

## Internet Access Service Agreement

### About Direct

Please read the following Internet Access Service Agreement before you apply for a Big Pond Direct Service. If you accept the terms and conditions outlined below, you may proceed to the Telstra Big Pond Direct application forms.

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### Parties:

- **TELSTRA CORPORATION LIMITED (ACN 051 775 556 ABN 33 051 775 556)** having its registered office at Level 41, 242 Exhibition Street Melbourne Victoria Australia 3000 ("Telstra")
- **CUSTOMER** as set out in the Application Form ("Customer")

### Recitals:

- A. Telstra operates an Internet service known as Big Pond Direct.
- B. The Customer has requested Telstra to provide Big Pond Direct to the Customer at various Nominated sites.
- C. Telstra has agreed to provide Big Pond Direct to the Customer on the terms and conditions set out in this agreement.

### Operative provisions:

## 1. Definitions and Interpretation

1.1 In this agreement the following words have these meanings:

- ACA** means the Australian Communications Authority.
- ACCC** means the Australian Competition & Consumer Commission.
- Acceptable Usage Policy** means the Acceptable Usage Policy for Big Pond Direct as published by Telstra on the Big Pond Direct Web Site and as amended from time to time.
- Access Port** means the point at which a Connecting Carriage Service connects to the Big Pond Direct Point of Presence.
- Access Port Connection Charge** means the connection charge, set out in paragraph 3 of the Big Pond Direct Price List, to connect a Connecting Carriage Service to a Big Pond Direct Point of Presence via an Access Port.
- Access Transmission Rate** means, in respect of an Access Port, the maximum data transfer capacity (measured in bits per second) that the Access Port has been configured for by Telstra.
- Account** means the Customer's numbered account to which this agreement relates.
- Administration Fees** has the meaning given to it in paragraph 5.8 of the Big Pond Direct Price List.
- Application Form** means the application form for Big Pond Direct, whether completed and submitted on-line or completed in hard copy and faxed to Telstra, which forms part of these terms and conditions.
- BackChannel Charge** means the charge payable per Megabyte sent by the Customer in excess of the relevant Cable or Satellite BackChannel Threshold Ratio.
- Big Pond Direct** means:
- a. access to the Big Pond Direct Access Service Network; and
  - b. the services, referred to in clause 2.2, which are Nominated by the Customer from time to time.
- Big Pond Direct Access Service Network** means the data communication network owned and operated by Telstra and based on the TCP/IP protocol suite (using any form of transmission medium) and which provides interconnection between Big Pond Direct Points of Presence and the Internet.
- Big Pond Direct Customer Care** means the Telstra point of contact, set out in paragraph 10 of schedule A, for requesting changes to, and for other general queries about, Big Pond Direct.
- Big Pond Direct Help Desk** means the Telstra point of contact, set out in paragraph 1 of schedule A, for reporting Service Difficulties in Big Pond Direct or the Equipment.
- Big Pond Direct Point of Presence** means the place where a Connecting Carriage Service connects to the Big Pond Direct Access Service Network.
- Big Pond Direct Price List** means schedule B of this agreement.
- Big Pond Direct Proxy Cache** and **Proxy Cache** means the proxy cache facility on the Big Pond Direct Access Service Network.
- Big Pond Direct Web Site** means the world wide web site found at [www.direct.bigpond.com](http://www.direct.bigpond.com) or such other site as notified by Telstra from time to time.
- Bill Remittance Advice** means the section identified on an Invoice that is to be returned on making payment.
- BPD Business Mail** means the virtual corporate mailbox service described in schedule E provided as part of Big Pond Direct if requested by the Customer completing and submitting a BPD Business Mail Application Form.
- BPD Business Mail Application Form** means the application form for BPD Business Mail which forms part of these terms and conditions if completed and submitted by the Customer.
- Business Day** means any day, other than a Saturday, Sunday or recognised public holiday in the state in which the Customer Premises is located.

**Business Hours** means 8:30am to 5:00pm, Local Time.

**Cable BackChannel Threshold Ratio** means the ratio, in each Month, of the total cable traffic sent by the Customer through an Access Port under this agreement to the total traffic received by the Customer through such Access Port.

### Change Event means:

- a. the issue of a Competition Notice by the ACCC in respect of a party to this agreement;
- b. the grant of an injunction against Telstra in relation to a breach or alleged contravention of the Trade Practices Act 1974 (C'th);
- c. the declaration, addition, variation or removal of a condition applying to Telstra's carrier licence granted under section 56 of the Telecommunications Act 1997 (C'th);
- d. the giving of a lawful directive to Telstra by the Regulator;
- e. the giving of a direction to Telstra by the Minister; or
- f. the introduction of any industry code or standard or other code of practice, whether registered or otherwise, with which Telstra is obliged to or chooses to comply.

**Charges** means Monthly Usage Charges, Access Port Connection Charges, Upgrade Charges, Administration Fees, Equipment charges, Maintenance Fees and all other relevant charges payable by the Customer under this agreement.

**Confidential Information** means the terms and conditions of this agreement together with all confidential, non-public or proprietary information exchanged between the parties before, on or after the date of this agreement relating to the business, technology or other affairs of the provider of the information but excludes information:

- a. which is in or becomes part of the public domain other than through breach of this agreement or an obligation of confidence owed to the provider;
- b. which a party can prove by contemporaneous written documentation was already known to it at the time of disclosure by the disclosing party (other than if such knowledge arose from disclosure of confidential information in breach of an obligation of confidentiality); or
- c. which the recipient acquires from a third party entitled to disclose it.

