's rights in relation to its Confidential Information.

After this Agreement

- 8.7 On the termination of this Agreement, each Party must as soon as practicable return to the other Party all copies, in any medium, of that other Party's Confidential Information (unless such Confidential Information is stored in or is essential to, the operation of a Party's network or systems). If this Agreement

is partially terminated then this clause applies to Confidential Information relating to the terminated part.

Publicity

- 8.8 Subject to clause 8.9, a Party must not make press or other public statements (including announcements and releases) about the performance of this Agreement or any disputes under or in relation to this Agreement without the written approval of the other Party as to the manner and content of the statement unless that statement is required to be made by law or by a stock exchange where that Party's securities are listed or quoted.
- 8.9 Clause 8.8 does not prohibit a Party from making any public statements concerning any matter which is in the public domain provided that it does not disclose any Confidential Information of the other Party in doing so.

Privacy

- 8.10 A Party is under no obligation to disclose any End User information to the other Party where that disclosure is not permitted by any applicable Privacy Laws.

Injunctive relief

- 8.11 Each Party acknowledges that its breach of this clause 8 may cause the other Party irreparable damage for which damages would not be an adequate remedy and that the other Party is entitled to specific performance or injunctive relief (as appropriate) as a remedy for any breach or threatened breach, in addition to any other available legal or equitable remedies.

Supply of Information

- 8.12 Any information which must be supplied under this Agreement must be provided by any time specified and otherwise in a timely manner. Except where this Agreement provides to the contrary the method by which such information is to be made available will be determined by the parties having regard to the reasonable cost, convenience and security concerns of the parties.

Network Information

- 8.13 Subject to clause 8.14 and to the exclusions in the definition of Confidential Information, information about particular Services supplied to the Customer which is generated within Telstra's Network as a result of the supply of the Services to the Customer, is Confidential Information of the Customer.
- 8.14 Aggregated information about Services or particular types of Services supplied by Telstra to the Customer, such as the total volume of a particular Service supplied to the Customer, is information of both Telstra and the Customer and may be used by either of them. Telstra, will on request from the Customer, disclose to the Customer quarterly aggregate traffic flow information generated within Telstra's Network in respect of a particular Service provided to the Customer, if Telstra measures and provides this information to itself. The Customer must pay the reasonable costs of Telstra providing that information.

Access to Databases

- 8.15 A Party obliged to provide information to the other Party under this Agreement:
- (a) is not required to give the other Party direct access to any of its databases where that information is held; and
 - (b) must provide the information from its databases to enable the other Party to establish its own databases.

Equipment

- 9.1 A Party must not, and must ensure that its People and End Users do not, establish, maintain or permit a connection to the other Party's Network, equipment or cabling that is prohibited by or does not meet the requirements of any technical or interconnection standards made by the ACA under the Telecommunications Act unless such connection is made in accordance with:
- (a) a connection permit issued under the Telecommunications Act; or
 - (b) connection rules made under the Telecommunications Act where the Party establishing, maintaining or permitting the connection (as the case may be) is subject to such connection rules.
- 9.2 Telstra has an absolute discretion to determine how to provide the functionality of any Service and to use, modify or substitute such of its equipment as it believes is reasonably required to provide a Service unless expressly provided otherwise in this Agreement.

Use of Services

- 9.3 Telstra does not guarantee that its Services will be continuous or fault free.
- 9.4 The Customer agrees that it will not, and will use reasonable endeavours to ensure that its People and End Users will not, use any Service in such a manner that may:
- (a) menace or harass any person or intentionally cause damage or injury to, any person or property or incite hatred against any person;
 - (b) expose either Party to the risk of any legal or administrative action including prosecution under any law, or which would bring that Party into disrepute;
 - (c) involve the publication of material that is illegal, or defamatory, or which may promote others to engage in such acts;
 - (d) infringe any person's Intellectual Property or other rights; or
 - (e) be unlawful.
- 9.5 The Parties agree to exchange information and cooperate in relation to:
- (a) the prevention, minimisation, and investigation of fraudulent use or misuse of either Party's Services,
 - (b) theft of either Party's equipment, or
 - (c) network or telecommunications fraud.
- 9.6 A Party is not obliged to exchange information or cooperate if, in its reasonable opinion, the other Party does not comply with, or does not have sufficient procedures to comply with, Privacy Laws.

Date Capable systems

- 9.7 Each Party warrants that any computer system, information technology or other data processing system used by the Party in connection with any Service is Date Capable. Each Party indemnifies the other against any Loss which the other may suffer or incur as a result of any such system not being Date Capable.

Access to Premises

- 9.8 The Customer may seek access to certain Telstra premises in accordance with terms and conditions (including any reasonable Charges) agreed with Telstra, acting reasonably, where such access is necessary for the purpose of the delivery of a Service to the Customer.
- 9.9 For the avoidance of doubt, this Agreement does not deal with, and does not confer on the Customer, any rights relating to access to Facilities owned or operated by Telstra, under Part 3 or 5 of Schedule 1 to the Telecommunications Act including telecommunications transmission towers and their sites and eligible underground facilities (as defined in the Telecommunications Act).

10 Allocation of Risk (Liability and Indemnity)

General principle

- 10.1 Except to the extent expressly set out in this Agreement (including Annex Five) this clause 10 will regulate the Liability of one Party to the other Party under and in relation to this Agreement.
- 10.2 Other remedies and exclusions and limitations of liability relating to specific Services (if applicable) will be set out in the relevant Service Module and other exclusions and limitations of liability relating to the Digital Channel Allocation Process are set out in Annex Five.

Remedies for warranties implied by law

- 10.3 If Telstra breaches any condition or warranty implied by law which cannot lawfully be excluded, to the extent permitted by law the Liability of Telstra is limited, at its option, to:
- (a) in the case of services, the resupply of, or payment of the cost of resupplying, the service; and
 - (b) in the case of goods:
 - (i) the replacement of the goods or the supply of equivalent goods; or
 - (ii) the repair of the goods; or
 - (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
 - (iv) the payment of the cost of having the goods repaired.

General exclusions

- 10.4 Except as otherwise expressly provided in this clause 10, a Party ("**first Party**") has no Liability to the other Party:
- (a) for or in respect of any consequential, special or indirect liability, loss, damage, cost, charge or expense, including without limitation any loss of profits or data; or
 - (b) for or in relation to any act or omission of, or any matter arising from or consequential upon any act or omission of, any customer of the first Party or any third person not under the direct control of the first Party; or
 - (c) where the first Party is Telstra, for:

- (i) any delay in the initial supply of, any failure to supply or any interruption in the supply of a Service by Telstra;
- (ii) any failure of Telstra's Network or any part of that Network; or
- (d) any error in or omission from information transmitted through a Party's Network.

Limitation of liability

10.5 The aggregate Liability of a Party to the other Party at any time:

- (a) in any 12 month period ending on the day before an anniversary of the Commencement Date; or
- (b) in a period of less than 12 months from the Commencement Date or an anniversary of the Commencement Date to the date of termination of this Agreement,

will not in any circumstances exceed an Annual Liability Cap, being the aggregate of the Recurring Charges payable by the Customer to Telstra during that period.

10.6 The Annual Liability Cap will not apply to any obligation of a Party under this Agreement to pay Charges for Services or to liability under clauses 10.8, 10.9, 10.10, 10.12 and 10.13 or paragraph 5.5 of Part 1 of Annex Five.

Interruption of Supply

10.7 In relation to any interruption to the supply of a Service (measured from the time of the giving of notice of the interruption by the Customer to Telstra), in excess of the Outage Period for that Service, the sole remedy available to the Customer will be a pro rata reduction in any Recurring Charges for the Service attributable to the period of such interruption in excess of the Outage Period.

Death or injury

10.8 Each Party indemnifies the other Party against all awards, judgements, costs, charges and expenses directly and reasonably incurred by the other Party as a result of a claim against it arising out of a death of or personal injury to the People of the Innocent Party, to the extent that such damage or loss is caused by a negligent act or omission or an act or omission intended to cause death or personal injury, by the Indemnifying Party or any of the Indemnifying Party's People.

Intentional or negligent property damage

10.9 Each Party indemnifies the other Party against all Loss (including consequential and indirect loss and damage) arising from or relating to any damage to or loss of any equipment, Network or other tangible property of the Innocent Party or any third party to the extent that such Loss is caused by a negligent act or omission or an act or omission which is a breach of this Agreement or which is intended to cause Loss by the Indemnifying Party or any of its People.

Other property damage

10.10 Each Party indemnifies the other Party against all costs, charges and expenses directly and reasonably incurred in relation to making good any damage to or loss of equipment, facilities, Network or other tangible property of the Innocent Party to the extent that such damage or loss is caused by any act or omission of the Indemnifying Party or any of its People.

Negligence - third party claims

- 10.11 Each Party indemnifies the other Party against all Loss arising directly from or incurred in connection with a claim by a third party against the Innocent Party to the extent that the claim relates to any negligent act or omission of the Indemnifying Party or a breach of this Agreement by the Indemnifying Party or any of its People in relation to this Agreement.

Transmission of Material

- 10.12 The Customer indemnifies Telstra against all Loss arising out of the reproduction, broadcast, use, transmission, communication or making available of any material (including data and information of any sort) by the Customer or an End User using a Service.

Defamation

- 10.13 The Customer indemnifies Telstra against all Loss arising out of any breach of a person's rights or defamation of a person (or allegation of such a breach or defamation) involving the Customer's use of a Service or services provided by the Customer to its End Users.

End User claims

- 10.14 The Indemnifying Party is not liable to the Innocent Party for or in respect of a claim brought against the Innocent Party by an End User of the Innocent Party to the extent that the Loss under such claim could reasonably have been excluded or reduced (regardless of whether such liability actually was excluded or reduced), by the Innocent Party in its contract with such End User.

Apportionment

- 10.15 The Indemnifying Party is not obliged to indemnify the Innocent Party under this clause 10 to the extent that the Liability the subject of the indemnity claim is the direct result of a breach of this Agreement, or a negligent act or omission, by the Innocent Party .

Mitigation

- 10.16 The Innocent Party must take all reasonable steps to minimise the Loss it has suffered or is likely to suffer as a result of the Event giving rise to an indemnity under this clause 10. If the Innocent Party does not take reasonable steps to minimise such Loss then the damages payable by the Indemnifying Party will be reduced as is appropriate in each case.

Contributory negligence

- 10.17 A Party's liability to the other Party for Loss of any kind arising out of this Agreement or in connection with the relationship established by it is reduced to the extent (if any) that the other Party causes or contributes to the Loss. This reduction applies whether the first Party's liability is in contract, tort (including negligence), under any statute or otherwise.

11 Access Relations Group

- 11.1 The Parties will, as soon as practicable after the Allocation Date, establish an Access Relations Group ("**ARG**") which will be responsible for co-ordinating the implementation and operation of this Agreement during its Term, including any matters referred to it pursuant to this Agreement.
- 11.2 The ARG may:
- (a) delegate such matters as it determines to one or more specialised sub-groups ("**Working Group**"); and

- (b) direct each Working Group to report to it on such matters as it determines; and
 - (c) establish rules to govern the conduct of each Working Group.
- 11.3 The ARG may establish rules to govern its conduct providing for such matters as:
 - (a) subject areas to be dealt with by each Working Group;
 - (b) chairmanship and administrative functions of each Working Group and the ARG to be shared on an agreed basis; and
 - (c) formal notification procedures to each Working Group and the ARG.
- 11.4 Unless the Parties agree otherwise, each Party will have an equal number of representatives on the ARG (usually being 3 representatives) and any Working Groups.
- 11.5 The ARG will meet at times to be agreed between the Parties. Without limiting the meetings of the ARG under this clause, either Party may request a special meeting of the ARG by giving the other Party not less than 10 Business Days notice, provided that a special meeting may not occur within 5 Business Days of a regular meeting unless both Parties agree.
- 11.6 The ARG may meet in any manner agreed between the Parties, including, for the avoidance of doubt, by telephone.
- 11.7 Written minutes must be agreed and kept of all meetings of the ARG. A copy of draft minutes relating to a meeting must be given by the Party responsible for keeping such minutes (as agreed between the Parties) to the other Party within 10 Business Days after the relevant meeting.
- 11.8 A representative of FOXTEL may participate in meetings of the ARG to the extent that the matters to be dealt with at a meeting relate to:
 - (a) FOXTEL's provision of STU services to the Customer; or
 - (b) FOXTEL's use of the Telstra HFC Network or Conditional Access Gateway,

but FOXTEL may not vote in any decision-making process of the ARG.
- 11.9 The Parties may appoint an independent third party to act as a case manager in relation to the technical implementation of this Agreement to guide discussions on certain issues between the Parties within the ARG, in the event that such discussions are not progressing to the satisfaction of both Parties. The terms of engagement, including the period of engagement, of any such third party case manager will be as agreed between the Parties, acting reasonably. The costs of the case manager will be shared equally between the Parties.

12 How We Will Resolve General Disputes

General

- 12.1 If a dispute arises between the Parties in connection with or arising from this Agreement (other than a dispute arising from or in connection with Annex Five), the dispute shall be resolved as follows:

- (a) where the dispute is a Payment Dispute, in accordance with the Payment Dispute procedures set out in Annex Two (Billing & Payment); or
- (b) subject to clause 12.2, in the case of any other dispute ("**General Dispute**"), in accordance with the procedures set out in this clause 12.

12.2 To the extent that a General Dispute is raised or arises in connection with, or otherwise relates to, a Payment Dispute, then unless Telstra otherwise determines, that General Dispute will be resolved in accordance with the Payment Dispute procedures set out in Annex Two (Billing & Payment).

Notice of Dispute

12.3 If a General Dispute arises, either Party may, by notice to the other (specifying the details of the General Dispute), refer the General Dispute for resolution under this clause 12.

12.4 Any General Dispute notified under clause 12.3 shall be subject to the following procedure unless the Parties agree in writing to a different procedure for resolution of that General Dispute:

- (a) initially, the nominated Disputes Officers of both Parties must seek to negotiate a commercial settlement within 20 Business Days of a notice under clause 12.3 being given;
- (b) if the General Dispute has not been resolved under sub-clause (a) within 20 Business Days, either Party may refer the General Dispute to the ARG by way of notice to the other Party. The ARG shall endeavour to resolve the dispute by the date 10 Business Days after the date of the giving of the notice or such other date as is agreed between the Parties ("**Escalation Date**"); and
- (c) if the ARG or the Working Group does not resolve the General Dispute by the Escalation Date, and:
 - (i) the General Dispute is not a Technical Dispute, then unless the Parties agree to refer the General Dispute to an Expert Committee under clause 12.10, either Party may submit it to mediation in accordance with clause 12.9 by notice in writing to the other Party (including a written proposal to the other Party for the appointment of a Mediator to assist in resolving the dispute and including a detailed statement outlining the subject of the General Dispute); or
 - (ii) the General Dispute is a Technical Dispute and:
 - (A) the Parties do not agree to refer the General Dispute to mediation under clause 12.9; or
 - (B) the Parties agree to refer the General Dispute to mediation under clause 12.9, but the mediation is terminated without resolving the General Dispute,

then either Party may submit the General Dispute to an Expert Committee in accordance with clause 12.10 by notice in writing to the other Party (including a written proposal to the other Party for the appointment of a independent chairperson to assist in resolving the dispute and including a detailed statement outlining the subject of the General Dispute).

12.5 If the General Dispute is not a Technical Dispute and:

- (a) the Parties do not agree to refer the General Dispute to Expert Committee, and neither Party refers the dispute to mediation, by the date 20 Business Days after the Escalation Date ("**End Date**"); or
- (b) the Parties agree to refer the General Dispute to an Expert Committee, but the Expert Committee Procedure is terminated without resolving the General Dispute ("**End Date**"); or
- (c) a Party refers the General Dispute to mediation, but the Mediation Procedure is terminated without resolving the General Dispute ("**End Date**"),

then, 10 Business Days after the End Date either Party may terminate the operation of this dispute resolution procedure in relation to the General Dispute by giving notice of termination to the other Party. This clause does not prevent the Parties agreeing to use some other form of dispute resolution mechanism to resolve the General Dispute.:

12.5A If the General Dispute is a Technical Dispute and if:

- (a) the Parties do not agree to refer the General Dispute to mediation, and neither Party refers the dispute to the Expert Committee, by the date 20 Business Days after the Escalation Date ("**End Date**"); or
- (b) the Parties refer the General Dispute to mediation, but the Mediation Procedure is terminated without resolving the General Dispute, and neither Party refers the dispute to the Expert Committee by the date 10 Business Days after the date of termination of the Mediation Procedure ("**End Date**"); or
- (c) a Party refers the General Dispute to Expert Committee, but the Expert Committee Procedure is terminated without resolving the General Dispute ("**End Date**"),

then, 10 Business Days after the End Date either Party may terminate the operation of this dispute resolution procedure in relation to the General Dispute by giving notice of termination to the other Party. This clause does not prevent the Parties agreeing to use some other form of dispute resolution mechanism to resolve the General Dispute.

12.6 A Party may not commence legal proceedings in any court (except proceedings seeking urgent interlocutory relief) in respect of a General Dispute unless the General Dispute has first been referred for resolution in accordance with the dispute resolution procedure set out in this clause 12 and a notice terminating the operation of the dispute resolution procedure has been issued under clause 12.5 or 12.5A.

Continuing Obligations

12.7 Each Party must continue to fulfil their obligations under this Agreement during the period of a General Dispute and any dispute resolution process invoked under this clause 12. This clause 12 does not prevent a Party from exercising its rights of termination or suspension of this Agreement.

12.8 A Party must not use information obtained in the course of any procedure established by this clause 12 for any purpose other than to resolve the relevant dispute.

Mediation

- 12.9 The Parties may agree to refer a General Dispute to mediation in accordance with clause 12.4(c)(ii), or a Party may refer a General Dispute to mediation in accordance with clause 12.4(c)(i), in which case the provisions of this clause 12.9 apply ("**Mediation Procedure**"):
- (a) The mediation must be conducted in accordance with the ACDC Mediation Guidelines and the provisions of this clause 12.9. In the event of any inconsistency between them, the provisions of this clause 12.9 will prevail.
 - (b) The mediation must be conducted in private.
 - (c) In addition to the qualifications of the Mediator contemplated by the ACDC Mediation Guidelines, the Mediator should:
 - (i) have an understanding of the relevant aspects of the telecommunications and broadcasting industries (or have the capacity to come to such an understanding quickly);
 - (ii) have an appreciation of competition law (or have the capacity to gain such an appreciation quickly); and
 - (iii) not be an officer, director or employee of a telecommunications or broadcasting company or otherwise have a potential for conflict of interest.
 - (d) The Parties must notify each other no later than 48 hours prior to mediation of the names of their representatives who will attend the mediation. Nothing in this sub-clause is intended to suggest that the Parties are able to refuse the other's chosen representatives or to limit other representatives from the Parties attending during the mediation.
 - (e) The terms of any mediation settlement agreements and any information relating to the existence, conduct, status or outcomes of the mediation is deemed to be Confidential Information of each Party and may be published or announced only with the consent of all Parties and in terms agreed by the Parties.
 - (f) The mediation will terminate in accordance with the ACDC Mediation Guidelines.
 - (g) The Parties will bear their own costs of the mediation including the costs of any representatives and will each bear half the costs of the Mediator.
 - (h) Any agreement resulting from mediation will bind the Parties on its terms and the Parties agree to effect any variation to this Agreement which is necessary to implement that agreement.

Expert Committee

- 12.10 The Parties may agree to refer a General Dispute for resolution by an Expert Committee in accordance with clause 12.4(c)(i), or a Party may refer a General Dispute for resolution by an Expert Committee in accordance with clause 12.4(c)(ii), in which case the provisions of this clause 12.10 will apply ("**Expert Committee Procedure**"):
- (a) The Parties must act in good faith and use all reasonable endeavours to agree the terms of reference of the Expert Committee. In the

absence of agreement on those terms of reference within 10 Business Days (or such period as is agreed) after delivery of the notice referred to in clause 12.10 or the date of the agreement referred to in clause 12.10 (as applicable) ("**Relevant Period**") the referral to the Expert Committee will be deemed to be terminated unless one Party notifies the other Party prior to the end of the Relevant Period that the independent chairperson agreed or nominated under clause 12.10(c) will determine the terms of reference.

If a notice is given under the preceding paragraph, the independent chairperson must determine the terms of reference within 10 Business Days from the end of the Relevant Period and notify the Parties of the determination. If the determination is not made within this timeframe, the referral to the Expert Committee will be deemed to be terminated.

An Expert Committee and the independent chairperson shall act as an expert and not as an arbitrator.

- (b) The Parties will each be represented on the Expert Committee by one appointee.
- (c) The Expert Committee must include an independent chairperson agreed by the Parties or, if not agreed, a nominee of the ACDC. The chairperson must have the qualifications listed in clause 12.9(c)(i), (ii) and (iii).
- (d) The Parties will be given equal opportunities to present their submissions and make representations to the Expert Committee.
- (e) The Expert Committee may determine disputes by unanimous or majority decision with each appointee having one vote and the chairperson having a casting vote.
- (f) The Expert Committee will use all reasonable endeavours to reach a decision within 15 Business Days (or such other period as is agreed) after the date on which terms of reference are agreed and the final member of the Expert Committee is appointed (whichever is the later) and the Parties undertake to co-operate reasonably with the Expert Committee to achieve that timetable.
- (g) If the dispute is not resolved within 20 Business Days (or such other period as is agreed) after the date of appointment of the Expert Committee (or, if applicable, after the date of determination of the terms of reference by the independent chairperson pursuant to clause 12.10(a)), either Party may by notice to the other Party terminate the appointment of the Expert Committee at any time after that 20 Business Day period (or other agreed period) unless prior to the expiry of that period the independent chairperson gives a notice ("**extension notice**") to both Parties that the Expert Committee requires more time to make a determination and the further period required (which must not exceed 40 Business Days).

If the independent chairperson gives a valid extension notice, the appointment of the Expert Committee will be extended from the date of the notice for the further period specified in the extension notice. If the dispute is not resolved within the further period, the appointment of the Expert Committee will automatically terminate at the end of the further period.

- (h) The Expert Committee will have the right to conduct any enquiry as it thinks fit, including the right to require and retain relevant evidence during the course of the appointment of the Expert Committee or the resolution of the dispute.
- (i) The Expert Committee must give written reasons for its decisions.
- (j) A decision of the Expert Committee is final and binding on the Parties in the absence of manifest error or a mistake of law.
- (k) Each Party will bear its own costs of the enquiry by the Expert Committee including the costs of its representatives, any legal counsel and its nominee on the Expert Committee and the Parties will each bear half the costs of the independent member of the Expert Committee.

13 Suspension and Ending the Relationship

Immediate suspension

- 13.1 Telstra may, without prior notice to the Customer, immediately suspend the supply of a Service for so long as:
 - (a) an Emergency exists; or
 - (b) in the reasonable view of Telstra the supply of that Service may pose a threat to safety of persons, a hazard to equipment, a threat to normal Network operation, access, integrity or Network security or is likely to impede the activities of authorised persons responding to an Emergency; or
 - (c) the Customer's access to Telstra's Network or use of any Service contravenes any law; or
 - (d) the Customer is Insolvent.
- 13.1A Telstra will aim to provide prior notice of any suspension under clause 13.1 of this Agreement (including the reason for the suspension) where reasonably practicable in the circumstances. Where Telstra does not give prior notice of any such suspension, Telstra will use all reasonable endeavours in the circumstances to provide subsequent notice of any such suspension (including the reason for the suspension) as soon as reasonably practicable after the suspension occurs.

Immediate Termination

- 13.2 A Party may by written notice to the other Party terminate this Agreement immediately if:
 - (a) the other Party is Insolvent; or
 - (b) an event of Force Majeure substantially adversely affects the ability of the other Party to perform obligations under this Agreement (other than an obligation by the Customer to pay any amounts owing under this Agreement) continuously for a period of 20 Business Days; or
 - (c) that Party has suspended or has a right to suspend this Agreement under clause 13.1(c); or
 - (d) the other Party has breached a material term of this Agreement and the breach is not capable of being remedied.

Termination for breach

- 13.3 Telstra may by written notice to the Customer, suspend or terminate this Agreement if:
- (a) the Customer has failed to pay any money owing under this Agreement by the Due Date; or
 - (b) the Customer fails to provide or maintain any Security required under clause 4 or fails to comply with any of its other obligations in clauses 3 or 4.
- 13.4 A Party may, by written notice to the other Party, suspend or terminate this Agreement if there has been a breach of a material term of this Agreement by the other Party.
- 13.5 For the avoidance of doubt, for the purposes of this Agreement, payment of a Charge, or any other monies owing, by a cheque which is dishonoured shall be taken to be non-payment.

Notice to be given

- 13.6 Before exercising a right of suspension or termination under clause 13.3 or 13.4 in respect of any breach which is capable of being remedied:
- (a) a Party must give a notice to the other Party identifying the breach that has occurred and requiring the other Party to remedy the breach within 10 Business Days; and
 - (b) the other Party must fail to remedy the breach within 10 Business Days (or, if agreed to by the first Party, a longer period) after receiving the notice under clause 13.6(a).
- 13.7 A Party cannot give both a notice of intention to suspend and a notice of intention to terminate under clause 13.3 or 13.4 in respect of the same Event or different Events that relate to or arise from the same Event or related Events.
- 13.8 A Party is not required to suspend or give a notice of suspension under clause 13.3 or 13.4 before exercising its right to terminate this Agreement.

Suspension or Termination of Services

- 13.9 Additional rights of suspension and termination relating to specific Services are set out in the Service Modules.

Partial Suspension or Termination

- 13.10 A Party may exercise its rights under clause 13.1, 13.2, 13.3 or 13.4 in respect of all or any part of this Agreement including in respect of any one or more Services (in whole or in part).

14 Amendments to Specifications

- 14.1 Notwithstanding clause 15, Telstra:
- (a) may replace or vary any Specifications by giving the Customer at least the amount of notice (if any) set out in that Specification before any such replacement or variation takes effect; and
 - (b) will consult with the Customer and negotiate in good faith in relation to any reasonable concerns of the Customer, in relation to the proposed replacement or variation.

- 14.2 If the Customer seeks a variation to any Specifications for a Service, Telstra will consider and negotiate that amendment in good faith with the Customer.
- 14.3 In negotiating a replacement or variation under clauses 14.1 or 14.2, the Parties will recognise Telstra's legitimate interest in ensuring that:
- (a) the Specifications for the Services which it supplies to more than one customer are consistent;
 - (b) its Services conform to relevant international standards.
- 14.4 Despite any negotiations between Telstra and the Customer, a replacement or variation proposed by Telstra will come into effect on expiry of the applicable period specified in clause 14.1(a), unless Telstra and the Customer agree otherwise.
- 14.5 Telstra may replace or vary Specifications for a Service if, in the opinion of Telstra acting reasonably, the replacement or variation would have no, or only a minor, effect on the Customer, by giving the Customer written notification of the replacement or variation.

15 Variation of Service Modules

Variation of ACCC Declaration

- 15.1 If the ACCC varies a declaration in respect of a Declared Service or part of a Declared Service which is, or is functionally equivalent to, a Service or part of a Service, Telstra may by 2 months' written notice to the Customer (together with a copy of the amended Service Module), vary the Service Module in respect of that Service to the extent reasonably necessary to maintain consistency with the varied declaration.

Variation of a Service Module

- 15.2 Subject to clause 15.3, Telstra may at any time vary a Service Module (except any Price List in that Service Module or Specifications associated with that Service Module) by giving the Customer not less than 6 months notice of the variation.
- 15.3 Telstra will consult with the Customer and negotiate in good faith in relation to any reasonable concerns expressed in writing by the Customer in relation to the proposed variation.
- 15.4 In attempting to reach agreement on the variation of a Service Module, the Parties will recognise Telstra's legitimate interest in ensuring that Services which it supplies to more than one customer are consistent.
- 15.5 Telstra may make changes to a proposal to vary a Service Module made by Telstra without having to re-notify the Customer unless those changes materially adversely affect the Customer.
- 15.6 Notwithstanding any negotiations between Telstra and the Customer, a variation proposed by Telstra will come into effect on expiry of the period specified in clause 15.2 unless Telstra and the Customer agree otherwise.
- 15.7 The Customer may terminate a Service Module which is to be varied by giving Telstra not less than 20 Business Days notice before the date on which the variation is to come into effect under clause 15.2 if the Customer has expressed in writing any reasonable concerns under clause 15.3 which have not been addressed by Telstra.

- 15.8 When replacing or varying a Service Module under this clause 15, Telstra may include provisions in respect of the liability of Telstra in the varied Service Module, provided that:
- (a) they are consistent with the liability provisions for the existing Service Module; and
 - (b) the additional provisions do not affect clause 10 (allocation of risk) of the General Terms and Conditions in respect of any other Service.

16 End Users

End User responsibility

- 16.1 The Customer is solely responsible at its own expense for:
- (a) billing End Users and any credit risks associated with End Users;
 - (b) the Carriage Services or Content Services it supplies to End Users;
 - (c) handling all other arrangements with End Users, including inquiries or complaints regarding End User Services;
 - (d) obtaining (in a form approved by Telstra) any written consent, approval and/or agreement (in favour of Telstra and its People) which may be necessary or desirable from any one or more of:
 - (i) any local government or other government authority;
 - (ii) End Users;
 - (iii) owners and/or occupiers of End User Premises; and
 - (iv) owners and/or occupiers of any land over, under or through which it is necessary or desirable,
- for the installation, maintenance or removal by Telstra of any Telstra Facilities necessary or desirable to enable the delivery, maintenance or disconnection of the Service.
- 16.2 The Customer must not engage in any form of resupply of the Services.
- 16.3 The Customer acknowledges and agrees any failure by one of its End Users to pay it in respect of any End User Service does not derogate from its obligations to pay Charges to Telstra under this Agreement.

End User contracts

- 16.4 In each agreement between the Customer (or a Related Body Corporate of the Customer) and an End User for the provision of the End User Service, the Customer must include the following:
- (a) provisions obtaining all relevant consents, approvals and/or agreements referred to in clause 16.1(d);
 - (b) consent, in a form which complies with Privacy Law, to the use by Telstra or its People and any of its Related Bodies Corporate of information relating to End Users necessary or desirable for Telstra's performance of this Agreement.

Which law and courts governs the Agreement

- 17.1 The Agreement is governed by the law in force in New South Wales.
- 17.2 Each Party submits to the non-exclusive jurisdiction of the courts of New South Wales for any dispute concerning this Agreement.
- 17.3 Each Party waives any right it has to object to an action being brought in the above courts (including that the action has been brought in an inconvenient forum, or that those courts do not have jurisdiction).

Entire Agreement

- 17.4 This Agreement constitutes the entire agreement of the Parties about its subject matter. A Party may not rely on any representations or warranties about the subject matter of this Agreement except as expressly provided in this Agreement.

How this Agreement can be varied

- 17.5 Except as otherwise expressly stated, this Agreement cannot be varied unless the variation is in writing and executed by both Parties.

Variation of Profile Annex

- 17.6 Except as otherwise provided by this Agreement, a Party may vary its information set out in the Profile Annex by not less than 10 Business Days written notice to the other Party, and without the other Party's consent.

Variation of Agreement

- 17.7 Except as otherwise provided by clause 17.6 or any other provision of this Agreement, Telstra may amend any part of the Service Modules, except the Price List, at any time without the Customer's consent by giving not less than 20 Business Days notice in writing to Customer if the amendment:
 - (a) does not have a material adverse effect on the rights of Customer (in Telstra's reasonable opinion); or
 - (b) relates to improvements in any Service.

Intervening Legislation

- 17.8 If the rights or obligations of either Party under this Agreement are or may be affected by Intervening Legislation ("affected Party"), the Parties will meet as soon as practicable and negotiate in good faith such amendments to this Agreement necessary or appropriate to ensure that this Agreement does not and will not require the affected Party to breach the Intervening Legislation. If the Parties cannot agree such amendments within a reasonable period and the Intervening Legislation has, or will be likely to have, a significant adverse affect on the affected Party, the affected Party may terminate this Agreement as it applies to any Services affected by the Intervening Legislation by giving 20 Business Days notice to the other Party. Nothing in this clause 17.8 limits Telstra's rights under clause 15.1 of the General Terms and Conditions or clause 1.2 of the Digital Services Module.
- 17.9 Where, by performing its obligations under this Agreement, a Party would or is likely to be in breach of Intervening Legislation, such Party may suspend the performance of its obligations under this Agreement to the extent necessary to ensure that it is not and will not be in breach of such Intervening Legislation.
- 17.10 Any present or future legislation or other binding requirement that varies a right, power or remedy of a person in connection with this Agreement is excluded to the extent permitted by law.

Severing Clauses

- 17.11 If the whole or any part of a provision of this Agreement is void, unenforceable or illegal in a jurisdiction it is severed for that jurisdiction. The remainder of this Agreement has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected. This clause has no effect if the severance alters the basic nature of this agreement or is contrary to public policy.

When rights and obligations can be assigned

- 17.12 The Customer may only assign or transfer its rights and obligations under this Agreement with the prior written consent of Telstra.
- 17.13 Telstra may novate or assign any or all of its rights and obligations under this Agreement by notice to the Customer and without the Customer's consent. Telstra may appoint an agent, sub-contractor or manager (or any of these) to perform any or all of its obligations under this Agreement without the Customers consent.

Waiving rights

- 17.14 No waiver of any breach of, or failure to enforce, any obligation of a Party or term of this Agreement is valid unless it is in writing and signed by an authorised officer on behalf of the Party granting the waiver.

Completing this Agreement

- 17.15 The Parties agree, at their own expense, on the request of the other, to do everything reasonably necessary to give effect to this Agreement and the transactions contemplated by it including:
- (a) the execution of documents;
 - (b) the use of all reasonable endeavours to cause relevant third persons to do likewise; and
 - (c) the timely performance of all obligations under this Agreement.

Set Off

- 17.16 Subject to any express provision to the contrary in this Agreement, where:
- (a) a Party has the right to suspend the supply of a Service or terminate any elements of this Agreement under clause 13, then that Party; or
 - (b) this Agreement has otherwise expired or terminated, then both Parties,
- may set off any money due and payable to them by the other Party in relation to the supply of Services under this Agreement.

Approvals and Consents

- 17.17 Unless this Agreement expressly provides otherwise, a Party may give conditionally or unconditionally or withhold its approval or consent in its absolute discretion.

Exercise of Rights, Powers and Remedies

- 17.18 A Party may exercise a right, power or remedy at its discretion, and separately or concurrently with another right, power or remedy. A single or partial exercise of a right, power or remedy by a Party does not prevent a further exercise of that or of any other right, power or remedy. Failure by a Party to exercise, or their delay in exercising, a right, power or remedy does not prevent its exercise.

Documentation

- 17.19 Where a Party is required to produce a document to fulfil its obligations under this Agreement, copies of the document required are rebuttable prima facie evidence of information included in the document.

Force Majeure

- 17.20 Where a Party is unable, wholly or in part, by reason of an event of Force Majeure, to perform an obligation under this Agreement (other than an obligation to pay money), the affected Party will not be liable to the other Party for failure to perform that obligation and that obligation is suspended for the minimum extent and duration of the event of Force Majeure provided that the affected Party:
- (a) gives the other Party prompt notice with sufficient details of the relevant event of Force Majeure and, in so far as known, the probable extent to which it will be unable to perform or be delayed in performing the relevant obligation; and
 - (b) uses all reasonable endeavours to minimise the effects of the event of Force Majeure and to perform the relevant obligation as soon as possible, but the affected Party will not be required to settle a labour dispute or other claim on terms which, in its reasonable opinion, are unreasonable.