**Connecting Carriage Service** means the telecommunications service between the Customer Premises and the Big Pond Direct Point of Presence (eg. a telephone or ISDN line).

**Creditworthiness Information** means, but is not limited to:

- a. the Customer's credit rating;
- b. if the Customer's accounts are audited, a copy of the Customer's most recent published audited balance sheet and published audited profit and loss statement (together with any notes attached to or intended to be read with such balance sheet or profit and loss statement);
- c. a copy of the Customer's audited or unaudited balance sheet and audited or unaudited profit and loss statement (together with any notes, attached to or intended to be read with such balance sheet or profit and loss statement) which relate to the period which has elapsed since the end of the period to which each of the documents referred to in sub-paragraph (b) relates;
- d. if the Customer's accounts are unaudited, a copy of the Customer's most recent balance sheet and profit and loss statement (together with any notes attached to or intended to be read with such balance sheet or profit and loss statement);
- e. a letter, signed by the company secretary or duly authorised officer of the Customer, stating that the Customer is not insolvent and not under any external administration (as defined in the Corporations Law) or under any similar form of administration under any laws applicable to it

in any jurisdiction

- f. a declaration of solvency (in the form prescribed by law for the purposes of a voluntary winding up) from the directors of the Customer approved at a valid meeting of the directors of the Customer;
- g. a credit report in respect of the Customer or any of its Principals from any credit reporting agency, credit provider or other independent party; and

h. any other information reasonably required by Telstra.

**CustData Web Page** means a world wide web page advised to the Customer by Telstra and used by the Customer to access and change certain information relating to Big Pond Direct.

**Customer Equipment** means the equipment and software used by the Customer to connect to, access or use Big Pond Direct.

**Customer Premises** means the Nominated premises of the Customer.

**Customer Problem** has the meaning given to it in clause 3.6.

**Customer Site Contact** means the person nominated by the Customer in accordance with clause 6.1 as the contact person in respect of a particular Customer Premises.

**Customer Supplied IP Addresses** has the meaning given to it in clause 4.7.

**Early Termination Fee** means the fee payable for terminating a service during the Initial Period as set out in paragraph 8 of the Big Pond Direct Price List.

**Equipment** means Routers and any other equipment and software supplied to the Customer by Telstra pursuant to schedule D, if any.

**Equipment Repair Time** means the period of time between a Service Difficulty in an item of Equipment being reported to the Big Pond Direct Help Desk by telephone by a Customer Site Contact and, if Telstra determines the Service Difficulty is a Fault, the repair of the Fault by Telstra.

**Equipment Response Time** means the period of time between a Service Difficulty in an item of Equipment being reported to the Big Pond Direct Help Desk by telephone by a Customer Site Contact and a response from Telstra acknowledging the report of the Service Difficulty.

**Fault** means a Service Difficulty reported by the Customer to the Big Pond Direct Help Desk and determined by Telstra to be a problem which it is Telstra's responsibility under this agreement to rectify.

**Force Majeure Event** means an event or circumstance, or combination of events or circumstances, that:

- a. is beyond the reasonable control of the party affected by the event or circumstances;
  - b. causes or results in a default or delay in that party performing its obligations under this agreement; and
  - c. could not, or the effects of that event could not, have been prevented, overcome or remedied by the exercise by the party affected of a standard of care and diligence consistent with that of a reasonable person under the circumstances,
- and includes any of (but is not limited to):

- d. fire, lightning, explosion, flood, earthquake, storm, cyclone, action of the elements, act of God, natural disaster, radioactive contamination, toxic or dangerous chemical contamination or force of nature;
- e. riots, civil commotion, malicious damage, sabotage, act of a public enemy, war (declared or undeclared) or revolution;
- f. action or inaction by, or order of, a court, government or authority (including an injunction, denial, refusal or failure to grant any permit, authorisation, licence, approval or acknowledgment despite timely best endeavours to obtain the grant);
- g. strikes, lockouts, industrial or labour disputes or difficulties, work bans, blockages or picketing;

- h. breakdown or failure of any facilities, machinery or equipment;
- i. unavailability of, interruption of, inability to, or delay in delivery of, essential equipment, goods, supplies or services needed by either party to perform its obligations under this agreement;
- j. Telstra being denied access to the Customer Premises, or Telstra being interrupted in the performance of, or being unable to perform, its obligations under this agreement by reason of an order of a court, tribunal or competent Government direction.

**General Network Availability Levels** has the meaning given to it in paragraph 4 of schedule A.

**General Network Performance Levels** has the meaning given to it in paragraph 5 of schedule A.

**Gigabyte (and Gbyte)** means, for the purpose of this agreement, 1,000,000,000 bytes.

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

**Indemnity Event** has the meaning given to it in clause 10.1.

**Initial Period** has the meaning given to it in paragraph 2 of schedule A.

**Insolvent** means being an insolvent under administration or insolvent (as defined in the Corporations Law) or having a controller (as defined in the Corporations Law) 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, in the case of a natural person, being bankrupt or being the subject of bankruptcy proceedings, or having something with the same or a similar effect happen under the laws of any jurisdiction.