For Telstra Network outages that are caused by an event of Force Majeure, Telstra may discharge its obligations under paragraph 17.20(a) by providing a notice to the Customer by way of electronic notification, or publishing a notice on its Internet web-page notified to the Customer for this purpose, outlining the extent of the Telstra Network outage caused by that event of Force Majeure

Survival

- 17.21 Termination or expiry of this Agreement for any reason does not:
- (a) affect any rights or obligations of the Parties which by their nature survive termination, or expiry, including clauses 4, 5, 8, 10, 13, 17 and 18; and
 - (b) waive any breach of this Agreement, and is without prejudice to and does not limit any rights, remedies, liabilities or obligations of either Party which have accrued up to the date of termination or expiry, including the right of indemnity.

Remedies cumulative

- 17.22 The rights, powers and remedies provided in this Agreement are cumulative with and not exclusive or limiting of the rights, powers or remedies provided by law or equity independently of this Agreement.

Indemnities

- 17.23 Each indemnity in this Agreement is a continuing obligation, separate and independent from the other obligations of the Parties and survives termination of this Agreement for whatever reason.
- 17.24 It is not necessary for a Party to incur expense or make payment before enforcing a right of indemnity conferred by this Agreement.

GST

- 17.25 If GST is imposed on any supply made under this Agreement by one Party ("**supplying Party**") to another Party ("**receiving Party**") and GST has not been taken into account when determining the consideration payable for the supply, the receiving Party must pay, in addition to and at the same time as

that consideration is payable or to be provided for the supply, an additional amount calculated by multiplying that consideration (without deduction or set-off) by the prevailing GST rate.

- 17.26 The receiving Party is not required to pay any amount of GST to the supplying Party unless the supplying Party has made demand for payment by means of a Tax Invoice.
- 17.27 If the amount of GST recovered by the supplying Party from the receiving Party differs from the amount of GST payable at law by the supplying Party in respect of the supply, the amount payable by the receiving Party to the supplying Party will be adjusted accordingly.

Other Taxes

- 17.28 If any Tax is increased or newly imposed ("**Additional Tax**") in relation to a Service (including anything used by Telstra in connection with that Service) then Telstra may, by notice to the Customer, increase the then current Charge for the Service ("**Base Charge**") so that, on payment of the Base Charge and the additional amount payable under this clause, Telstra receives (after deducting the Additional Tax) at the time the Base Charge is due, the amount it would have received but for the Additional Tax.
- 17.29 Clause 17.28 applies regardless of anything else in this Agreement (including any Charge in a Price List) but does not apply to GST or any Tax in the nature of a tax on wealth, capital gains or income.

18 Notices

- 18.1 Unless expressly stated otherwise in this Agreement, a notice, approval, consent, request or other communication in connection with this Agreement ("**Notice**") must be:
- (a) in writing; and
 - (b) unless expressly stated otherwise in this Agreement, marked to the attention of the relevant person and either left at the address of the addressee, posted in Australia by pre-paid ordinary post to the address or sent by facsimile to the facsimile number(s), specified in the Profile Annex.
- 18.2 A Notice takes effect from the time it is received unless a later time is specified in it.
- 18.3 In the absence of contrary evidence:
- (a) a posted Notice is taken to be received on the third Business Day after posting; and
 - (b) a facsimile is taken to be received on production of a transmission report by the machine from which the facsimile was sent which indicated that the facsimile was sent in its entirety to the facsimile number of the recipient provided that if a facsimile is sent outside Business Hours, it is taken to be delivered at the commencement of the next Business Day; and
 - (c) a Notice left at an address during Business Hours is taken to be received on that Business Day or, if the Notice is not delivered during Business Hours it is taken to be delivered on the next Business Day.

Execution page

EXECUTED as an agreement on the day of

EXECUTED by)

Name of representative (block letters))

as authorised representative for **TELSTRA**)

MULTIMEDIA PTY LIMITED in the presence of:)

.....)

Signature of witness)

.....)

Name of witness (block letters))

.....)

Address of witness)

.....)

Occupation of witness)

.....)

.....)

.....
Signature of representative

By executing this agreement the signatory warrants that the signatory is duly authorised to execute this agreement on behalf of
TELSTRA MULTIMEDIA PTY LIMITED
(ABN 82 069 279 072)

EXECUTED by **[COMPANY NAME]**)

(ABN XX XXX XXX XXX) in accordance with)

section 127(1) of the Corporations Act 2001)

(Cwlth) by authority of its directors:)

.....)

.....)

.....)

Signature of director)

.....)

.....)

.....)

Name of director (block letters))

.....
Signature of director/company secretary*

*delete whichever is not applicable

.....
Name of director/company secretary* (block letters)

*delete whichever is not applicable

PROFILE ANNEX

1. Notices - General Terms and Conditions, clause 18.1

Contact Details	Telstra's information	Customer's information
Name:	()	
Title:	()	
Phone Number:	()	
Fax Number:	()	
Address:	()	

2. Disputes Officer - General Terms and Conditions, clause 12

Contact Details	Telstra's information	Customer's information
Name:	()	
Title:	()	
Phone Number:	()	
Fax Number:	()	
Address:	()	

3. Customer's Billing Address - Annex Two, paragraph 2.2

Billing Address	Customer's information
Address:	
Attention:	

4. Nominated Telstra Bank Account for Electronic Funds Transfer - Annex Two, paragraph 3.1

Account Details	Telstra's information
Bank:	()
Account Name:	()
BSB:	()
Account Number:	()
Customer Reference Number:	()

5. Billing Enquiries - Annex Two, paragraph 4

Telstra Billing Area	Telstra's information
Name:	()
Title:	()
Phone Number:	()
Fax Number:	()
Address:	()

6. Payment Disputes - Annex Two, paragraph 5

Telstra Billing Area	Telstra's information
Name:	()
Title:	()
Phone Number:	()
Fax Number:	()
Address:	()

7. Fault Reporting - Annex Three, paragraph 1.15

Contact Details	Telstra's information
Phone Number:	1800 064 489
Fax Number:	(03) 9642 5449

Contact Details	Customer's information
Phone Number:	
Fax Number:	

8. Authorised System - Annex Four (Telstra's information)

For the purposes of Annex Four (IT Systems Interface Procedures), the Customer is granted Authorised Access to each Authorised System described below.

Authorised System	Data Feed Description/ IP address	Permitted Purpose	Customer System from which Authorised Access is permitted	Authorised Access method	Telstra System Administrator
()	()	()	()	()	()
()	()	()	()	()	()
()	()	()	()	()	()
()	()	()	()	()	()

9. Authorised Hours - Annex Four (Telstra's information)

For the purposes of Annex Four (IT Systems Interface Procedures), authorised access to the Authorised System is permitted () hours a day, () days a week.

ANNEX ONE

DICTIONARY OF DEFINITIONS

In this Agreement, except if the context requires otherwise, the following words have these meanings:

A

ACA means the Australian Communications Authority.

ACCC means the Australian Competition and Consumer Commission.

Acceptable Long Term Credit Rating means a credit rating (which must not be more than 6 months old):

- (a) from Moody's Investor Services, of "Ba" or higher; or
- (b) from Standard & Poors, of "BB" or higher.

Account means a billing account held with Telstra which is identifiable by an Account Number.

Account Numbers means the numbers in Telstra's billing systems against which Charges are billed.

ACDC means the Australian Commercial Disputes Centre Limited

ACDC Mediation Guidelines means the "*Guidelines for Commercial Mediation*" (August 1997 edition) issued by the ACDC, but if the ACDC issues an updated edition of those guidelines, the Parties may agree in writing to use that updated edition.

ACDC Arbitration Guidelines means the "*Guidelines for Commercial Arbitration*" (August 1997 edition) issued by the ACDC, but if the ACDC issues an updated edition of those guidelines, the Parties may agree in writing to use that updated edition.

Agreement means this agreement between Telstra and the Customer which is comprised of the General Terms and Conditions, the Annexes, the Service Modules, the Profile Annex and the Dictionary.

Allocation Date has the meaning set out in Annex Five of this Agreement.

Annex means an annexure to this Agreement which contains the word "Annex" in its title, including this Annex One (Dictionary).

Annual Liability Cap has the meaning given in clause 10.5 of the General Terms and Conditions.

Application has the meaning set out in Annex Five of this Agreement.

Application Form has the meaning set out in Annex Five of this Agreement.

Application Payment has the meaning set out in Annex Five of this Agreement, if an Application Payment is required.

Arbitrator means a neutral and impartial arbitrator appointed to resolve a Payment Dispute.

Available Digital Channel has the meaning set out in Annex Five of this Agreement.

B

Bill means a bill for Charges which meets the requirement for a Tax Invoice.

Billing Enquiry Notice means a billing enquiry notice in writing in relation to a Service in the form specified in writing by Telstra from time to time for the purposes of paragraph 4 of Annex Two (Billing and Payment).

Bill Issue Date means the date specified on a Bill, which will be a date no earlier than the date of despatch of the Bill to the Customer.

BSA means the *Broadcasting Services Act 1992 (Cth)*.

Business Day means a day on which banks are open for general banking business in Melbourne and Sydney other than:

- (a) a Saturday or Sunday;
- (b) a public holiday in the place concerned; or
- (c) in any year, 25 December through to 31 December (inclusive).

Business Hours means from 9.00am to 5.00pm on a Business Day.

C

Carriage Service has the meaning given by section 7 of the Telecommunications Act.

Carriage Service Provider or **CSP** has the meaning given by section 87 of the Telecommunications Act.

Carried Signal has the meaning set out in the Digital Services Module.

Carrier has the meaning given by section 7 of the Telecommunications Act.

Change in Control means that:

- (a) a relevant interest, as defined in the Corporations Act, in more than 20% of the securities of the Customer that in normal circumstances entitle the holder to vote or participate at a meeting of the members of the Customer or to vote or participate in the election or appointment of directors; or
- (b) an economic interest in more than 20% of the revenue, profits or value of the Customer; or
- (c) the ability to control or the actual control (irrespective of whether such control is exercisable on a passive or active basis and irrespective of whether such control is exercisable solely or jointly or directly or indirectly) of the management and policies of the Customer,

passes to a person or persons who did not have such entitlement, interest, ability to control or actual control (as the case may be) at the Commencement Date.

Channel Price has the meaning set out in Annex Five of this Agreement.

Charge means a charge as set out in the Price List to a Service Module, and includes any other amount payable by the Customer in relation to Services supplied under this Agreement.

Commencement Date has the meaning set out in clause 1.4 of the General Terms and Conditions.

Competition Notice has the meaning given by the TPA.

Completed, in relation to the completion of the Digital Channel Allocation Process, has the meaning set out in Annex Five of this Agreement. This definition only applies if Annex Five of this Agreement is titled *Digital Channel Allocation Process (Simulcast Period)*.

Confidential Information of a Party means all information of a confidential nature relating to that Party including know-how, ideas, concepts, technology, the terms of this Agreement, the terms of any mediation

settlement made under this Agreement, manufacturing processes, industrial marketing and commercial knowledge, which is disclosed, communicated or delivered by it to the other Party under this Agreement or comes to the knowledge or into the possession of the other Party in connection with this Agreement, but does not include information which:

- (a) is or becomes part of the public domain (other than through any breach of either this Agreement by the other Party or of an obligation of confidence to a third party); or
- (b) is rightfully received by the other Party from a third person (except where that Party knew or should have reasonably known that the information was obtained in breach of an obligation of confidentiality or where the third person was under a duty of confidentiality to the first Party in respect of the relevant information).

Content Service has the meaning given by section 15 of the Telecommunications Act.

Control, when used in relation to the definition of **Related Party**, has the meaning set out in section 50AA of the Corporations Act.

Corporations Act means the *Corporations Act 2001 (Cth)*.

CPI Change at any time means the difference between the then latest published Consumer Price Index All Groups Index number for the weighted average of 8 capital cities, and the equivalent Index number published 12 months earlier, expressed as a percentage of the earlier Index number.

Credit Report means a document prepared internally by Telstra that incorporates financial and non-financial information submitted by the Customer so that a meaningful assessment can be undertaken and provides a summation of the creditworthiness of the Customer at a particular point in time.

CSP or Carriage Service Provider has the meaning given by section 87 of the Telecommunications Act.

Customer Equipment means any equipment, Network, Facility, cable, software or any other thing (other than Telstra Equipment) used by the Customer and/or an End User to access and/or connect to the Service, whether or not owned by the Customer, including Fly Cables and STUs and, in relation to clause 6.5(a)(i), includes Fly Cables and STUs that are used by a Third Party Customer (or end users of that Third Party Customer) under an arrangement with the Customer, regardless of whether those Fly Cables or STUs are used by the Customer.

Customer Input Signal has the meaning set out in the Digital Services Module.

Customer Landlines means the cable transmission links owned or used by the Customer and connected into an Interconnection Point for the purposes of conveying the Customer Input Signal from the Customer's Network to that Interconnection Point.

D

Date Capable means that a data processing system can correctly process all dates and can continue to operate and function properly on all dates.

Declared Service has the meaning given by section 152AL of the TPA.

Digital Channel has the meaning set out in the Digital Services Module.

Digital Services has the meaning set out in the Digital Services Module.

Digital Services Module means the service module attached to this Agreement titled *Digital Services Module*.

Digital Module Term has the meaning set out in the Digital Services Module.

Dispute Officer (of a Party) means the person designated as such by the Party in the Profile Annex or his or her representative as designated in writing.

Due Date means the date 14 days after the Bill Issue Date as specified on the Bill.

E

Emergency means an emergency due to an actual or potential occurrence (such as fire, flood, storm, earthquake, explosion, accident, epidemic or war like action) which endangers or threatens to endanger the safety or health of persons, or destroys or damages or threatens to destroy or damage, property.

End User means a person with whom the Customer (or a Related Body Corporate of the Customer) has a contract to provide an End User Service.

End User Premises means the premises of an End User at which the Customer provides (or has a contract to provide) an End User Service.

End User Reception Equipment means equipment connected to, and on the End User Premises side of, any Network Termination Point at an End User Premises, including STUs and Fly Cables.

End User Service has the meaning set out in the Digital Services Module.

Enhancements and Extensions has the meaning set out in the Digital Services Module.

Event means an act, omission or event relating to or arising out of this Agreement or part of this Agreement.

Expert Committee means a committee established under clause 12.10 of the General Terms and Conditions.

F

Facility has the meaning given by paragraph 17 of Part 3 of Schedule 1 of the Telecommunications Act.

Fault means:

- (a) in relation to a Service, a failure of the Service to operate normally in accordance with the relevant Service Module; and
- (b) in relation to Customer Equipment, means a failure by the Customer Equipment to operate normally or a failure by the Customer Equipment to enable the relevant Service to be supplied by Telstra to the Customer under the relevant Service Module.

Fault Report has the meaning set out in the relevant Service Module.

Financial Statements means:

- (a) profit and loss statements;
- (b) balance sheets; and
- (c) statements of cash flows,

together with any notes to those documents and a directors' declaration as required under the Corporations Act and any other information necessary to give a true and fair view of a corporation's financial position.

Fly Cable means any cable located at an End User Premises which connects the Network Termination Point to the STU and the STU to the End User's television receiver and/or VCR and/or other similar television signal reception equipment (as applicable).

Force Majeure means any cause which is not reasonably within the control of the Party affected including industrial disputes of any kind, Emergencies, governmental restraint, expropriation or prohibition, inability or delay in granting or obtaining governmental approvals, consents, permits, licences or authorities but does not include Intervening Legislation or a delay resulting from an inability to obtain financing.

FOXTEL means Foxtel Management Pty Limited (ABN 65 068 671 938), for and on behalf of the Foxtel Partnership.

G

General Dispute means a dispute arising under this Agreement, including a dispute about the construction of this Agreement or a Party's rights or obligations, but does not include a Payment Dispute.

General Terms and Conditions means the part of this Agreement entitled "General Terms and Conditions".

GST has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

H

Headend means a headend Facility for the Telstra HFC Network located at the following Telstra exchanges as at the Commencement Date:

Lonsdale Exchange

Level 2
447 Lonsdale St
Melbourne VIC 3000

Homebush Exchange

Level 1
68 Beresford Rd
Strathfield NSW 2135

Flinders Exchange

Level 2
115 Flinders St
Adelaide SA 5000

Pier Exchange

Level 4
98 Pier St
Perth WA 6000

Charlotte Exchange

Level 2
20 Charlotte St
Brisbane QLD 4000

HFC means hybrid fibre co-axial.

Holding Company, when used in relation to the definition of **Related Party**, has the meaning set out section 4A of the TPA.

I

Indemnifying Party means the Party giving an indemnity under this Agreement.

Initial Allocation means any initial allocation as contemplated by paragraphs 2.3, 2.7 and 2.8 of Part A (Digital Channel Allocation) of Schedule 2 of the Telstra XIC Undertaking.

Innocent Party means the Party receiving the benefit of an indemnity under this Agreement.

Insolvent means being an insolvent under administration or insolvent (each as defined in the Corporations Act) or having a controller (as defined in the Corporations Act) appointed, or being in receivership, in receivership and management, in liquidation, in provisional liquidation, under administration, wound up, subject to any arrangement, assignment or composition, protected from creditors under any statute, dissolved (other than to carry out a reconstruction while solvent) or being otherwise unable to pay debts when they fall due or having something with the same or a similar effect happen under the laws of any jurisdiction.

Intellectual Property means all rights conferred under statute, common law and equity in and in relation to trade marks, trade names, logos and get up, inventions, patents, designs, copyright, circuit layouts, confidential information, know-how and trade secrets and all rights and interests in them or licences to use any of them.

Interconnection Point has the meaning set out in the Digital Services Module.

Interconnecting Transmission has the meaning set out in the Digital Services Module.

Interest means interest at the National Australia Bank Limited Business Indicator Base Rate from time to time as published weekly in the *Australian Financial Review* (or, if it ceases to be published an equivalent rate obtained from the National Australia Bank Limited or, if such equivalent rate cannot easily be obtained or is disputed, an equivalent rate published by another major Australian trading bank as nominated by Telstra) plus 2.5%.

Intervening Legislation means:

- (a) amendments to or repeals of the Telecommunications Act, the BSA, the *Telstra Corporation Act 1991*, the TPA or enactment of, promulgation of, amendments to, or repeal of any other statute, ordinance, code or law; or
- (b) a directive of a Regulator; or
- (c) registration or determination of a new or varied industry standard or industry code under Part 6 Divisions 4 or 5 of the Telecommunications Act; or
- (d) the ACCC issuing or Telstra reasonably believing that the ACCC intends to issue a Competition Notice to Telstra that affects or may affect Telstra's rights or obligations under this Agreement or Services supplied under this Agreement; or
- (e) the determination, addition, variation or removal of a Service Provider Rule (as defined by section 98 of the Telecommunications Act) applicable to a Party; or
- (f) the grant of an injunction against a Party in relation to a breach or alleged contravention of the TPA (if any); or
- (g) the declaration, addition, variation or removal of a condition applying to a Party's carrier licence.

J K L

Liability (of a Party) means any liability of that Party (whether in contract, in tort, under statute or in any other way and whether due to negligence, wilful or deliberate breach or any other cause) under or in relation to this Agreement, or part of this Agreement or in relation to any Event or series of related Events.

Loss means any loss, liability, costs or expenses (including legal costs).

Look means a Party's trade dress, get up, corporate look and business identity from time to time including any font, colour or uniform layout and presentation.

M

MCC means the Telstra Multimedia Control Centre.

Mediator means a neutral and impartial adviser or mediator appointed to resolve a General Dispute or Payment Dispute (as applicable).

N

Network of a Party, means that Party's system, or series of systems, that carries, or is capable of carrying communications by means of guided or unguided electromagnetic or optical energy (and, in the case of Telstra, includes the Telstra HFC Network and any system used for Interconnecting Transmission).

Network Termination Point means any wall plate at an End User Premises which is actually connected to the Telstra HFC Network and is capable of receiving the Carried Signal. For the avoidance of doubt, Network Termination Point does not include any STU or Fly Cable, or any other point or thing on the End User Premises side of a wall plate.

O

Outage Period has the meaning set out in the relevant Service Module.

P

Party means Telstra or the Customer.

Payment Advice means a payment advice applicable to a Service containing the information specified by Telstra from time to time.

Payment Dispute means a dispute in relation to a Charge in a Bill.

Payment Dispute Notice means a payment dispute notice in writing in relation to a Service set out in Attachment A to Annex Two (Billing and Payment) of this Agreement, as amended by Telstra with the agreement of the Customer (such agreement not to be unreasonably withheld).

People of a Party, means each of that Party's directors, officers, employees, agents, contractors, advisers and representatives but does not include that Party's End Users or the other Party.

Planned Outage Windows has the meaning set out in the relevant Service Module.

Price List means Telstra's price list in respect of a Service included in the Service Module for that Service.

Privacy Laws means any laws, regulations, codes, or policies applicable to or protecting the privacy of individuals and their personal information, including, Parts 13 and 14 of the Telecommunications Act, the Privacy Act 1988 (Cth), any privacy codes registered under Division 4 of Part 6 of the Telecommunications Act, any industry or private sector privacy codes subscribed to by a Party on a voluntary basis, any undertakings given by a Party in participating in the Telecommunications Industry Ombudsman Scheme established by Part 10 of the Telecommunications Act, and in the case of Telstra, the Telstra Privacy Protection Policy as in force from time to time.

Profile Annex means the Annex that sets out the contact details and other information relating to each Party under this Agreement.

Prohibited Traffic means Communications delivered into the Telstra HFC Network via an Interconnection Point (or any other point of interface between Customer Equipment and Telstra Equipment) which do not comply with the requirements of this Agreement.

Q

Quarter means each period of three months throughout the Term, the first such period commencing on the Commencement Date and each subsequent period commencing on each three monthly anniversary of the Commencement Date.

R

Recurring Charges means Charges of a recurring nature payable periodically for the supply or usage of a Service as listed in a Price List and includes annual service charges to cover operating costs.

Related Party, for the purposes of the pre-qualification criteria set out in the Application Form, means in relation to a person ("**first person**"):

- (a) any person, company or entity that exercises or has the ability to exercise, practical control of the affairs of the first person;
- (b) all Holding Companies, subsidiary companies and Subsidiaries of Holding Companies of the first person (where the first person is a company); and
- (c) all directors (but not shareholders) of the first person where the first person is a company or partners or trustees or other office holders however described of the first person (where the first person is unincorporated).

Regulator means, as the case requires, a minister responsible for administering Part XIB or XIC of the TPA or the Telecommunications Act, or the BSA, or the ACA, or the Australian Broadcasting Authority, or the ACCC.

Related Body Corporate has the meaning given by the Corporations Act.

Remittance Advice means advice of remittance of a Charge for a Service in the form specified by Telstra from time to time.

S

Scheduled Outage has the meaning set out in the relevant Service Module.

Security means any security provided or to be provided by the Customer to Telstra under this Agreement or otherwise, including Security as defined in Annex Five. The initial form of Security provided under this Agreement will be the bank guarantee in the form of Attachment B to Annex Five of this Agreement.

Service means a service supplied, or to be supplied, under this Agreement and includes the Digital Services.

Service Module means the Digital Service Module and includes any Specifications referenced on the cover of the Service Module.

Simulcast End Date means the date at which Telstra ceases (or ceased) carriage of FOXTEL's subscription television signals in analogue mode on the Telstra HFC Network on a commercial basis.

Specifications means Telstra's specifications for a Service, such specifications referenced in the applicable Service Module.

STU means a device (commonly known as the "set top unit") which is connected to, or part of, a television which device includes functionality that allows an End User to receive, in descrambled form, the End User Services to which the End User is entitled.

Subscription Television Service means a service that delivers television programs (as defined in the BSA) where the service is:

- (a) a subscription broadcasting service (as defined in the BSA); or

- (b) a subscription narrowcasting service (as defined in the BSA).

Subsequent Allocation means:

- (a) any subsequent allocation as contemplated by paragraph 2.9 of Part A (Digital Channel Allocation) of Schedule 2 of the Telstra XIC Undertaking; or
- (b) any allocation as contemplated by paragraph 3 of Part A (Digital Channel Allocation) of Schedule 2 of the Telstra XIC Undertaking.

Subsidiary, when used in relation to the definition of **Related Party**, has the meaning set out in section 4A of the TPA.

Successful Applicant has the meaning set out in Annex Five of this Agreement

T

Taxes means all duties (including stamp duty, hiring arrangements duty, rental business duty), taxes (including GST), duties or taxes on financial transactions (including financial institutions duty, debit duty and the like whether such duties or taxes are levied directly upon Telstra or passed on to Telstra by the financial institution with which the relevant account is held), levies, charges or imposts, whether existing at the Commencement Date or coming into effect at a later time.

Tax Invoice has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

Technical Dispute means that part of a General Dispute which relates to any of the following:

- (a) any provisions in Annex Three (Operations and Maintenance), including the Telstra Operational Details (paragraph 1.2 of Annex Three), the customer fault management procedures (paragraph 1.11 of Annex Three) and the network management procedures (paragraph 1.11 of Annex Three);
- (b) any provisions in Annex Four (IT Systems Interface Procedures);
- (c) any Enhancements and Extensions, subject to the terms of the Digital Service Module;
- (d) any provisions of any Specifications;
- (e) the Digital Compliance Testing Procedure (as defined in the Digital Service Module);
- (f) the Customer Input Signal Procedures (as defined in the Digital Service Module);
- (g) the Service Information Signal Requirements (as defined in the Digital Services Module); or
- (h) clause 1.18(c) of the Digital Services Module.

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

Telstra 87B Undertaking means Telstra Corporation's and Telstra's formal undertaking to the ACCC provided on or about 20 November 2002, given for the purposes of section 87B of the TPA, relating, among other matters, to a *Content Supply Agreement* entered into between FOXTEL, Optus Vision Pty Limited, Optus Vision Media Pty Limited, Telstra Media Pty Limited, Sky Cable Pty Limited and SingTel Optus Pty Limited.

Telstra Corporation means Telstra Corporation Limited (ABN 33 051 775 556).

Telstra Equipment means any equipment, Network, Facility, cable, software or any other thing used by Telstra to provide the Services to the Customer, but excludes Customer Equipment.

Telstra Fault means a Fault which has arisen other than as a result (directly or indirectly) of an act or omission of the Customer, its People, an End User or a third person under the reasonable control of the Customer, its People or an End User.

Telstra HFC Network means the HFC Network owned by Telstra from (and including) each Headend to (and including) each Network Termination Point (and, for the avoidance of doubt, does not include any equipment, Fly Cables or STUs owned by, or leased to, any other person and, in the case of the Digital Services, does not include any systems used for Interconnecting Transmission or any Telstra Equipment located at the Central Encoding Location (as defined in the Digital Services Module)).

Telstra XIC Undertaking means Telstra's access undertaking to the ACCC for the purposes of Division 5 of Part XIC of the TPA, in respect of the declared analogue subscription broadcasting carriage service via line links gazetted on 8 September 1999, a copy of which was attached as Schedule 1 to the Telstra 87B Undertaking.

Term means the term of the Agreement as defined in clause 1.7 of the General Terms and Conditions.

Third Party Customer has the meaning set out in the Digital Services Module.

TPA means the *Trade Practices Act 1974 (Cth)*.

U V W

Working Group has the meaning set out in clause 11.2(a) of the General Terms and Conditions.

X Y Z

INTERPRETATION

In this Agreement unless the contrary intention appears:

- (a) the singular includes the plural and vice versa;
- (b) a reference to an agreement, document, manual or another instrument includes any variation or replacement of any of them;
- (c) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (d) the word person includes a firm, body corporate or politic, unincorporated association or an authority;
- (e) a reference to a person includes the person's executors, administrators, successors, substitutes (including, without limitation, persons taking by novation), and permitted assigns;
- (f) all dollar amounts are expressed in Australian dollars unless expressly specified;
- (g) a reference to a period of time:
 - (i) which dates from a given day or the day of an act or event is to be calculated exclusive of that day; or
 - (ii) which commences on a given day or the day of an act or event is to be calculated inclusive of that day;
- (h) a reference to a month is a reference to a calendar month and a reference to a year is a calendar year;
- (i) if the day on which the payment of money falls due is not a Business Day, the due date will be deemed to be the next Business Day;
- (j) a reference to a third person or a third party is a reference to a person who is not a Party to this Agreement;
- (k) an expression which is given a particular meaning in the Telecommunications Act, the TPA or the Corporations Act and which is not otherwise defined in this Agreement has that meaning in this Agreement;
- (l) words and expressions in relation to a particular Service or a price for a particular Service, have the meanings set out in the Service Module for that Service;
- (m) the paraphrasing of any statutory provision does not amount to either Party agreeing to waive any of its rights under the paraphrased provision and that statutory provision continues to apply in full; and
- (n) the words "include", "including", "for example" or "such as" are not used as, and are not to be interpreted as, words of limitation, and, when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind;

ANNEX TWO

BILLING & PAYMENT

1 Background

- 1.1 This Annex applies to all Services provided by Telstra under the Agreement, except to the extent expressly excluded in a Service Module.
- 1.2 A Service Module may contain billing and payment arrangements which add to or amend this Annex in respect of the relevant Service.

2 Billing

- 2.1 Telstra will send the Customer a Bill for each Service itemising the Charges payable for that Service.
- 2.2 Telstra will send Bills to the Customer's billing address as specified in the Profile Annex. The Customer may change the Customer's billing address details by giving Telstra at least 20 Business Days' notice in writing.
- 2.3 Telstra may bill the Customer for a Charge which has not been previously billed or which has been previously understated to the Customer if Telstra provides the Customer details of the Charge by way of a record of the Charge. Telstra will only exercise its rights to do so where no more than 6 months have elapsed since the unbilled or understated Charge was incurred.

3 Payment

- 3.1 Bills must be paid in Australian dollars by electronic funds transfer to the Telstra bank account nominated in the Profile Annex, or such other bank account as may be notified by Telstra to the Customer in writing.
- 3.2 Payment of an amount will be deemed to be received by Telstra when the amount is shown as having been deposited in that Telstra bank account.
- 3.3 On the day it pays a Bill the Customer must send Telstra a completed Remittance Advice and Payment Advice in relation to the payment.
- 3.4 If the Customer does not provide a Remittance Advice for a payment Telstra may allocate the payment to any amount payable to Telstra by the Customer which is not the subject of a Payment Dispute. Telstra will notify the Customer of any such allocation.
- 3.5 If a Bill shows that the Customer's Account is in credit Telstra may:
 - (a) leave the credit to offset future Charges; or
 - (b) transfer the credit to an Account or Accounts (but no more than 5) for other Services.
- 3.6 A Charge is payable in full no later than the Due Date. The Customer must pay Interest on any Charge under a Bill which is due and payable and not paid in full by the Due Date. Interest will accrue daily from the Due Date until the amount is paid. In addition to charging Interest, or exercising any other rights Telstra has at law or under this Agreement, where an amount is outstanding and remains unpaid for more than 20 Business Days after the Due Date, Telstra reserves the right to take action, without further notice to the Customer, to recover any such amount as a debt due to Telstra by claiming such amount against any Security, in a court of competent jurisdiction or otherwise.
- 3.7 For the avoidance of doubt:
 - (a) making or escalating a billing enquiry under paragraph 4; or

(b) lodging a Payment Dispute under paragraph 5,

does not relieve the Customer of its obligation to pay each Bill in full by the Due Date.

4 Billing Enquiries

4.1 The Customer may make an enquiry about a Bill by:

- (a) calling the Telstra Billing Area specified in the Profile Annex (or such other number as may be notified to the Customer) ("**Phone Enquiry**"); or
- (b) submitting a Billing Enquiry Notice to the Telstra Billing Area specified in the Profile Annex by facsimile (or such other number as may be notified to the Customer).

4.2 If, due to the nature of the enquiry, Telstra cannot adequately deal with a Phone Enquiry, Telstra may require the Customer to follow up the initial Phone Enquiry with a Billing Enquiry Notice.

4.3 Telstra will acknowledge receipt of a Billing Enquiry Notice within 2 Business Days by providing the Customer with a reference number.

4.4 The Customer agrees not to make any Billing Enquiry Notice which is incomplete or illegible. If Telstra receives a Billing Enquiry Notice which is incomplete or illegible, Telstra will use reasonable endeavours to return it to the Customer within 2 Business Days of receipt.

4.5 The Customer agrees not to make a Phone Enquiry or a Billing Enquiry Notice in relation to a Bill later than 3 months after the Bill Date.

4.6 Telstra will try to resolve any billing enquiry within 10 Business Days of the Phone Enquiry or receipt of a complete and legible Billing Enquiry Notice. If that time frame will not be achieved Telstra will advise the Customer of the expected timeframe and keep the Customer notified of the progress of the matter.

4.7 If the Customer is not satisfied with Telstra's response in relation to a billing enquiry the Customer may escalate the matter by giving Telstra a notice:

- (a) stating why it does not agree with Telstra's response; and
- (b) seeking escalation of the billing enquiry.

4.8 The notice must be submitted to the relevant senior Telstra manager who will discuss the matter with his or her counterpart in the Customer's organisation as nominated and made available by the Customer for that purpose.

4.9 If the matter cannot be resolved under paragraph 4.8 within 10 Business Days of notice being given and the Customer wishes to take the matter further, the Customer must submit a Payment Dispute Notice in accordance with paragraph 5.

5 Payment Disputes

5.1 If the Customer believes a Payment Dispute exists, it may, by submitting a Payment Dispute Notice to the Telstra Billing Area specified in the Profile Annex, invoke the dispute resolution procedure set out in paragraphs 5 and 6.

5.2 Telstra may reject any Payment Dispute Notice that is not complete, accurate or in the required form at any time within 5 Business Days of receipt.

5.3 Notwithstanding lodgement of a Payment Dispute Notice, the Customer must still pay the disputed Charge by the Due Date.