**Intellectual Property Rights** means all rights in relation to patents, copyright, registered designs, registered and unregistered trade marks, trade secrets, know-how and confidential information and all other intellectual property as defined in article 2 of the Convention establishing the World Intellectual Property Organisation of July 1967, including any right to register those rights, whether created before or after the date of this agreement, whether existing in Australia or any other country and in all cases for the duration of those rights.

**Internet** means the international network of data networks utilising the TCP/IP protocol suite of which the Big Pond Direct Access Service Network forms part.

**Invoice** means an invoice sent to the Customer setting out Charges payable by the Customer under this agreement.

**Licensed IP Addresses** has the meaning given to it in clause 4.1.

**Local Time** means the time in the state or territory in which the Customer Premises are located.

**Maintenance** means the work performed on Equipment, on the terms and conditions of this agreement, to remedy Faults in that Equipment.

**Maintenance Fees** has the meaning given to it in clause 4 of schedule D.

**Megabyte** means, for the purpose of this agreement, 1,000,000 bytes.

**Minimum Monthly Charge** has the meaning given in paragraph 1.4 of the Big Pond Direct Price List.

**Minister** means the minister responsible for administering the Telecommunications Acts.

**Month** means a calendar month and **Monthly** means per calendar month.

**Monthly Usage Charge** has the meaning given to it in paragraph 4 of the Big Pond Direct Price List.

**Nominated** means selected by the Customer using the Application Form or requested from Telstra in writing.

**Option** means a pricing option, from paragraph 2 of the Big Pond Direct Price List, which is Nominated by the Customer to apply to an Access Port.

**Principals** means any of the Customer's owners, directors or company

- variation, amendment or replacement of them;
- b. the singular includes the plural and vice versa;
- c. the word "person" includes a firm, a body corporate, a partnership, joint venture, an unincorporated body or association, or any government agency;
- d. if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- e. the verb "include" (in all its parts, tenses and variants) is not used as, nor is it to be interpreted as, a word of limitation;
- f. the words "including", "for example" or "such as" do not limit the meaning of the words to which the example relates or examples of a similar kind;
- g. a reference to "written" or "in writing", includes printing and other means of representing or reproducing words in material form;
- h. a reference to dollars or "\$" is a reference to the lawful currency of Australia;
- i. a reference to a number includes a fraction, mixed number or mixed decimal;
- j. a reference to a "day" is to a calendar day;
- k. a reference to "cable" or "satellite" traffic under this agreement is not a reference to the Customer's Connecting Carriage Service;
- l. a reference to this agreement includes a reference to its schedules ; and
- m. a reference to traffic or bytes received or sent is a reference to traffic, bytes received by the Customer or sent by the Customer, as the case may be.

1.3 Headings are to be ignored in construing the agreement.

## 2. Big Pond Direct

- 2.1 Telstra will provide Big Pond Direct and Equipment to the Customer on the terms and conditions set out in this agreement.
  - 2.2 The provision of Big Pond Direct includes provision of, and access to, the Nominated services as described on the Big Pond Direct Web Site and varied by Telstra from time to time, Big Pond Direct Proxy Cache and such other Big Pond Direct services as agreed with Telstra from time to time.
  - 2.3 Telstra will operate a global connection to the Internet and make all reasonable efforts to maintain access routes and interconnection agreements with member networks of the Internet.
- Routing**
- 2.4 Telstra does not guarantee that multiple Connecting Carriage Services connected to the same Big Pond Direct Point of Presence will terminate on the same router.
  - 2.5 Telstra may change its Routing Policy at any time without notice to the Customer and without the Customer's consent.

secretary.

**Regulator** means, as the case requires, the Minister, the ACA, the ACCC or any two or more of them.

**Response Time** means the period of time between a Service Difficulty in Big Pond Direct being reported to the Big Pond Direct Help Desk by telephone by a Customer Site Contact and a response from Telstra acknowledging the report of the Service Difficulty.

**Restoration Time** means the period of time between a Service Difficulty in Big Pond Direct being reported to the Big Pond Direct Help Desk by telephone by a Customer Site Contact and, if Telstra determines the Service Difficulty is a Fault, the restoration of the service by Telstra.

**Restoration Time Rebate** means the rebate amount calculated in accordance with paragraph 3 of schedule A, if any.

**Router** means a router purchased by the Customer pursuant to schedule D, if any.

**Routing Policy** means the rules used by Telstra from time to time to route packets through the Big Pond Direct Access Service Network.

**Satellite BackChannel Threshold Ratio** means the ratio, in each Month, of the total satellite traffic sent by the Customer through an Access Port under this agreement to the total traffic received by the Customer through such Access Port.

**Scheduled Outages** means those occasions when Telstra performs scheduled maintenance, upgrades or repairs to the Big Pond Direct Access Service Network and all or part of Big Pond Direct is not available at an Access Port as a result.

**Security** means an unconditional bank guarantee in favour of Telstra from an Australian licensed bank in Australia, payable in Australian dollars, on demand or other security as agreed between the parties in a form approved by Telstra and includes any increase to existing security.

**Service Difficulty** means an issue as to the availability or quality of Big Pond Direct or operation of Equipment.

**Settlement Credit Plan** means the terms and conditions set out in schedule C.

**Single-homed Customer** means a Customer whose only connection to the Internet is through Big Pond Direct.

**Taxes** means taxes (including goods and services taxes), levies, imposts, deductions, charges, withholdings and duties (including stamp and transaction duties), together with any related interest, penalties, fines and other statutory charges.