- 5.4 Telstra will not accept a Payment Dispute Notice in relation to a Bill unless the Bill has been paid in full.
- 5.5 A Payment Dispute Notice may not be lodged in relation to a Charge later than 6 months after the Due Date for the Charge. Any claim by the Customer for relief on the basis that Charges on a Bill for Services are allegedly incorrect on any basis whatsoever can only be brought if made within 6 months of the Due Date for payment of those Charges.
- 5.6 Telstra will acknowledge receipt of a Payment Dispute Notice within 2 Business Days by providing the Customer with a reference number.
- 5.7 Telstra will try to resolve any Payment Dispute as soon as practicable and in any event within 45 Business Days of receipt of a complete and accurate Payment Dispute Notice. If that timeframe will not be achieved Telstra will advise the Customer of the expected timeframe and keep the Customer notified of the progress of the matter.
- 5.8 Telstra will notify the Customer of the outcome of a Payment Dispute. That notice will explain Telstra's decision and any action to be taken by:
- (a) Telstra (eg withdrawal, adjustment or refund of any disputed Charge); or
 - (b) the Customer (eg any Charge payable).
- 5.9 Any refund of a Charge by Telstra must be made within 5 Business Days of Telstra's notice unless the Customer escalates the dispute under paragraph 5.12.
- 5.10 Telstra will pay Interest on any refund. Interest will accrue daily from the date on which each relevant amount to be refunded was paid to Telstra, until the date the refund is paid.
- 5.11 If the Customer is not satisfied with Telstra's response in relation to a Payment Dispute, the Customer may escalate the matter under paragraph 5.12. If the Customer does not do so within 5 Business Days of being notified of Telstra's response, the Customer will be taken to have accepted Telstra's response and paragraph 5.8 will apply.
- 5.12 If the Customer wishes to escalate a Payment Dispute, the Customer must give Telstra a notice:
- (a) stating why it does not agree with Telstra's response; and
 - (b) seeking escalation of the Payment Dispute.
- 5.13 A notice under paragraph 5.12 must be submitted to Telstra's relevant manager for the Service, who will discuss how best to resolve the Payment Dispute with his or her counterpart in the Customer's organisation as nominated and made available by the Customer for that purpose.
- 5.14 If the Payment Dispute cannot be resolved under paragraph 5.13 within 5 Business Days of notice being given under paragraph 5.12 then either Party may submit the Payment Dispute to mediation in accordance with paragraph 6.1 by notice in writing to the other Party (including a written proposal to the other Party for the appointment of a Mediator to assist in resolving the Payment Dispute and including a detailed statement outlining the subject of the Payment Dispute).
- 5.15 If the Mediation Procedure is terminated without resolving the Payment Dispute, or neither Party submits the Payment Dispute to mediation by giving notice under paragraph 5.14 within 10 Business Days of notice being given under paragraph 5.12, then either Party may submit the Payment Dispute to arbitration in accordance with paragraph 6.2 by notice in writing to the other Party (including a written proposal to the other Party for the appointment of an Arbitrator to assist in resolving the Payment Dispute and including a detailed statement outlining the subject of the Payment Dispute).

- 5.16 If:
- (a) neither Party submits the Payment Dispute to mediation by giving notice under paragraph 5.14 within 15 Business Days of notice being given under paragraph 5.12; or
 - (b) a Party submits the Payment Dispute to mediation under paragraph 5.14, but the Mediation Procedure is terminated without resolving the Payment Dispute;
- and
- (c) neither Party submits the Payment Dispute to arbitration by giving notice under paragraph 5.14 within 15 Business Days of notice being given under paragraph 5.12; or
 - (d) neither Party submits the Payment Dispute to arbitration by giving notice under paragraph 5.14 within 10 Business Days after the date at which the Mediation Procedure is terminated; or
 - (e) a Party submits the Payment Dispute to arbitration under paragraph 5.15, but the Arbitration Procedure is terminated without resolving the Payment Dispute,
- then either Party may terminate the operation of this dispute resolution procedure in relation to the Payment Dispute by giving notice of termination to the other Party.
- 5.17 All discussions and information relating to a Payment Dispute must be communicated or exchanged between the Parties through the representatives of the Parties set out in paragraph 5.13 (or their nominees). A Party will not be entitled to rely on a statement which has been made, or information which has been provided, in relation to a Payment Dispute by any other person.
- 5.18 Each Party must continue to fulfil their obligations under this Agreement during the period of a Payment Dispute and any dispute resolution process invoked under paragraphs 5 and 6. Paragraphs 5 and 6 do not prevent a Party from exercising its rights of termination or suspension of this Agreement.
- 5.19 A Party must not use information obtained in the course of any procedure established by paragraphs 5 and 6 for any purpose other than to resolve the relevant dispute.
- 5.20 A Party may not commence legal proceedings in any court (except proceedings seeking urgent interlocutory relief) in respect of a Payment Dispute unless the Payment Dispute has first been referred for resolution in accordance with the dispute resolution procedure set out in paragraphs 5 and 6 and a notice terminating the operation of the dispute resolution procedure has been issued under paragraph 5.16.

6 Payment Disputes - Mediation Procedure and Arbitration Procedure

- 6.1 A Party may refer a Payment Dispute to mediation in accordance with paragraph 5.14, in which case the provisions of this paragraph 6.1 apply ("**Mediation Procedure**"):
- (a) The mediation must be conducted in accordance with the ACDC Mediation Guidelines and the provisions of this paragraph 6.1. In the event of any inconsistency between them, the provisions of this paragraph 6.1 will prevail.
 - (b) The mediation must be conducted in private.
 - (c) In addition to the qualifications of the Mediator contemplated by the ACDC Mediation Guidelines, the Mediator should:
 - (i) have an understanding of the relevant aspects of the telecommunications and broadcasting industries (or have the capacity to come to such an understanding quickly);

- (ii) have an appreciation of competition law (or have the capacity to gain such an appreciation quickly); and
 - (iii) not be an officer, director or employee of a telecommunications or broadcasting company or otherwise have a potential for conflict of interest.
- (d) The Parties must notify each other no later than 48 hours prior to mediation of the names of their representatives who will attend the mediation. Nothing in this sub-clause is intended to suggest that the Parties are able to refuse the other's chosen representatives or to limit other representatives from the Parties attending during the mediation.
- (e) The terms of any mediation settlement agreements and any information relating to the existence, conduct, status or outcomes of the mediation is deemed to be Confidential Information of each Party and may be published or announced only with the consent of all Parties and in terms agreed by the Parties.
- (f) The mediation will terminate in accordance with the ACDC Mediation Guidelines.
- (g) The Parties will bear their own costs of the mediation including the costs of any representatives and will each bear half the costs of the Mediator.
- (h) Any agreement resulting from mediation will bind the Parties on its terms and the Parties agree to effect any variation to this Agreement which is necessary to implement that agreement.

6.2 A Party may refer a Payment Dispute to arbitration in accordance with paragraph 5.15, in which case the provisions of this paragraph 6.2 apply ("**Arbitration Procedure**"):

- (a) The arbitration must be conducted in accordance with the ACDC Arbitration Guidelines and the provisions of this paragraph 6.2. In the event of any inconsistency between them, the provisions of this paragraph 6.2 will prevail.
- (b) The arbitration must be conducted in private.
- (c) In addition to the qualifications of the Arbitrator contemplated by the ACDC Arbitration Guidelines, the Arbitrator should:
 - (i) have an understanding of the relevant aspects of the telecommunications and broadcasting industries (or have the capacity to come to such an understanding quickly);
 - (ii) have an appreciation of competition law (or have the capacity to gain such an appreciation quickly); and
 - (iii) not be an officer, director or employee of a telecommunications or broadcasting company or otherwise have a potential for conflict of interest.
- (d) The Parties must notify each other no later than 48 hours prior to arbitration of the names of their representatives who will attend the arbitration. Nothing in this sub-clause is intended to suggest that the Parties are able to refuse the other's chosen representatives or to limit other representatives from the Parties attending during the arbitration.
- (e) The Parties will be given equal opportunities to present their submissions and make representations to the Arbitrator.
- (f) The Arbitrator will have the right to conduct any enquiry as it thinks fit, including the right to require and retain relevant evidence during the course of the appointment of the Arbitrator or the resolution of the dispute.

- (g) The Arbitrator will use all reasonable endeavours to reach a decision within 15 Business Days after the date on which terms of reference are agreed and the Parties undertake to co-operate reasonably with the Arbitrator to achieve that timetable.
- (h) The Arbitrator must give written reasons for his or her decisions.
- (i) If the dispute is not resolved within 20 Business Days (or such other period as is agreed) after the date of the appointment of the Arbitrator, either Party may by notice to the other Party terminate the Arbitration Procedure. The arbitration will otherwise terminate in accordance with the ACDC Arbitration Guidelines.
- (j) The Customer will pay the full costs of the arbitration including the costs of Telstra and its representatives and the costs of the Arbitrator if the Charges the subject of the Payment Dispute are found to be accurate. Otherwise, the Parties will bear their own costs of the arbitration including the costs of any representatives and will each bear half the costs of the Arbitrator, unless the Arbitrator determines otherwise.
- (k) A decision of the Arbitrator is final and binding on the Parties in the absence of manifest error or a mistake of law.
- (l) The terms of any such decision and any information relating to the existence, conduct, status or outcomes of the arbitration is deemed to be Confidential Information of each Party and may be published or announced only with the consent of both Parties and in terms agreed by the Parties.

Attachment A to Annex Two

PAYMENT DISPUTE NOTICE

TELSTRA MULTIMEDIA ACCESS AGREEMENT

TO: Telstra Multimedia Pty Limited (ABN 82 069 279 072)	("Telstra")
Attention: _____	Fax Number: _____
Title: _____	Number of Pages in this Fax: _____

FROM: _____ (ABN: _____) **("Customer")**

The Customer is party to a Telstra Multimedia Access Agreement with Telstra dated ____ / ____ / 20 ____.

The Customer submits this Payment Dispute Notice to Telstra pursuant to paragraph 5 of Annex Two (Billing & Payment) of that Agreement in relation to the Payment Dispute detailed below and seeks to invoke the dispute resolution procedure set out in paragraphs 5 and 6 of Annex Two.

DETAILS OF PAYMENT DISPUTE:

Bill Reference Number	Date Bill issued by Telstra	Due Date stated on Bill	Date Bill paid by Customer	Charge under dispute in dollars (incl. GST)
Ref: _____	____ / ____ / 20____	____ / ____ / 20____	____ / ____ / 20____	\$ _____

Relevant paragraph of Price List: _____

Charge stated in Price List (if any): _____

The basis for the Payment Dispute is described in the Attachment to this Notice (*must be typed*).

Number of pages attached describing basis for Payment Dispute: _____

CONTACT DETAILS OF CUSTOMER:

Contact: _____ Phone Number: _____

Title: _____ Fax Number: _____

DATE OF THIS PAYMENT DISPUTE NOTICE: ____ / ____ / 20 ____.

ANNEX THREE

OPERATIONS AND MAINTENANCE

- 1.1 This Annex Three describes the operations, maintenance and fault procedures for Services supplied by Telstra to the Customer under the Service Modules.
- 1.2 To the extent further operational details are necessary relating to the operations, maintenance and fault procedures for the Service supplied by Telstra to the Customer under the Service Modules, these details are as ("**Telstra Operational Details**"):
- (a) agreed between the Parties in writing; or,
 - (b) in the absence of such agreement, as notified by Telstra in writing from time to time provided that Telstra acts in accordance with good engineering practice and that such operational details do not unfairly and unreasonably discriminate against a particular user of Telstra's HFC Network.

Responsibilities for operations and maintenance

- 1.3 The Parties agree that except where expressed otherwise in the relevant Service Module:
- (a) Telstra has no responsibility to the Customer for the operation, maintenance, of any equipment other than Telstra Equipment or for correcting Faults in any equipment other than Telstra Equipment; and
 - (b) the Customer is responsible for the operation and maintenance of any Customer Equipment and for correcting Faults in that equipment; and
 - (c) Telstra is responsible for the operation and maintenance of Enhancements and Extensions;
 - (d) Telstra is responsible for the operation and maintenance of, and correcting Faults in, the Service; and
 - (e) a Party must not modify, or take any action which would have the effect of modifying, the operation of the equipment of the other Party, or take any action with respect to the other party's equipment that is not authorised in writing by that other Party.
- 1.4 Each Party agrees that in operating and maintaining its equipment, it must take reasonable precautions to ensure that its acts or omissions will not have a material adverse effect on the operation of another Party's equipment.
- 1.5 Nothing in this Agreement precludes or restricts Telstra from using, modifying or substituting such of its equipment for other of its equipment, as is reasonably required to supply the Service.

Maintenance procedures and Planned Outage Windows

- 1.6 Each Party must comply with any maintenance procedures specified in the Telstra Operational Details.
- 1.7 The Customer agrees that Telstra may from time to time close down the whole or any part of the Service to perform planned maintenance work. Telstra must use reasonable endeavours in the circumstances to:
- (a) minimise the duration of any outages; and
 - (b) undertake this maintenance work during the Planned Outage Windows or such other hours as may be agreed by the Parties.

- 1.8 Subject to paragraph 1.9, Telstra will use reasonable endeavours to provide the Customer with the amount of notice specified in the relevant Service Module in relation to the Planned Outage Windows for that Service to which that notice period relates.
- 1.9 For the avoidance of doubt, paragraphs 1.7 and 1.8 do not apply to unplanned work associated with a Fault or Emergency which may require Telstra to close down all or part of the Service without advance notice. Paragraphs 1.7 and 1.8 do not apply, and no prior notice is required, where less than 5 End Users will be affected by the outage, or where the duration of an outage is, or is expected to be, less than 15 seconds per Digital Channel.
- 1.10 For the avoidance of doubt, nothing in this Annex or any Service Module is to be construed in any way as a promise by, an obligation on, or representation or guarantee by, Telstra relating in any way to the performance by any other person of any of its obligations.

Fault management and reporting

- 1.11 The Customer must comply with the customer fault management procedures and network management procedures in respect of the Service that are:
- (a) agreed between the Parties in writing; or,
 - (b) in the absence of such agreement, as notified by Telstra in writing from time to time provided that Telstra acts in accordance with good engineering practice and that such procedures do not unfairly and unreasonably discriminate against a particular user of Telstra's HFC Network.
- 1.12 The Customer must establish and maintain at its own cost, and advise its End Users of a service number for, a fault reporting service which allows its End Users to report faults (including Faults) to the Customer. The Customer must actively promote the use of this service number to its End Users and must not encourage the End Users to contact Telstra in relation to a fault.
- 1.13 The Customer must establish and maintain at its own cost a service number, or with Telstra's consent, an alternative information transfer medium, which allows Telstra to report Faults in the Customer Equipment to the Customer. Any such alternative information transfer medium provided by Telstra will be at the Customer's expense.
- 1.14 Initial responsibility for identifying the location of a Fault rests with the Party who first becomes aware of the Fault.
- 1.15 Where a Party becomes aware of a Fault ("**Identifying Party**"), and:
- (a) the Fault is clearly located in another Party's equipment; or
 - (b) upon subsequent investigation it is evident that the Fault is located in another Party's equipment,
- the Identifying Party must promptly notify that other Party in accordance with the procedures specified in the Telstra Operational Details. The Party correctly receiving notification is responsible for rectifying that Fault in accordance with the Party's standard fault rectification procedures as required by this Service Module.
- 1.16 Where the Customer becomes aware of a Fault in the Service, the Customer must report that Fault to Telstra via the MCC:
- (a) immediately by telephone to the number specified in the Profile Annex; and
 - (b) as soon as possible by facsimile to the number specified in the Profile Annex in the form of the Fault Report.
- 1.17 If a Party ("first Party") identifies a Fault in its equipment which will have a significant adverse effect on another Party's equipment, the first Party must:

- (a) promptly advise the other Party of the actions being taken to rectify the Fault;
 - (b) provide an estimate to the other Party of the expected time until normal service is restored;
 - (c) promptly inform the other Party when the Fault is rectified; and
 - (d) where the restoration of the Fault is not prompt, provide the other Party with progress reports at appropriate intervals.
- 1.18 As a general principle each Party must give priority to Faults that have the highest service loss impact in terms of the number of End Users affected.
- 1.19 Restoration of the Service where affected by a Fault will generally be in accordance with the following principles:
- (a) restoration of service must take priority over equipment repair where the repair of such equipment would delay the restoration of service. For the avoidance of doubt, nothing in this paragraph shall be taken to restrict Telstra where reasonably necessary or appropriate, from repairing equipment prior to partial or full restoration of the Service; and
 - (b) monitoring equipment, alarms, testing, and co-operation may be employed to determine the nature and location of a Fault.

Fault resolution targets for the Telstra HFC Network

- 1.20 Provided the Customer Input Signal complies with all relevant specifications, and subject to the terms and conditions of the Service Module, Telstra will endeavour to resolve Faults in the Digital Services as set out in the relevant Service Module.
- 1.21 For the purposes of compliance with the targets stated in the relevant Service Module, resolution of a Fault in the Digital Services (other than a Fault which Telstra believes has arisen as a result of an act or omission of the Customer or its People or an End User) means when Telstra rectifies the Fault so that the Digital Services (as applicable) is (as advised by Telstra to the Customer) restored to perform as required under the relevant Service Module.

ANNEX FOUR

IT SYSTEMS INTERFACE PROCEDURES

Interpretation

1. In this Annex Four, and only in this Annex Four, the following words have these meanings unless the contrary intention appears:

access means to communicate, instruct, operate, use, or in any way interact, with a System.

Authorised Access means access to an Authorised System by a Customer System using the method of access identified by Telstra in writing in respect of that Authorised System, or such other method of access as is approved in writing by the Telstra System Administrator.

Authorised System means a Telstra System listed in the Profile Annex.

Authorised User means in relation to a Customer System, persons who are expressly authorised by the Customer to have access to that Customer System.

Customer System means, in relation to an Authorised System, a System of the Customer which is expressly authorised by Telstra in writing for the purposes of this Annex Four that the Customer can use to access that Authorised System.

Confidential Systems Information means:

- (a) information or knowhow concerning or relating to Telstra Systems, including without limitation, their configuration, architecture, security protections and access controls;
- (b) information which constitutes, or which is contained or stored in, or capable of being retrieved or reproduced using, Telstra Systems; and
- (c) any other information relating to the customers, business, systems, technology or affairs of Telstra which is or has been:
 - (i) disclosed by Telstra to the Customer, whether orally, electronically, in writing or otherwise; or
 - (ii) otherwise obtained by the Customer from Telstra (whether or not by means of Authorised Access or otherwise),
under or in connection or through this Agreement other than any such information which the Customer can establish:
 - (iii) was in the public domain at the time of its provision by Telstra; or
 - (iv) became part of the public domain after its provision by Telstra, otherwise than through a disclosure by the Customer or any person to whom it has disclosed Confidential Systems Information (whether or not the disclosure is made in breach of this Agreement or any undertaking by which the relevant person is bound).