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

**TCP/IP** means the Transmission Control Protocol/Internet Protocol in general use in accordance with good practice.

**Temporary Service** means a Big Pond Direct service acquired by the Customer for less than the Initial Period as determined by the relevant Connecting Carriage Service.

**Terabyte** means, for the purpose of this agreement, 1,000,000,000,000 bytes.

**Traffic Volume** means the number of Megabytes of data received by the Customer through all Access Ports under this agreement.

**Upgrade Charge** has the meaning given to it in paragraph 5.6 of the Big Pond Direct Price List.

**Usage** means the number of Megabytes of data received by the Customer through an Access Port on a daily basis, aggregated to a Monthly total.

**Utilisation** means, in any billing period, the total number of Megabytes received by the Customer through an Access Port divided by the theoretical total number of Megabytes that could have been received by the Customer through that Access Port based on the speed for which it was configured during such billing period.

1.2 In this agreement unless the contrary intention appears:

- a. a reference to this agreement or another instrument includes any

## Connection

2.6 Telstra will use its best efforts to implement an Access Port connection within the period set out in paragraph 8 of schedule A. Telstra will notify the Customer when the connection has been affected.

2.7 The Customer is responsible for obtaining and paying for its use of the Connecting Carriage Service and for all associated telecommunication service and other charges involved in the connection between the Customer Premises and the Big Pond Direct Point of Presence.

The Customer acknowledges that:

- a. the Connecting Carriage Service does not form part of Big Pond Direct; and
- b. Telstra is under no obligation to notify the Customer:
  - i. about the availability of new Big Pond Direct points of presence; or
  - ii. that connection to a different Big Pond Direct point of presence would reduce the cost of a Connecting Carriage Service.

## Access Transmission Rates

2.9 The Customer must Nominate the Access Transmission Rate and the Connecting Carriage Service to be used to connect to the Big Pond Direct Point of Presence.

2.10 The Customer may request a change to the Access Transmission Rate by submitting a duly completed Application Form to Big Pond Direct Customer Care. Telstra's implementation of the change will constitute an agreement by the Customer to pay the Monthly Usage Charges which apply to the new Access Transmission Rate and any relevant Upgrade Charges.

2.11 Where Telstra agrees to a request made under clause 2.10, it will use its best efforts to change the Access Transmission Rate within the period specified in paragraph 8 of schedule A.

## Software

2.12 If a Customer is supplied with software under this agreement, then the software is supplied on the terms and conditions that accompany it.

## 3. Network Performance and Availability

3.1 Telstra will use its best efforts to meet the:

- a. General Network Performance Levels;
- b. General Network Availability Levels; and
- c. Response Times set out in schedule A.

3.2 Subject to clause 3.7, Telstra will meet the Restoration Times for Big Pond Direct as set out in schedule A.

3.3 If Telstra fails to meet a Restoration Time as set out in schedule A, Telstra will, subject to clauses 3.4, 3.5, 3.6 and 3.7, credit the Customer's Account with the relevant Restoration Time Rebate. To the extent permitted by law, the payment of a Restoration Time Rebate to the Customer represents the Customer's sole remedy for a breach of clause 3.2.

3.4 The Customer must claim a Restoration Time Rebate in writing within twenty Business Days of the date on which Telstra fails to meet the relevant Restoration Time. If the Customer does not claim a Restoration Time Rebate in writing within such period then the Customer is taken to have unconditionally and irrevocably waived its right to:

- a. claim the Restoration Time Rebate; and
- b. make any claim against Telstra in respect of Telstra's failure to meet that Restoration Time.

3.5 Telstra is not liable for failing to meet a Restoration Time if the failure was caused by:

- a. a fault in Customer Equipment or other equipment or software that does not form part of Big Pond Direct; or
- b. causes external to Big Pond Direct.

3.6 Notwithstanding clause 3.5, or clauses 3.7 and 3.8 of schedule D, if Telstra performs any work to attempt to remedy a problem in:

- a. Customer Equipment or other equipment or software that does not form part of Big Pond Direct;
- b. Equipment in circumstances where, pursuant to schedule D or otherwise under this agreement, Telstra is not obliged to remedy the problem; or
- c. Big Pond Direct resulting from a breach of this agreement by the Customer,

(a "Customer Problem") then:

- i. the Customer must pay Telstra for such work at Telstra's then current rates; and
- ii. Telstra may cease work at any time without incurring any liability for failing to correct the Customer Problem.

3.7 The obligation in clause 3.2 only applies to Access Ports with Option 1, 2 or 3 pricing.

#### Scheduled Outages

3.8 Telstra will use its best efforts to give the Customer a minimum of 5 Business Days notice of any Scheduled Outages.

3.9 Telstra will use its best efforts to ensure that a Scheduled Outage is performed between 9.00pm and 7.00am Local Time.

3.10 Telstra will use its best efforts to ensure that Scheduled Outages will not, in aggregate, exceed:

- a. 7 hours per week; and
- b. fourteen hours per quarter.

#### 4. IP Addresses

4.1 Telstra grants to the Customer a non-exclusive, non-transferable licence to use any IP addresses provided to the Customer by Telstra ("Licensed IP Addresses"), in software and hardware devices on the Customer Equipment, for the sole purpose of enabling those devices to access a Big Pond Direct Point of Presence.

4.2 Telstra may revoke the Customer's licence to use a Licensed IP Address, by notice to the Customer, if:

- a. the Customer breaches the licence conditions in clause 4.1;
- b. the Customer fails to pay any amount due to Telstra under this agreement by the due date for payment; or
- c. the Licensed IP Address was provided for use with a service that is no longer provided to the Customer.

4.3 The Customer's licence to use Licensed IP Addresses terminates immediately on termination or the expiration of this agreement.

4.4 If the Customer has selected a pricing option that is based on an international satellite service, its Licensed IP Addresses will only be advertised via Telstra's satellite links. If the Customer changes from such an option to a pricing option that is based on a submarine cable service, its Licence to use its Licensed IP Addresses terminates immediately.

4.5 On termination or revocation of a licence to use a Licensed IP Address, the Customer must immediately cease using and remove the Licensed IP Address from all software and hardware devices in the Customer Equipment.

4.6 The Customer acknowledges that Telstra is under no obligation to supply IP addresses to the Customer.

4.7 Telstra may, as a condition of providing Big Pond Direct, require the Customer to provide Telstra with IP addresses (up to 256 addresses for services that involve satellite transmission) from within a certain block ("Customer Supplied IP Addresses").

4.8 If the Customer advertises IP Addresses which are not provided by Telstra, Telstra may request written permission from the registered owner of those IP Addresses to route those IP Addresses on the Customer's behalf. If Telstra does not receive such written permission when requested, Telstra reserves the right to refuse to route such IP Addresses advertised by the Customer through the Big Pond Direct Access Service Network.

#### 5. Fees and Payment

5.1 The Customer must pay the Charges in the amounts and on the terms and conditions set out in the Big Pond Direct Price List and this agreement.

5.2 The Customer is responsible for all Charges incurred on its Account including amounts related to alleged and actual unauthorised use of Big Pond Direct by third parties.

5.3 Monthly Usage Charges are calculated and billed on a Monthly basis, beginning on the first day of each Month. Other Charges are billed as they are incurred and will appear on the Monthly Invoice. All Charges are payable by the date specified on the Invoice or, if not so specified, within 30 days of the date of Invoice.

5.4 Customers of Telstra Domestic Wholesale must pay all Charges or other amounts due to Telstra by way of electronic transfer of cleared funds to the bank account advised by Telstra Domestic Wholesale from time to time.

5.5 Customers (other than Telstra Domestic Wholesale Customers) must pay all Charges or other amounts due to Telstra by cheque sent to the address set out on the Invoice (or as otherwise advised by Telstra from time to time) unless an alternative payment method is specified on or with an Invoice.

5.6 The Customer must pay all Charges in full without deducting, withholding, setting off or counter claiming any amount or attaching any condition to the payment.

5.7 All payments made by the Customer must be accompanied by notification of payment. If payment is made by electronic funds transfer, the Customer must forward:

- a. a completed Bill Remittance Advice; or
- b. a written facsimile advice notifying Telstra that a payment has been made by electronic transfer, stating the value of the payment, the Invoice and Account to which it relates,

to Telstra on the same day that the transfer is made. All payments made by cheque must be accompanied by a completed Bill Remittance Advice unless an alternative payment advice method is specified on or with the Invoice.

5.8 Customers of Telstra Domestic Wholesale must forward completed notifications of payment in accordance with clause 5.7 to the address or fax number advised by Telstra Domestic Wholesale from time to time.

5.9 Customers (other than Telstra Domestic Wholesale Customers) must forward completed notifications of payment in accordance with clause 5.7 to the address or fax number set out on the Invoice or such other address or fax number as advised by Telstra from time to time.

5.10 Telstra is taken to have received an electronic funds transfer from the Customer on the date of deposit shown in Telstra's bank account statement.

5.11 Telstra may charge interest on any overdue amount from the due date to the date that payment is received. Interest will be calculated at the National Australia Bank Limited Business Indicator rate published weekly in the Australian Financial Review (or if it ceases to be published, an equivalent rate) plus 3% per annum. Telstra may calculate and capitalise interest monthly. In addition to charging interest and exercising any other rights it has, Telstra may take action to recover any overdue amount as a debt due to Telstra.

5.12 Telstra may bill the Customer for amounts previously unbilled or understated provided that Telstra gives the Customer details of such amounts.

5.13 Telstra may refuse to change the Access Transmission Rate or to provide any additional Big Pond Direct services (including Equipment or Maintenance) to the Customer while the Customer is in default of any of its obligations under this clause 5.

#### 6. Customer Obligations

6.1 The Customer must:

- a. provide all information and assistance as is reasonably required by Telstra in order to enable Telstra to meet its obligations under this agreement;
- b. comply with:
  - i. the Acceptable Usage Policy; and
  - ii. all reasonable directions and instructions of Telstra in relation to the Customer's use of Big Pond Direct and the Equipment; and
- c. ensure that Telstra is provided with sufficient and timely access to each Customer Premises, Customer Equipment and Equipment, if any, to enable Telstra to provide Big Pond Direct, Maintenance and Equipment in accordance with Telstra's obligations under this agreement;
- d. provide Telstra with the name and details of the Customer Site Contact at each of the Customer Premises and promptly notify Big Pond Direct Customer Care in writing of any changes to that information; and
- e. promptly notify the Big Pond Direct Help Desk of any Service Difficulty and provide all available details necessary to assist Telstra in investigating the Service Difficulty.