Permitted Purpose means in relation to Authorised Access to an Authorised System, the purpose described in the Profile Annex in respect of that Authorised System, or any other purpose authorised in writing by the Telstra System Administrator.

Representative when used in this Annex Four in relation to a Party, means an officer, employee, agent, adviser, auditor or consultant of that Party.

System means any system, whether networked or not, which has the ability to use, generate, process, store, communicate or transfer information (in any form) by means of computer (or other digital or analogue processing equipment) or telecommunications hardware or software.

Telstra System means a System which is:

- (a) owned, operated or used by, or under the control of, Telstra; or
- (b) owned, operated or used by or under the control of a third party to provide services or information to Telstra (such as a bureau service),

and includes, without limitation:

- (c) telecommunications switches and computer systems and networks used in the installation, operation, control, maintenance or support of Telstra's telecommunications or cable television networks or operations (such as network management, directories and billing systems); and
- (d) computer systems used in the support of Telstra's business activities, including mainframes, mini-computers, local area networks, workstations and personal computers.

Telstra System Administrator means in relation to access to a Telstra System specified in the Profile Annex:

- (a) the person for the time being filling the position described in that Profile Annex; or
- (b) any other person or position notified by Telstra to the Customer in writing as being the Telstra System Administrator for the relevant Telstra System.

Unauthorised Access means any actual or attempted access to a Telstra System for a purpose or in a manner which is not permitted under this Annex Four.

Access

2. Telstra grants the Customer Authorised Access to each Authorised System for the Permitted Purpose on the terms and conditions of this Annex Four. Access to:
 - (a) a Telstra System which is not an Authorised System; and
 - (b) an Authorised System by a System of the Customer which is not a Customer System or otherwise than in accordance with this Annex Four,is prohibited.
3. The Customer must ensure that it does not alter or vary its access to an Authorised System without the prior written consent of Telstra.
4. The Customer must use its best efforts to ensure that only Authorised Users have access to the Customer Systems and thence to Authorised Systems or other Telstra Systems.
5. The Customer must institute and, maintain for each Customer System, access control mechanisms which at a minimum:
 - (a) ensure that:
 - (i) each individual user of the Customer System has a unique, personal, identifier ("**User ID**") that can be used within the Customer System to refer to that user (the "**identified user**");
 - (ii) a User ID which is terminated in respect of a person is not re-used for another person within the term of this Agreement; and
 - (iii) upon any person ceasing to be an Authorised User that person's access to the relevant Customer System is immediately terminated,
 - (b) enable the Customer System to verify the identity of a user of the Customer System by means of a password system; and
 - (c) ensure that only an identified user who has the necessary authority to do so can access the Customer System.
6. The Customer must ensure that all of its users of the Customer Systems comply with the access control mechanism referred to in paragraph 5.
7. The Customer must comply, and ensure that its representatives comply, with the access control mechanisms from time to time imposed by Telstra in relation to access to Authorised Systems.

Administration of Access

8. An amendment or variation to any of the Exhibit(s) to this Annex Four or the addition of any new Exhibit(s), may only be made if signed in writing by the Telstra System Administrator.
9. Telstra may monitor and log all actual or attempted access from a Customer System to a Telstra System.

10. The Customer must:

- (a) immediately advise Telstra (and provide reasonable information) as soon as it becomes aware of:
 - (i) any failure by the Customer or its representatives to comply with this Annex Four; or
 - (ii) any occurrence of Unauthorised Access to an the Customer System or a Telstra System;and
- (b) if required by Telstra, provide reports in a form agreed with Telstra of its compliance with its obligations under this Annex Four.

11. The Customer must fully co-operate with Telstra, and make available to Telstra for inspection, all systems, facilities, records, information and personnel relating to the Customer Systems or the Telstra Systems necessary to enable Telstra to obtain information as to actual or potential Unauthorised Accesses to Telstra Systems or to determine whether or not, and to what extent, the Customer is complying with its obligations under this Annex Four.

12. Telstra does not promise or warrant that the Customer's access to Telstra Systems under this Agreement will be continuous or fault-free. The Customer should report any loss of, or fault in, access to Telstra Systems to the Telstra System Administrator.

13. If, at any time Telstra considers that there has been an Unauthorised Access or that any person (whether or not an Authorised User) is otherwise jeopardising the security or integrity of a Telstra System, Telstra may suspend, break, cancel or change any access which the Customer System or an Authorised User has or may have to all or any Telstra Systems, whether or not that person or System is on-line at the time. As long as the Customer fully complies with paragraph 11, Telstra will

- (a) use all reasonable endeavours to expedite its assessment of the extent and nature of any such Unauthorised Access and/or the extent to which the security or integrity of the Telstra System has been jeopardised; and
- (b) immediately reinstate such access if such assessment indicates there was no reasonable cause for Telstra to suspend, break, cancel or change such access.

Telstra Systems Security

14. The Customer must use its best efforts to ensure that no viruses or similar computer programs are transmitted to Telstra Systems through or as a result of the access granted to the Customer under this Agreement.

15. The Customer must:

- (a) ensure that before any computer program, data or information is to be transmitted from an the Customer System to a Telstra System, or is to be otherwise delivered to Telstra, the program, data or information is free from viruses and similar computer programs; and
- (b) implement, maintain and enforce suitable virus protection policies in relation to its access to the Customer Systems and Telstra Systems.

Confidentiality

16. The Customer acknowledges that the Confidential Systems Information is valuable to Telstra and undertakes to keep the Confidential Systems Information secret and to protect and preserve the confidential nature and secrecy of the Confidential Systems Information.

17. The Customer:

- (a) may only use or reproduce Confidential Systems Information relating to or accessed via an Authorised System, on a need to know basis for the Permitted Purposes relevant to that Authorised System;
- (b) must not disclose Confidential Systems Information to any person except as permitted by this Annex Four;
- (c) must not permit unauthorised persons to have access to the Confidential Systems Information;
- (d) must not make, assist or permit any person (including its People or End Users) to make any unauthorised use, disclosure or reproduction of the Confidential Systems Information;

- (e) shall take:
 - (i) reasonable efforts to ensure that any person who has access to Confidential Systems Information does not make any unauthorised use, reproduction or disclosure of that information; and
 - (ii) reasonable steps to enforce the confidentiality obligations imposed or required to be imposed by this Agreement including, diligently prosecuting at its cost, any breach or threatened breach of such confidentiality obligations by a person to whom the Customer has disclosed Confidential Systems Information and, where appropriate, making applications for interim or interlocutory relief; and
 - (iii) must use its best efforts to ensure that any Confidential Systems Information in the possession or control of the Customer or its People is erased, destroyed or returned to Telstra when it is no longer needed by the Customer.

18. The Customer may disclose Confidential Systems Information relating to or accessed via an Authorised System to:

- (a) People of the Customer requiring the information for the Permitted Purposes relevant to that Authorised System;
- (b) to its legal advisers in order to advise the Customer in relation to its rights under this Agreement, provided such persons are first advised by Customer of the confidential nature of the information.

19. The Customer may disclose Confidential Systems Information:

- (a) to the extent required by law; or
 - (b) if required in connection with legal proceedings relating to this Agreement,
- but in each case, subject to the Customer giving Telstra sufficient notice of any proposed disclosure to enable Telstra to seek a protective order or other remedy to prevent the disclosure.

Indemnity

20. Notwithstanding any other provision of the Agreement the Customer indemnifies Telstra and its representatives against all liability or loss arising directly or indirectly from, and any costs, charges and expenses incurred in connection with:

- (a) any liability, loss, damage, costs and expenses suffered or incurred by Telstra arising out of or in connection with any Unauthorised Access to Telstra Systems by any person through or by means of the Authorised Access granted by Telstra to the Customer under this Annex Four; and
- (b) any act or omission by any of the Customer's People in connection with or in relation to Telstra Systems, which, if done or omitted to be done by the Customer, would be a breach of the Customer's obligations under this Agreement.

Further Assurances

21. The Customer will at its own expense, on the request of Telstra:

- (a) do everything reasonably necessary to cause this Annex Four and the transactions contemplated by it to become and remain effective, including, but not limited to, the execution of documents;
- (b) cause relevant third parties including its representatives to do likewise where necessary or desirable; and
- (c) co-operate with Telstra in any action which it may take to protect the security or integrity of the Telstra Systems and the confidentiality of the Confidential Systems Information.

Injunctive Relief

22. The Customer acknowledges that damages may not be a sufficient remedy for Telstra for any breach of a provision of this Annex Four and that Telstra is entitled to seek specific performance or injunctive relief (as appropriate) as a remedy for any breach or threatened breach of a provision of this Annex Four by the Customer, in addition to any other remedies available at law or in equity.

ANNEX FIVE

DIGITAL CHANNEL ALLOCATION PROCESS

RELEVANT VERSION OF ANNEX FIVE TO BE INSERTED PRIOR TO EXECUTION

DIGITAL SERVICES MODULE

This document is a Service Module to the *Telstra Multimedia Access Agreement - Digital Services* dated [] between Telstra Multimedia Pty Ltd ("**Telstra**") and [] ("**Customer**").

This Digital Services Module comprises the following parts and attachments:

Parts:

- Part 1 – Service Terms
- Part 2 – Digital Services
- Part 3 - Price List

Attachments:

- Attachment A – Fault Report
- Attachment B – Planned Outage Windows
- Attachment C – Fault Resolution Times

The following Specifications are referenced by this Digital Services Module:

- Digital Specifications

PART 1

SERVICE TERMS

Definitions

1.1 In this Digital Services Module, except if the context requires otherwise, the following words have these meanings:

8 MHz Stream means an 8 MHz transport stream of the Telstra HFC Network.

Bundled Channels has the meaning set out in paragraph 1.4 of this Digital Services Module.

Carried Signal means the signal produced by the amalgamation and translation of the Customer Input Signal by Telstra Equipment in accordance with the Digital Specifications, which is then carried by Telstra's Network in accordance with this Digital Services Module.

Central Encoding Location means the location, specified by Telstra to the Customer pursuant to paragraph 1.10 of this Digital Services Module, of a Facility containing equipment for the central encoding of Customer Input Signals.

Customer Input Signal means the Customer's subscription television signal in digital mode (comprising the signals for an End User Service) input by the Customer into the relevant Interconnection Point and includes the Pre-Encoded Input Signal where the Customer has made the Customer Encoding Election.

Customer Encoding Election means an election of the Customer to encode its Customer Input Signals as described in paragraph 1.4 of this Digital Services Module and which complies with the conditions in this Services Module (including paragraph 1.5).

Contiguous Digital Channels means Digital Channels which are within the same 8 MHz Stream.

Digital Availability Date has the meaning set out in paragraph 1.26 of this Digital Services Module.

Digital Channel means a single digital transport stream within the Telstra HFC Network, as described in the Digital Specifications, used in the supply of the Digital Services.

Digital Module Term means the term of this Digital Services Module as defined in paragraph 1.2 of this Digital Services Module.

Digital Services Module means this Service Module, including all Parts, any Attachments and the Digital Specifications.

Digital Services means the digital subscription television broadcast carriage service described, and subject to the limitations set out, in Part 2 of this Digital Services Module and any other service to be provided by Telstra under this Digital Services Module as part of that service.

Digital Specifications means the latest version of the Specifications titled *Digital Specifications for the Telstra Multimedia Access Agreement* provided by Telstra to the Customer, as varied from time to time in accordance with the Agreement.

End User Service means a single, discrete channel of a Subscription Television Service provided by the Customer to End Users, by means which include the Digital Services, and includes services provided by the Customer to End Users that are related to a digital Subscription Television Service that deliver content where the sole purpose of the transmission of the content is to enhance a television program.

Enhancements and Extensions means the enhancements and extensions notified by Telstra to the Customer and includes:

- (a) where the Customer has not made or has revoked the Customer Encoding Election for a Supplied Digital Channel, any encoders or other equipment necessary to enable Telstra to encode the Customer Input Signal to be carried by that Supplied Digital Channel in accordance with the relevant Digital Specifications; and
- (b) any services incidental to sub-paragraph (a), including installation and disconnection.

Fault Report means a report in writing by the Customer to Telstra (in the form of Attachment A to this Digital Services Module, or such other form as agreed from time to time with agreement by the Customer not to be unreasonably withheld) in relation to a Fault in the Digital Services.

Interconnection Point means the transmission interface interconnection point described in the Digital Specifications and located at:

- (a) each Headend, if the Customer has made the Customer Encoding Election for a Supplied Digital Channel; or
- (b) if the Customer has not made or has revoked the Customer Encoding Election for a Supplied Digital Channel:
 - (i) the Central Encoding Location, if the encoders for that Supplied Digital Channel are to be located at the Central Encoding Location;
 - (ii) each Headend, if the encoders for that Supplied Digital Channel are to be located at each Headend,

and which is a physical point of demarcation and interconnection between Telstra's Network and upstream Customer Equipment being the point into which the Customer Landlines are connected for the purposes of delivering the Customer Input Signal to Telstra's Network for the Supplied Digital Channel.

Interconnecting Transmission means a point to point carriage service provided by Telstra to the Customer for the carriage of the Customer Input Signal in encoded form between:

- (a) the Central Encoding Location; and
- (b) each Headend.

Outage Period has the meaning set out in the Digital Specifications.

Planned Outage Windows means the time period identified in the "Window Range" column of the table in Attachment B of this Digital Services Module in relation to particular Telstra Equipment.

Pre-Encoded Input Signal means the single encoded input signal delivered to the Headends as described in paragraph 1.6 (b)(i) of this Digital Services Module.

Scheduled Outage means the whole or any part of the Digital Services is not available and the unavailability:

- (a) is due to maintenance, repair, replacement or enhancement of Telstra Equipment; and
- (b) where the maintenance, repair, replacement or enhancement is:
 - (i) non-urgent, the Customer was given at least the relevant period of advance notice specified in the "Notice" column of the table in Attachment B; or
 - (ii) urgent, the Customer has been given as much notice as is reasonable in the circumstances.

Service Information Signal means a signal containing the service and conditional access information for the End User Services to be carried by the Supplied Digital Channels.

Supplied Digital Channel means an Available Digital Channel for which the Customer is a Successful Applicant under Annex Five of this Agreement.

Telstra Final Order means the final order referred to in clause 6.1(b) of the Telstra 87B Undertaking.

Third Party Customers means persons other than the Customer to whom Telstra supplies Digital Services on terms which are substantially the same as those contained in this Agreement.

Third Party Channels means Digital Channels supplied by Telstra to Third Party Customers.

Digital Module Term

- 1.2 The Digital Module Term commences on the Commencement Date and ends on the earlier of:
- (a) the date 5 years after the Digital Availability Date (unless such date is amended by way of a variation to this Agreement executed by both Parties);
 - (b) termination of this Digital Services Module in accordance with its terms or in accordance this Agreement; or
 - (c) termination or expiry of the Agreement in accordance with its terms; or
 - (d) termination of this Digital Services Module or the Agreement by operation of Law.

Consistency with Digital Access Undertaking

- 1.3 The Customer acknowledges that Telstra may vary this Digital Services Module by notice to the Customer where such variation is made in a manner which ensures that the terms and conditions of this Digital Services Module are either consistent with, or identical to, the terms and conditions of supply of the digital services that form part of the Telstra Final Order.

Customer Encoding Election

- 1.4 Subject to paragraph 1.5, if and only if:
- (a) two or more Supplied Digital Channels are Contiguous Digital Channels; or
 - (b) one or more Supplied Digital Channels taken together with one or more Third Party Channels, are Contiguous Digital Channels,
- (in either case "**Bundled Channels**"),
- the Customer may elect to encode the Customer Input Signal to be carried by any of those Supplied Digital Channels prior to its delivery at the Headends in accordance with paragraph 1.6 of this Digital Services Module and the Digital Specifications.
- 1.5 An election to which paragraph 1.4(b) applies has no effect unless and until all of the Third Party Customers whose Third Party Channels have been included in the Bundled Channels also elect to include those Third Party Channels in the same Bundled Channels pursuant to their respective agreements with Telstra.
- 1.6 If the Customer makes and has not revoked the Customer Encoding Election in respect of a Supplied Digital Channel:
- (a) Telstra will not be responsible for any encoding of the Customer Input Signal to be carried by the Supplied Digital Channel;
 - (b) the Customer must ensure that:
 - (i) the Customer Input Signal to be carried by the Supplied Digital Channel is delivered to the Headends within a single encoded signal:
 - (A) which complies with the Digital Specifications relevant to the Customer Encoding Election;

- (B) which contains all the other signals for services to be carried at any time by the Bundled Channels (including any Third Party Channels); and
 - (C) whose bit rate does not exceed $n \times 4\text{Mbit/s}$, where “n” is the number of Digital Channels (both Supplied Digital Channels and any Third Party Channels) which at any time comprise the Bundled Channels;
- (ii) the aggregate number of End User Services and services to be carried by the Third Party Channels (if any) does not exceed the number “n” in sub-paragraph 1.6(b)(i)(C).

Initial notification of Customer Encoding Election

- 1.7 Within 10 Business Days after the Allocation Date, the Customer must notify Telstra in writing whether or not the Customer makes the Customer Encoding Election for each Supplied Digital Channel (“**Initial Election Notice**”).
- 1.8 If the Customer does not give Telstra an Initial Election Notice for a Supplied Digital Channel within 10 Business Days pursuant to paragraph 1.7, the Customer will be taken to have not made the Customer Encoding Election for that Supplied Digital Channel.
- 1.9 If the Customer makes the Customer Encoding Election for a Supplied Digital Channel, the Customer must specify in the Initial Election Notice, the number of Supplied Digital Channels in the Bundled Channels (including their channel identifier) and, if sub-paragraphs 1.4(b) applies, the number of Third Party Channels included in the Bundled Channels (including their channel identifier) and the names of the relevant Third Party Customers
- 1.10 If the Customer has not made the Customer Encoding Election for any Supplied Digital Channels, then Telstra must notify the Customer in writing whether the encoders for the 8 MHz Streams which carry those Supplied Digital Channels will be located at the Headends or at a specified central location (“**Encoder Location Notice**”). Telstra will aim to provide the Encoder Location Notice within 20 Business Days after the Allocation Date.
- 1.11 Before sending the Encoder Location Notice, Telstra will consult with the Customer regarding the Customer’s preferences for the location of encoders, provided that Telstra has not already given an Encoder Location Notice for an 8 MHz Stream as a result of consultations with Third Party Customers that are already being supplied Third Party Channels within that 8 MHz Stream.
- 1.12 If the Customer does not make, or revokes, the Customer Encoding Election for a Supplied Digital Channel and the encoders for that Supplied Digital Channel are located at the Central Encoding Location, the Customer must acquire from Telstra, and Telstra must supply, Interconnecting Transmission on terms and conditions (including charges) as notified by Telstra to the Customer. Before giving this notice, Telstra will consult with the Customer and take into account the Customer’s reasonable suggestions as to the form of the Interconnecting Transmission and terms of supply. The Customer acknowledges that Telstra will also consult with and take into account the reasonable suggestions of each other Third Party Customer that also requires Interconnecting Transmission. For the avoidance of doubt, Interconnecting Transmission will be supplied under a separate contract, is not a Service for the purposes of this Agreement, and is not supplied under this Agreement.

Subsequent Customer Encoding Election

- 1.13 At any time during the Digital Module Term, the Customer may make a Customer Encoding Election for a Supplied Digital Channel by giving Telstra not less than 40 Business Days notice in writing, such notice containing the information specified in paragraph 1.9.

- 1.14 If the Customer makes the Customer Encoding Election under paragraph 1.13, the Customer will be required to pay Charges to Telstra in accordance with paragraph 3.9 of the Price List to cover the reasonable costs that Telstra incurs in implementing that Customer Encoding Election. The Customer is not entitled to a refund of the Charges for any Enhancements and Extensions for that Supplied Digital Channel.

Revocation of Customer Encoding Election

- 1.15 At any time during the Digital Module Term, the Customer may (by giving Telstra not less than 40 Business Days notice in writing), revoke a Customer Encoding Election for a Supplied Digital Channel.
- 1.16 A revocation under paragraph 1.15 will have no effect if the revocation would result in the remaining Bundled Channels (if any) failing to meet the requirements of paragraphs 1.4(a) or (b) of this Digital Services Module.
- 1.17 If the Customer makes an effective revocation under paragraphs 1.15 and 1.16 for a Supplied Digital Channel, that Supplied Digital Channel no longer forms part of the Bundled Channels and the Customer acknowledges that:
- (i) Enhancements and Extensions will be required for the relevant Supplied Digital Channel in accordance with paragraphs 1.19 to 1.22 of this Digital Services Module;
 - (ii) Interconnecting Transmission will be required if the encoders for that Supplied Digital Channel are located at the Central Encoding Location;
 - (iii) it may be required to pay Charges for any such Enhancements and Extensions, as contemplated by paragraphs 3.2 to 3.4 of the Price List; and
 - (iv) Telstra may suspend the supply of the Digital Services in respect of that Supplied Digital Channel until such time as all necessary Enhancements and Extensions have been completed under paragraphs 1.19 to 1.25.

Conditions precedent for supply of the Digital Services

- 1.18 Telstra has no obligation to supply the Digital Services in respect of any Supplied Digital Channel to the Customer, unless and until all of the following requirements have been satisfied (such requirements being conditions precedent as contemplated by clause 2.4 of the General Terms and Conditions):
- (a) Telstra has obtained the agreement of any third party to the extent necessary for the use of Intellectual Property belonging to that third party required for the supply of the Digital Services under this Digital Services Module, and the Customer has fully reimbursed Telstra for any licence fees or other amounts payable by Telstra to any such third party in relation to such agreement;
 - (b) the Enhancements and Extensions for that Supplied Digital Channel have been completed and the Customer has paid Telstra the full amount of the Charges for the required Enhancements and Extensions; and
 - (c) the Parties have reached agreement in writing, and resolved to the reasonable satisfaction of Telstra, all critical technical and operational issues relating to the supply of the Digital Services :
 - (i) that are set out in the Digital Specifications as issues that need to be resolved before supply can commence; and/or
 - (ii) that the Customer agrees with Telstra need to be resolved before supply can commence; and/or
 - (iii) that Telstra reasonably believes must be resolved before supply can commence, as notified by Telstra in writing to the Customer from time to time provided that Telstra acts in accordance with good engineering practice and that Telstra does not unfairly and unreasonably discriminate against a particular user of Telstra's HFC Network.

Enhancements and Extensions

1.19 Subject to paragraph 1.20, any disputes over Enhancements and Extensions (including Enhancements and Extensions the subject of the Initial Payment) must be resolved as Technical Disputes under clause 12 of the General Terms and Conditions subject to the overriding principle that Telstra is not required to bear the costs of:

- (a) extending or enhancing the capability of a Facility; or
- (b) maintaining extensions to or enhancements or the capability of a Facility.

However, the Customer can only refer a General Dispute relating to Enhancements and Extensions for resolution under clause 12 of the General Terms and Conditions if it has reasonable grounds for such a dispute.

1.20 To the extent Charges for Enhancements and Extensions are not set out in this Digital Service Module, any disputes over such Charges (including the amount of the Initial Payment and disputes relating to paragraph 1.21 below) must be resolved as Payment Disputes subject to the overriding principle that Telstra is not required to bear the costs of:

- (a) extending or enhancing the capability of a Facility; or
- (b) maintaining extensions to or enhancements or the capability of a Facility.

However, the Customer can only refer a General Dispute relating to Enhancements and Extensions for resolution under clause 12 of the General Terms and Conditions if it has reasonable grounds for such a dispute.

1.21 The Customer acknowledges and agrees that it may be required to pay amounts for Enhancements and Extensions that are shared with other users of the Service (other than FOXTEL) and, where such sharing occurs:

- (a) The Customer must fully co-operate, in good faith, with Telstra and other users of the Service in relation to such shared Enhancements and Extensions.
- (b) Telstra will aim to pro rate the costs of such shared Enhancements and Extensions between users of the Service (other than FOXTEL) based on the number of Supplied Digital Channels acquired by each user of the Service (other than FOXTEL) as a proportion of the number of Supplied Digital Channels allocated to users of the Service (other than FOXTEL) at that time. Telstra's decision on such pro rating will be final and binding in the absence of manifest error. Other users of the Service include persons that are party to a *Telstra Multimedia Access Agreement - Analogue Services (with transition to Digital Services)* with Telstra.
- (c) Telstra will not usually commence ordering such shared Enhancements and Extensions until all users of the Service that will contribute to the cost of such shared Enhancements and Extensions have paid Telstra the full amount of the relevant Initial Payment without dispute.
- (d) If the Customer has been allocated Available Digital Channels via a Subsequent Allocation, it may still be required to pay to Telstra a contribution to the cost of shared Enhancements and Extensions even though such Enhancements and Extensions may have already been ordered or installed for other users of the Service. The level of that payment may be determined as a proportion of the cost of the shared Enhancements and Extension based on the number of Available Digital Channels acquired by that Customer as a proportion of the total number of Available Digital Channels allocated to users

of the Service (other than FOXTEL) at that time (including via the Initial Allocation and any other Subsequent Allocations), regardless whether Telstra has or has not already recovered that cost from other users of the Service. Telstra may distribute that payment to other users of the Service in the form of a part refund of Charges actually paid by them to Telstra for the relevant Enhancements and Extensions. Telstra's decision on any calculation or refund will be final and binding in the absence of manifest error. By way of example:

Assume:

- *a customer ("**first customer**") has been allocated two Available Digital Channels in a Subsequent Allocation;*
- *another customer ("**second Customer**") has been allocated one Available Digital Channel in the same Subsequent Allocation; and*
- *Telstra has already recovered the \$100,000 cost of a shared Enhancement and Extension from seven other Customers ("**initial customers**") that have each been allocated one Available Digital Channel in the Initial Allocation (i.e. each paying \$14,285.72).*

Telstra is permitted to now recover from the first Customer $(2 / (2 + 1 + 7)) \times \$100,000 = \$20,000$ and from the second Customer $(1 / (1 + 2 + 7)) \times \$100,000 = \$10,000$. Telstra may distribute the additional \$30,000 total additional payment it has received from the first customer and the second customer to the seven initial Customers in the form of a refund of \$4,285.72 to each initial customer.

In this manner, each of the ten customers would have contributed \$10,000 per Available Digital Channel to the \$100,000 cost of the shared Enhancement and Extension.

- 1.22 Telstra will commence ordering the Enhancements and Extensions for that Supplied Digital Channel once the Customer has paid Telstra the full amount, without dispute, of the Initial Payment (as defined in the Price List) of the Charges in respect of all Enhancements and Extensions. All Enhancements and Extensions remain the property of Telstra.
- 1.22A Within 15 Business Days before the expiry of the Digital Module Term, the Customer may request Telstra to identify whether any particular Enhancements and Extensions exist that meet the following criteria:
- (a) the sole use of the Enhancements and Extensions during the Digital Module Term was to enable the supply of the Digital Services to the Customer (and no other user of the Digital Services);
 - (b) the Enhancements and Extensions can be easily removed from the Telstra HFC Network without adversely affecting Telstra or any other user of the Digital Services or any other services supplied by means of the Telstra HFC Network; and
 - (c) the Customer has paid Telstra the Charges for the Enhancements and Extensions,
- ("Specified E&E").**
- 1.22B Telstra must comply with a request under clause 1.22A and notify the Customer of any Specified E&E that exists.

- 1.22C If Telstra notifies the Customer that Specified E&E exist, then if requested by the Customer, Telstra must enter into negotiations in good faith for the sale of the Specified E&E from Telstra to the Customer. The terms and conditions for such sale will include terms and conditions reflecting the following principles, unless otherwise agreed:
- (a) The Specified E&E will be sold by Telstra to the Customer for no charge;
 - (b) Telstra will arrange for the Specified E&E to be delivered to the Customer;
 - (c) Until delivery of the Specified E&E to the Customer occurs, ownership and property in the Specified E&E will remain with Telstra and the Customer has no proprietary or equitable interest in the Specified E&E;
 - (d) The Customer will reimburse Telstra for charges, costs and expenses incurred in the removal, transfer and delivery of the Specified E&E;
 - (e) Telstra will have no Liability for any damage to the Specified E&E (including loss or destruction of the Specified E&E or any part), that occurs before delivery; and
 - (f) To the extent permitted by law, Telstra makes no warranties or representations regarding the quality, condition, fitness for purpose or state of repair of the Specified E&E and the Customer agrees to accept the Specified E&E on an "as is" basis at the time of delivery.
- 1.22D If the parties cannot agree the terms and conditions under clause 1.22C, the matter may be resolved as a Technical Dispute under this Agreement.
- 1.23 While Telstra will make reasonable endeavours to procure the Enhancements and Extensions, the Customer acknowledges that:
- (a) Telstra must rely on third parties for the supply of Enhancements and Extensions;
 - (b) there may be delays in the supply of Enhancements and Extensions (including delays relating to shared Enhancements and Extensions);
 - (c) Telstra is not responsible for any delay in the supply of Enhancements and Extensions (other than delays caused by its breaches of this Agreement).
- 1.24 Subject to paragraphs 1.19 to 1.23 and 1.25, Telstra will install the Enhancements and Extensions as soon as practicable after Telstra's receipt of the Initial Payment of the Charges for the Enhancements and Extensions and the delivery of any Enhancements and Extensions to Telstra.
- 1.25 If Telstra is unable to acquire all the Enhancements and Extensions, the Parties agree to discuss in good faith any amendments to this Digital Services Module which may be appropriate (including the use of any relevant alternatives to Enhancements and Extensions, if applicable).

Digital Availability Date

- 1.26 Subject to the terms and conditions of this Digital Services Module, Telstra will act in good faith to make the Digital Services available for acquisition by the Customer as soon as reasonably practicable after the Commencement Date and will notify the Customer in writing once the Digital Services are available for acquisition by the Customer ("**Digital Availability Date**"). A different Digital Availability Date may apply to different Supplied Digital Channels.
- 1.27 **[intentionally deleted]**

Digital Services limitations and specifications

- 1.28 The Customer acknowledges that the number and geographic location of Network Termination Points may vary during the Digital Module Term and hence Telstra does not guarantee that the Digital Services will continue to deliver signals to all Network Termination Points that existed as at the Network Digitisation Date.
- 1.29 For the avoidance of doubt, the Customer expressly acknowledges that Telstra does not undertake, and is not responsible for the transmission or carriage of signals, or for the maintenance of any Customer Equipment or anything:
- (a) on the End User Premises side of any Network Termination Point (including STUs or Fly Cables); or
 - (b) upstream of an Interconnection Point (including the Customer Landlines),
- such transmission, carriage and maintenance being the Customer's sole responsibility.

Faults

- 1.30 The Customer must report any Fault in relation to the Digital Services in accordance with Telstra's current Fault reporting procedures in effect from time to time, and not in any other way. The current procedures are set out in Annex Three (Operations and Maintenance) to the Agreement.
- 1.31 Telstra will respond to Faults duly reported by the Customer within the times set out in Attachment C to this Digital Services Module. Charges applicable to Faults are set out in Part 3 (Price List) of this Digital Services Module.

Digital Channel numbers

- 1.32 The Customer acknowledges that the numbering allocated to particular Supplied Digital Channels by any STU is beyond the control of Telstra.

Resale

- 1.33 The Customer agrees that it will not confer any benefit of the Digital Services (or any part thereof) on any person (including by resale, licensing or otherwise) without Telstra's prior written consent.

Broadcasting

- 1.34 The Customer represents and warrants that each of the statements in this paragraph 1.34 is accurate on the Digital Availability Date and will be accurate on each day of the Digital Module Term as if made on each of those dates:
- (a) the Digital Services will be used solely to deliver End User Services by the Customer, those End User Services are duly licensed by the Customer under the BSA, and the Customer is otherwise legally entitled to use the Digital Services;
 - (b) neither the End User Services nor their delivery to End Users infringes any intellectual property or legal right of any person;
 - (c) the Customer's use of the Digital Services and the End User Services complies with, and does not offend, any applicable laws, regulations, orders, program standards or codes of practice including:
 - (i) the BSA;
 - (ii) the conditions of any applicable subscription television broadcasting licence;
 - (iii) the requirements of the ABA as to television program content, standards or origin; and

- (iv) laws as to defamation.

Charges

- 1.35 The Customer agrees to pay all applicable Charges for the Digital Services as set out in Part 3 (Price List) of this Digital Services Module.

IT Systems Interface Procedures

- 1.36 The Parties will comply with Annex Four (IT Systems Interface Procedures) of this Agreement.

Termination of Digital Services Module

- 1.37 In addition to any other rights of termination set out in this Agreement, this Digital Services Module may also be terminated as follows:
- (a) Telstra may terminate on 6 months notice served at any time after the date 6 months before Telstra ceases to carry FOXTEL's subscription television services in digital mode on the HFC Network;
 - (b) either Party may terminate by serving a notice on the other Party for any material breach of this Agreement, including this Digital Services Module, (which shall include non-payment by the Customer of Charges for a period of more than 15 Business Days or a breach of paragraph 1.35 of this Digital Services Module) by the other Party where the breach (if capable of remedy) is not remedied within 10 Business Days of a notice from the Party not in breach; or
 - (c) either Party may terminate by serving notice on the other Party in the event that the Digital Availability Date has not occurred within 2 years after the Commencement Date ("**2 year period**"). A termination notice served by Telstra only becomes effective in accordance with clause 1.38A.
- 1.38 Where this Digital Services Module is terminated in accordance with paragraphs 1.37(c), the Customer will be entitled to a refund of any Charges it has paid in relation to Enhancements and Extensions, less any amount Telstra has paid, and/or entered into a commitment to pay, for the Enhancements and Extensions as at the date of termination, and less 15% (to cover Telstra's administration costs).
- 1.38A
- (a) If Telstra serves a termination notice under clause 1.37(c), the Customer may, within 10 days of receiving the notice, serve a further notice ("**extension notice**") on Telstra, requesting a variation of clause 1.37(c) to extend the 2 year period in clause 1.37(c) for the further period described in the extension notice (which must not exceed 12 months). During the 10 day period, the termination notice will have no effect. If the Customer does not serve an extension notice during the 10 day period, the termination notice becomes effective on the expiration of the 10 day period. If the Customer serves an extension notice during the 10 day period, the termination notice only becomes effective in accordance with clause 1.38A(e).
 - (b) To be valid, the extension notice must set out the grounds for the requested extension which must be reasonable and demonstrate that there is a significant likelihood that the Digital Availability Date will occur within the further period described in the extension notice.
 - (c) Within five days of receipt of an extension notice, Telstra may notify the Customer that it accepts the extension notice or refer the validity of the extension notice under clause 1.38A(b) for dispute resolution as a Technical Dispute under clause 12 of the General Terms and Conditions. If Telstra does neither of these things it will be taken to have accepted the extension notice.
 - (d) If an extension notice is accepted or taken to have been accepted under clause 1.38A(c), or is determined to be valid under clause 12 of the General

Terms and Conditions, then the 2 year period in clause 1.37(c) will be taken to have been extended in accordance with the extension notice and the termination notice given under clause 1.37(c) will have no effect.

- (e) If an extension notice is determined under clause 12 of the General Terms and Conditions to be invalid under clause 1.38A(b) or the Technical Dispute is not resolved under clause 12 of the General Terms and Conditions, the termination notice under clause 1.37(c) will immediately become effective and this Digital Services Module will terminate.
- (f) To avoid doubt, once an extension notice has been given under this clause, no other extension notice may be given unless both parties agree.