6.2 The Customer is solely responsible for:

- a. selecting, supplying, configuring and maintaining (at its expense) its own facilities and equipment which includes Customer Equipment;
- b. selecting, obtaining and maintaining its Connecting Carriage Service;
- c. choosing which Big Pond Direct points of presence it connects to;
- d. enquiring about the availability of new Big Pond Direct points of presence;
- e. the purpose(s) for which the Customer uses Big Pond Direct and the

- Equipment, if any; and
- f. the content of any data or information which the Customer sends or receives using Big Pond Direct or the Equipment, if any.

## 7. Credit Management

7.1 Telstra may at any time review the creditworthiness of the Customer and require the Customer to provide such Creditworthiness Information as directed by Telstra. In doing so, Telstra may seek information or advice from third parties such as credit reporting agencies or credit providers to assist it.

7.2 The Customer agrees to promptly co-operate with any creditworthiness review in accordance with clause 7.1 by providing Telstra with any information, authorisation or consent Telstra reasonably requires for the purposes of the review. In particular, the Customer must:

- provide Creditworthiness Information to Telstra within five Business Days of receipt of a request from Telstra for that information;
- provide Security to Telstra within 10 Business Days, or a longer period if agreed, of being notified by Telstra that it requires the Security; and
- provide any information necessary for any credit reporting agency, credit provider or other independent party preparing a credit report on the Customer for Telstra to enable it to form an accurate opinion of the Customer's creditworthiness including the information in clause 7.3.

7.3 The Customer agrees to procure written consents (as required under the Privacy Act 1988 (C'th)) from such of its Principals as is reasonably necessary in the circumstances to enable Telstra to:

- obtain from a credit reporting agency, credit provider or other independent party, information contained in a credit report;
- disclose to a credit reporting agency, credit provider or other independent party, personal information about each Principal; and
- obtain and use a consumer credit report.

7.4 By providing Creditworthiness Information to Telstra under this clause 7, the Customer is taken to have represented and warranted that such information is true, fair, accurate and complete as at the date on which it is received by Telstra.

7.5 Telstra may require the Customer to provide Security for its obligations under this agreement if:

- the Customer fails to make any payment under this agreement when it falls due;
- the Customer becomes or, in Telstra's reasonable opinion, is likely to become Insolvent;
- there is a change in the controlling interest of the Customer;

- the Customer requests or acquires additional services from Telstra;
- the Customer ceases or, in Telstra's reasonable opinion, is likely to cease carrying on business.

7.6 If the Customer is required to provide Security in accordance with clause 7.5, Telstra is not obliged to provide, and may cease to provide, Big Pond Direct or other services (including Maintenance) under this agreement to the Customer until such Security has been provided. If Telstra chooses to provide Big Pond Direct to the Customer prior to receipt of the Security, it does not waive the requirement that the Customer provide the Security.

7.7 Unless otherwise agreed by Telstra, the Customer must (at its own expense) maintain any Security required in accordance with clause 7.5 for the term specified in clause 7.9. For the avoidance of doubt, this means that if the Security is wholly or partially drawn down by Telstra, the Customer must ensure that Telstra is immediately issued with a replacement or additional Security for the entire amount of the Security as was in place immediately before that draw down.

7.8 Telstra may call upon the Security provided by the Customer to Telstra to pay unpaid amounts due under this agreement if:

- the Customer fails to pay an Invoice or other sum due under this agreement by the date that payment of that Invoice or other sum is due; or
- if the Customer becomes Insolvent.

7.9 Telstra may retain any Security provided by the Customer for seven months after the later of:

- the date of termination of this agreement;
- the date the Customer paid all amounts due to Telstra under this agreement;
- the date the Customer ceased to acquire goods or services from Telstra under this agreement;

and, following expiry of such period, Telstra will return such Security following a request in writing by the Customer for Telstra to return such Security.

7.10 Unless Telstra gives notice to the contrary, the Customer must pay to Telstra on demand (whether demanded by way of invoice or otherwise) all Taxes imposed on or payable by or met by Telstra on or in respect of or in connection with any Security provided by the Customer.

## 8. Confidentiality

8.1 No Confidential Information of a party may be disclosed by the other party to any person except:

- with the consent of the party who supplied the information;

- to its legal or other professional advisers, employees or authorised officers on a confidential basis;
- if the recipient party is required to disclose the information by law (which includes in the case of Telstra, as may be required under the *Telstra Corporation Act 1991*) or as required by the listing rules of any stock exchange where the recipient party's securities are listed or quoted; or
- if the recipient party is required to disclose the information in connection with legal proceedings relating to this agreement.

8.2 A party who has received Confidential Information from the other under this agreement must, on the request of the other party, deliver to that party within a reasonable time frame all documents or other materials containing or referring to that information which are in its possession, power or control or in the possession, power or control of persons who have received Confidential Information from it under clauses 8.1(a) or 8.1(b).