Digital Channels

- 1.39 The Customer may not use a Supplied Digital Channel to carry more than one End User Service regardless of whether or not it has made the Customer Encoding Election for that Supplied Digital Channel
- 1.40 Unless otherwise agreed with the Customer, Telstra must ensure that Supplied Digital Channels which are Contiguous Digital Channels remain as Contiguous Digital Channels for the remainder of the Digital Module Term.
- 1.41 The Customer acknowledges and agrees that Telstra will not carry more than 8 Digital Channels on each 8 MHz Stream used by the Customer and Third Party Customers.

PART 2

DIGITAL SERVICES

Service Description

- 2.1 The following service description is provided for the Digital Services and applies to the provision of the Digital Services by Telstra to the Customer.
- 2.2 The Digital Services comprise a digital subscription television broadcast carriage service, specified and subject to the limitations contained in the Digital Specifications, comprising:
- (a) if the Customer has not made, or has revoked, the Customer Encoding Election for a Supplied Digital Channel:
 - (i) the receipt of the Customer Input Signal to be carried by that Supplied Digital Channel from the Customer at the relevant Interconnection Point;
 - (ii) the creation of the Carried Signal from the Customer Input Signal;
 - (iii) the point to multi-point carriage of the Carried Signal using that Supplied Digital Channel from the Headends over, and subject to the performance characteristics of, the Telstra HFC Network to each Network Termination Point.
 - (b) if the Customer has made the Customer Encoding Election for a Supplied Digital Channel:
 - (i) the receipt of the Pre-Encoded Input Signal from the Customer at the relevant Interconnection Point;
 - (ii) the creation of the Carried Signal from the Pre-Encoded Input Signal;
 - (iii) the point to multi-point carriage of the Carried Signal using that Supplied Digital Channel from the Headends over, and subject to the performance characteristics of, the Telstra HFC Network to each Network Termination Point; and
 - (c) the point to multi-point carriage of the Service Information Signal from the Headends over, and subject to the performance characteristics of, the Telstra HFC Network to each Network Termination Point
- 2.3 If the Customer has not made or has revoked the Customer Encoding Election for a Supplied Digital Channel, the bit transmission rate of the Carried Signal to be carried by that Supplied Digital Channel will vary in accordance with the Digital Specifications depending, among other things, on the aggregate bit transmission rate of all other signals transmitted using the same 8 MHz Stream.
- 2.4 Other than as described in sub-paragraph 2.2(c), the Digital Services do not include (and Telstra has no responsibility for) any conditional access services or functionality (including the generation of the Service Information Signal).

Availability

- 2.5 The availability of the Digital Services may vary depending on the geographic and technical capability of the Telstra HFC Network at the time at which the Digital Services are delivered to the Customer.

Interconnection

- 2.6 The Customer is responsible for delivery of the Customer Input Signal via the Customer Landline to the relevant Interconnection Point.

- 2.7 Customer Equipment that is connected to an Interconnection Point or Network Termination Point must comply with the Digital Specifications.
- 2.8 Telstra will use reasonable endeavours to facilitate the Customer's interconnection at each Interconnection Point in a timely manner. Customer Equipment must not interconnect with the Telstra Equipment (including the Telstra HFC Network) at any point other than Interconnection Points and Network Termination Points. Customer Equipment must only interconnect with Telstra Equipment at an Interconnection Point for the purposes of delivering the Customer Input Signal to the Telstra HFC Network. Customer Equipment must only interconnect with Telstra Equipment at a Network Termination Point for the purposes of receiving the Carried Signal from the Telstra HFC Network.
- 2.9 For the avoidance of doubt, there is no obligation on Telstra to receive the Customer Input Signal or carry any signal, if that Customer Input Signal delivered to the relevant Interconnection Point does not comply with all relevant requirements of this Agreement, including the Digital Specifications.
- 2.10 In addition to the requirements of this Digital Services Module, the Customer will comply at all times with any terms, conditions, procedures and technical requirements relating to the Customer Input Signal (including its delivery) that are ("**Customer Input Signal Procedures**"):
- (a) set out in the Digital Specifications; and/or
 - (b) otherwise agreed in writing between the Parties; and/or
 - (c) in the absence of such agreement, are notified by Telstra in writing from time to time provided that Telstra acts in accordance with good engineering practice and that such terms, conditions and procedures do not unfairly and unreasonably discriminate against a particular user of Telstra's HFC Network.

Digital Compliance Testing Procedures

- 2.11 Unless otherwise agreed, the Customer must demonstrate that its interconnection to Telstra Equipment (including the Telstra HFC Network) complies with this Digital Services Module and the Digital Specifications by carrying out compliance testing in accordance with the procedures, requirements, test plan, testing programme, and compliance standards that are ("**Digital Compliance Testing Procedures**"):
- (a) set out in the Digital Specifications; and/or
 - (b) as otherwise agreed in writing between the Parties; and/or
 - (c) in the absence of such agreement, are notified by Telstra in writing from time to time provided that Telstra acts in accordance with good engineering practice and that such requirements and test plan do not unfairly and unreasonably discriminate against a particular user of Telstra's HFC Network.
- 2.12 The Customer must provide to Telstra all test results from such compliance testing with a view to demonstrating such compliance.
- 2.13 The Customer must arrange for such compliance testing to be carried out in accordance with the Digital Compliance Testing Procedures by any testing organisation (capable of conducting tests in accordance with the test plan referred to in paragraph 2.11) which is acceptable to Telstra acting reasonably.
- 2.14 Telstra will use all reasonable endeavours to complete its review of the results of the Customer's compliance testing within 20 Business Days of receipt of the test results from the Customer and must complete its review within 15 Business Days. If the Digital Compliance Testing clearly demonstrates that the Customer complies with all relevant provisions of the Digital Services Module and the Digital Specifications, and complies with the relevant compliance standards, then the Parties will agree a date for network commissioning tests.

- 2.15 During the Digital Module Term, the Customer must continue to demonstrate that its interconnection to Telstra Equipment (including the Telstra HFC Network) complies with all relevant provisions of the Digital Services Module and the Digital Specifications, and complies with the relevant compliance standard, by further compliance testing in accordance with the Digital Compliance Testing Procedures.

Monitoring

- 2.16 Telstra may monitor the Customer Input Signal and Carried Signal to verify compliance by either Party with this Digital Services Module and for such other purposes associated with this Digital Services Module as Telstra considers necessary (including, for example, for quality assurance purposes, Network operations and maintenance, and Fault management). Telstra must seek the prior consent of the Customer to such monitoring if such monitoring would adversely affect the Customer's End User Service unless Telstra has reasonable grounds to believe that the Customer is in breach of this Agreement.

Service Information Signal

- 2.17 The Customer is responsible for the delivery of the Service Information Signal to each Interconnection Point in accordance with the Digital Specifications.
- 2.18 The Customer must ensure that the Service Information Signal complies at all times with all requirements and specifications, and all terms, conditions and procedures relating to the delivery of the Service Information Signal, that are ("**Service Information Signal Requirements**");
- (a) set out in the Digital Specifications; and/or
 - (b) as otherwise agreed in writing between the Parties; and/or
 - (c) in the absence of such agreement, are notified by Telstra in writing from time to time provided that Telstra acts in accordance with good engineering practice and that such technical requirements and specifications do not unfairly and unreasonably discriminate against a particular user of Telstra's HFC Network.
- 2.19 For the avoidance of doubt, there is no obligation on Telstra to receive the Service Information Signal or carry any signal, if that Service Information Signal does not comply with all relevant requirements of this Agreement, including the Service Information Signal Requirements.
- 2.20 The Customer acknowledges and agrees that it is the Customer's responsibility to ensure that the STUs and other Customer Equipment is compatible with the Service Information Signal carried by Telstra pursuant to paragraph 2.2(c) in accordance with the Digital Specifications and that Telstra has no liability if this is not the case.

PART 3

PRICE LIST FOR DIGITAL SERVICES

General

- 3.1 The Charges payable by the Customer under this Digital Services Module for the Digital Services include:
- (a) Charges payable to Telstra for Enhancements and Extensions (comprising an Initial Payment and Subsequent Payment); and
 - (b) monthly Charges payable to Telstra for the operation and maintenance of Enhancements and Extensions; and
 - (c) an annual Charge for each Supplied Digital Channel, payable to Telstra on a monthly basis; and
 - (d) where applicable, a Charge payable to Telstra for investigation of Faults reported by the Customer; and
 - (e) where applicable, a Charge payable to Telstra for handling End User communications; and
 - (f) where applicable, a Charge payable to Telstra for use of Intellectual Property; and
 - (g) where applicable, a Charge payable to Telstra for connection of Customer Equipment to Telstra Equipment; and
 - (h) where applicable, a Charge payable to Telstra for making a Customer Encoding Election pursuant to paragraphs 1.13 and 1.14 of this Digital Services Module; and
 - (i) where applicable, additional amounts payable to Telstra as agreed or as otherwise set out in this Digital Services Module (if any).

Enhancements and Extensions

- 3.2 The Charges payable by the Customer to Telstra for Enhancements and Extensions comprise:
- (a) an initial payment in advance for all costs, charges or expenses that Telstra has reasonably incurred or anticipates incurring in designing, testing, acquiring, installing and undertaking the Enhancements and Extensions (including labour and material costs) ("**Initial Payment**"); and
 - (b) a subsequent payment ("**Subsequent Payment**"), once the Enhancements and Extensions have been completed, comprising any difference between the Initial Payment and the aggregate of the costs, charges and expenses (including labour and material costs) that Telstra actually incurred in designing, testing, acquiring, installing and undertaking the Enhancements and Extensions ("**Actual Costs**").

Telstra will inform the Customer of differences between the anticipated costs, charges and expenses and those actually incurred once such differences become known.

- 3.3 The Customer will make the Initial Payment on receipt of a Bill from Telstra for those Charges. The Customer acknowledges that the supply of the Digital Services in respect of a Supplied Digital Channel is contingent on the completion of all necessary

Enhancements and Extensions which, in turn, is contingent on the Customer paying all Charges for such Enhancements and Extensions in full on demand. If the Actual Costs are more than the Initial Payment, the Customer will make the Subsequent Payment upon receipt of a Bill from Telstra for those Charges. If the Actual Costs are less than the Initial Payment, Telstra will set off the difference against other Charges payable by the Customer under this Agreement.

- 3.4 The Customer will pay monthly Charges in relation to the operation and maintenance of Enhancements and Extensions, at the standard rates advised in writing by Telstra for the purposes of this Price List, (and, for the avoidance of doubt, such charges are not Recurring Charges for the purposes of this Agreement).

Digital Services

- 3.5 The annual Charge payable by the Customer to Telstra for each Supplied Digital Channel is the Channel Price for that Supplied Digital Channel (pro rated for any part of the year). One-twelfth of the annual Charge is payable each calendar month ("**Monthly Charge**") (pro rated for any part of the month), from the Digital Availability Date for that Supplied Digital Channel (whether or not the Supplied Digital Channel is actually used by the Customer during that month) for the remainder of the Digital Module Term.

Faults

- 3.6 Where the Customer reports what it considers to be a Fault to Telstra and:
- (a) following investigation by Telstra, the reported Fault is a Telstra Fault then there will be no charge to the Customer; or
 - (b) where the Fault reported by the Customer is not a Telstra Fault, the Customer will pay to Telstra a Charge for each such reported Fault comprising:
 - (i) a fee of \$200; and
 - (ii) a charge of \$30 for each 15 minutes (or part thereof) of time spent (including travelling time to and from the relevant location) for each person investigating the Fault report, in excess of 1 person hour (in which case Telstra will identify the time spent and, on request, the reason the Fault took in excess of 1 person hour to investigate).

End User communications

- 3.7 The Customer shall pay Telstra a Charge of \$25 for each communication (including emails, letters, faxes and telephone calls) by an End User to Telstra or any of its Related Bodies Corporate or their respective People where that communication relates to services supplied by the Customer to that End User or any other arrangements between the Customer and the End User (contractual or otherwise).

Connection Charges

- 3.8 The Customer will pay Charges for connection of Customer Equipment to Telstra Equipment at each Interconnection Point. Such Charges will be as advised by Telstra based on the labour and materials involved. Work shall not commence until the Customer has accepted a quotation for such work provided to the Customer by Telstra.

Subsequent Customer Encoding Election

- 3.9 The Customer will pay Charges for reasonable costs incurred by Telstra as a result of implementing a Customer Encoding Election made under paragraphs 1.13 and 1.14 of this Digital Services Module as notified by Telstra in writing for the purposes of this Price List.

Intellectual Property

- 3.10 The Charges for Intellectual Property payable by the Customer to Telstra will include full reimbursement of any amounts paid by Telstra under an agreement with any third party (including licence fees), and any costs and expenses reasonably incurred by Telstra in negotiating, administering and maintaining that agreement, where that agreement is necessary for use of Intellectual Property rights belonging to that third party for the supply of the Service to the Customer under this Digital Services Module.

GST & CPI

- 3.11 The Charges set out in this Price List:
- (a) are exclusive of any applicable GST (unless otherwise expressly stated); and
 - (b) may be increased on each anniversary of the Commencement Date by any CPI Change on such date if such change is a positive number.

Reduction by any Application Payment

- 3.12 Telstra will reduce the first monthly charge payable by the Customer pursuant to paragraph 3.5 of this Price List for any Supplied Digital Channel in respect of the Digital Services by the amount of any Application Payment received by Telstra from the Customer in respect of that Digital Channel (if an Application Payment was required).

Variation in Channel Price

- 3.13 Clauses 3.14 to 3.18 apply if:
- (a) the Commencement Date occurred prior to the Simulcast End Date and the Supplied Digital Channels were automatically allocated to the Customer under paragraph 3.2 of Part 2 of Annex Five - Digital Channel Allocation Process (Simulcast Period); or
 - (b) the Commencement Date occurred after the Simulcast End Date.
- 3.14 For the purposes of clause 3.5 of this Part 3, the Channel Price will vary in accordance with clause 1A of Part A of Schedule 2 to the Telstra 87B Undertaking ("**clause 1A**") with effect from the "Relevant Dates" (as defined in clause 1A).
- 3.15 Within 10 Business Days of the Relevant Dates, the Customer must notify Telstra of the amount of:
- (a) revenue derived from the retail supply by the Customer of End User Services (or Subscription Television Services (if any) transmitted in analogue mode) delivered by means of the Telstra HFC Network during the 12 month period ending on each Relevant Date; and
 - (b) revenue derived from the retail supply by the Customer of all other services (if any) delivered to end users by means of the Telstra HFC Network during the 12 month period ending on each Relevant Date,
- ("revenue information").

- 3.16 Within 5 Business Days of receiving revenue information from the Customer, Telstra may give the Customer a notice ("**audit notice**") that Telstra requires an independent audit of the accuracy of the revenue information provided by the Customer to be conducted by a qualified accountant nominated by Telstra in the audit notice ("**auditor**"). If Telstra gives an audit notice, the Customer agrees to provide the auditor with all assistance and information (including access to books and records of the Customer) as the auditor may reasonably require for the purposes of the audit.
- 3.17 The auditor must give a written report of its findings to Telstra and the Customer within 20 Business Days of its appointment. Telstra must pay the costs of the auditor in conducting the audit unless the auditor determines that the revenue information provided by the Customer is materially inaccurate in which case the Customer must pay the costs of the auditor and the auditor must give an estimate of the accurate revenue information.
- 3.18 To avoid doubt, Telstra may only use revenue information for the purpose of it and the independent third party referred to in clause 1A calculating amounts under clause 1A. The Customer consents to the disclosure of the revenue information to the independent third party for that purpose.

Attachment A to Digital Services Module

Fault Report

Digital Services Fault Report to Telstra Multimedia		
<i>To: Telstra MCC</i>		
<i>Fax: 03 9642 5449</i>		
<i>From: [</i>	<i>]</i>	<i>Contact Name: _____</i>
<i>Date: _____</i>	<i>Contact Phone: _____</i>	<i>Contact Fax: _____</i>
<i>General Description of Fault in Digital Services:</i>		

<i>Locations affected by Fault:</i>		

<i>Steps taken to analyse and/or correct Fault and results:</i>		

<i>Signed: _____</i>		
PLEASE NOTE THAT YOU MAY BE SUBJECT TO CHARGES IN THE EVENT OF A REPORTED FAULT NOT BEING A TELSTRA FAULT		

Attachment B to Digital Services Module

Planned Outage Windows

NETWORK COMPONENT	NOTICE (days)	WINDOW RANGE
Headend	10	2am to 6am any day
Headend to node/out-posted splitter, optical fibre	7	2am to 6am any day
Nodes/out-posted splitters	7	2am to 6am any day
Headend/node/out-posted splitter to hub, optical fibre affecting more than one hub	7	2am to 6am any day
Headend/node/out-posted splitter to hub, optical fibre affecting one hub only	7	10 am - 3pm 12am - 6am Mon – Fri
Hub	7	10 am - 3pm 12am - 6am Mon – Fri
Coaxial RF network	2	10 am - 3pm 12am - 6am Mon – Fri

Attachment C to Digital Services Module

Target Fault Resolution Times

Fault Type	Target
Within Headend	95% resolved within 2 hours
Between Headend and hub	90% resolved within 8 hours
Between hub and tap*	90% resolved within 12 hours
Between hub and tap**	90% resolved within 16 hours
Between tap and wall plate	90% resolved within 24 hours

Note: All targets exclude periods within Planned Outage Windows and Scheduled Outages. All periods commence from the time of receipt of a duly completed Fault Report, in the form of Attachment A, at the MCC facsimile machine.

* Fault Reports received between 0700H to 2100H (Monday to Friday)

** Fault Reports received at other than 0700H to 2100H (Monday to Friday)