## 9. Customer Warranties and Third Party Agreements

### Warranties

9.1 The Customer warrants that it, and its employees, contractors and agents will not use Big Pond Direct or the Equipment, if any, for any purpose that may:

- menace or harass any person or cause damage or injury to any person or property;
- be regarded by a reasonable person as offensive;
- infringe any third party Intellectual Property Right, or rights;
- result in the misuse of a third party's confidential information;
- constitute an infringement or the commission of an offence against any law, standard or code;
- involve sending or receiving any instructions which, if implemented, might cause damage or injury to any person or property;
- expose either party to the risk of any legal or administrative action including prosecution under any law;
- affect the availability of Big Pond Direct to other Telstra customers;
- result in a "virus", "worm", "trojan" or similar program being sent through Big Pond Direct from the Customer Equipment or Equipment; or
- breach the Acceptable Usage Policy.

9.2 The Customer warrants that it will not, and will ensure that its employees, contractors and agents will not, use Big Pond Direct or the Equipment, if any, to send excessive unsolicited email to third parties.

### Third party agreements

9.3 Unless otherwise agreed with Telstra, the Customer must include, and enforce, in all agreements between it and persons who use the Customer's Internet services:

- warranties substantially in the form of and no less stringent than the warranties set out in clauses 9.1 and 9.2 (substituting the Customer with the third party, Big Pond Direct with the name of the relevant Customer service and Customer Equipment or Equipment with the third party's equipment); and
- an express right for the Customer to terminate, without incurring liability, for the third party's breach of any of the warranties referred to in (a) if any warranty is breached on more than two occasions in any Month.

9.4 On request from Telstra, the Customer will provide a copy of each of its agreements (having removed, if necessary, any Confidential Information from such agreements) with persons who use the Customer's Internet services, to allow Telstra to verify compliance with clause 9.3.

### Material breach

9.5 Failure to comply with the provisions of clause 9 or a breach of any warranty in clause 9 is a material breach of this agreement.

## 10. Indemnity

10.1 The Customer indemnifies Telstra against any loss, cost, expense or liability arising from any claims, demands or proceedings by any person against Telstra arising out of, or in any way connected to:

- Telstra's use of Customer Supplied IP Addresses;
- the use or attempted use of Big Pond Direct by the Customer or by any third party (whether authorised or unauthorised); or
- the use or attempted use of the Equipment by any person other than Telstra.

("Indemnity Event").

10.2 Without limiting the scope of the indemnity in clause 10.1, an Indemnity Event includes:

- a breach of clauses 9.1, 9.2 or 9.3; and
- any liability or obligation incurred by Telstra as a result of data sent to, or received from, the Customer's Access Port or the Equipment.

10.3 The Customer's liability to Telstra under the above indemnities is reduced to the extent that Telstra's loss, cost, expense or liability arises from, or is attributable to, any negligent act or omission or willful misconduct on the part of Telstra, Telstra's officers, employees,

12.7 The termination of this agreement for any reason will not prejudice any rights which have accrued to either party prior to the date of termination.

## 11. Liability

11.1 Except as expressly provided to the contrary in this agreement and to the full extent permitted by law, all terms, conditions, warranties, undertakings, inducements or representations whether express, implied, statutory or otherwise relating in any way to the provision of Big Pond Direct or otherwise relating to this agreement are excluded.

11.2 Where any Act of Parliament implies in this agreement any term, and that Act voids or prohibits provisions under a contract which exclude or modify the operation of such term, such term is deemed to be included in this agreement. However, Telstra's liability for breach of such term will be, if permitted by law, limited to one of the following remedies (at Telstra's option):

- a. if the breach relates to services:
  - i. the resupply of the services; or
  - ii. the payment of the cost of resupplying the services; and
- b. if the breach relates to goods:
  - i. the replacement of the goods or the supply of equivalent goods;
  - ii. the repair of such goods;
  - 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.

### Limitation of liability

11.3 Subject to clause 11.2, Telstra excludes all liability for indirect and consequential loss (including for loss of profits of any kind, loss or corruption of data, loss of revenue, loss of anticipated or expected profits or revenue and economic loss of any kind) in contract, tort, under any statute or otherwise (including negligence) to the Customer arising from or connected to this agreement.

11.4 Subject to clause 11.2 and without prejudice to clause 11.3, Telstra's total liability to the Customer for loss or damage of any kind, other than the types referred to in clause 11.3 (however caused) due to Telstra's negligence, breach of contract or breach of any law arising out of or in any way related to this agreement is limited in aggregate for all claims arising in any calendar year to the lesser of:

- a. \$5,000; and
- b. 10% of the amount paid by the Customer to Telstra under this agreement in that year.

11.5 The exclusions referred to in clauses 11.3 and 11.4 apply to any action giving rise to an obligation, duty or liability even if the action was not authorised, or not capable of being authorised, by the Customer.

11.6 Subject to clause 11.2 and notwithstanding any other provision of this agreement, Telstra's liability to the Customer is reduced to the extent that any act or omission of the Customer, or of its officers, employees, contractors, agents or customers, caused or contributed to the liability.

## 12. Term and Termination

### Term

12.1 This agreement will commence on the date that Telstra:

- a. notifies the Customer that it has accepted its Application Form; or
- b. first supplies any part of Big Pond Direct to the Customer,

whichever is the earlier, and continue until terminated under this clause 12 or clause 16.12.

### Termination

12.2 The Customer may terminate this agreement (or any of the services Nominated under clause 2.2) at any time during the Initial Period by:

- a. giving one Month's written notice to Telstra; and
- b. paying to Telstra the Early Termination Fee.

12.3 Either party may terminate this agreement at any time after the Initial Period by giving the other party 90 days' written notice.

12.4 Either party may terminate this agreement at any time by notice in writing to the other party if such other party:

- a. has committed a material breach of this agreement and has not rectified the breach 14 days after receiving notice from the other party specifying the nature of the breach and requiring its rectification;
- b. has failed to pay or meet any financial obligation (including an obligation under clause 7) under this agreement; or
- c. becomes Insolvent.

12.5 If this agreement is terminated by Telstra pursuant to clause 12.4 during the Initial Period, the Customer will pay Telstra the applicable Early Termination Fee.

12.6 If this agreement is terminated by the Customer pursuant to clause 16.12 during the Initial Period, Telstra may require the Customer to pay, and the Customer will pay, the Early Termination Fee, unless:

- a. the amendment notified by Telstra (if it became effective) would increase the price payable to Telstra by the Customer under this agreement for Big Pond Direct; or
- b. Telstra otherwise determines, in its absolute discretion, that such fee

## 13. Suspension of Service

13.1 Without limiting any of Telstra's other rights or remedies under this agreement and otherwise, Telstra may suspend the provision of all or part of Big Pond Direct or Maintenance to the Customer at any time:

- a. while payment of an Invoice is overdue for a period of seven days after the service of a notice that the provision of Big Pond Direct or Maintenance to the Customer will be suspended due to overdue payment;
- b. in accordance with the Acceptable Usage Policy if the Customer breaches clause 6.1(b)(i);
- c. if the Customer breaches clauses 9.1, 9.2 or 9.3;
- d. if the Customer breaches any term or condition of this agreement other than clauses 9.1, 9.2, 9.3 or 6.1(b)(i) and fails to remedy that breach within a period of 14 days of Telstra notifying the Customer of the breach and requiring rectification;
- e. if the Customer becomes Insolvent;
- f. if a Change Event occurs and suspension is necessary to ensure compliance with any notice, direction, declaration, order, directive, judgment, code or standard the subject of the Change Event; or
- g. in the event of an emergency or whenever Telstra considers it necessary or reasonable in order to safeguard provision of Big Pond Direct to emergency and other essential services.

13.2 If the provision of a Big Pond Direct service or Maintenance is suspended under clauses 13.1(a), 13.1(b), 13.1(c), 13.1(d) or 13.1(e), then:

- a. removal of the suspension will entitle Telstra to charge the Customer an Administration Fee in the amount referred to in paragraph 5.8 of the Big Pond Direct Price List;
- b. Telstra may, as a condition of removing the suspension, require the Customer to pay all fees and charges outstanding under the agreement and the Administration Fee referred to in sub-clause 13.2(a) in advance; and
- c. while the suspension is in place, Telstra may refuse to supply any additional Big Pond Direct services Nominated by, but not yet provided to, the Customer or any additional Equipment or Maintenance requested by the Customer.

## 14. Disputes

14.1 Any dispute arising out of, or relating to, this agreement, other than a dispute relating to:

- a. fees, charges or other amounts due or paid under this agreement; or
- b. clause 7 of this agreement,

(a "Dispute"), must, prior to either party initiating any form of litigation (other than for urgent equitable relief), be the subject of discussions between a Telstra Account Manager and the chief executive officer of the Customer (or their nominees) ("Designated Representatives"). The Designated Representatives must, within 7 days of one party notifying the other in writing of the existence of a Dispute, meet at the offices of the Customer (or such other place as the parties may agree) and attempt to resolve the Dispute.

14.2 If a Dispute remains unresolved for 14 days after the Designated Representatives of the parties have met, (or should have met), the Dispute will, at either party's request, immediately be referred to mediation under the then current Guidelines for Commercial Mediation used by the Australian Commercial Disputes Centre in Sydney, Australia. Unless otherwise agreed by the parties, the mediation will take place in Sydney, Australia. If the parties cannot agree on a mediator, then the parties agree to accept a mediator nominated by the then Chairman of the Institute of Arbitrators and Mediators Australia.

14.3 If a Dispute remains unresolved 45 days after referral of the Dispute to mediation, then either party is not bound to resolve the Dispute by mediation and may commence litigation to resolve the Dispute and any other related Dispute (whether the subject of a mediation or otherwise).

## 15. Tax

15.1 The Customer must pay, and must keep Telstra indemnified against, any Taxes payable upon, or in respect of, this agreement or any services, payments, documents, transactions or matter referred to in, or contemplated by, this agreement whenever and however such Taxes arise.

15.2 Without limiting clause 15.1 but subject to clause 15.3, if GST is imposed on any supply made under this agreement by one party (referred to in this clause 15 as the supplying party) to another party (referred to in this clause 15 as the 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.

15.3 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.

15.4 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.

15.5 The supplying party warrants that it will comply with the provisions of Part VB of the Trade Practices Act 1974 (C'ht) in relation to passing on to the receiving party the benefit resulting from any abolition or reduction of taxes undertaken in conjunction with the introduction of GST.

15.6 Notwithstanding any other clause in this agreement, the supplying party shall not be entitled to recover from the receiving party any amount of GST which the supplying party has paid or is liable to pay in relation to or in connection with any supply acquired by the supplying party from a third party if the supplying party has received, or is entitled to, any form of tax credit or refund for the said amount of GST.

15.7 Where, under the terms of this agreement, the liability of either party is limited to a maximum dollar amount, the parties acknowledge that the dollar amount is exclusive of the GST payable, if any, on a supply made under an indemnity clause in this agreement.

15.8 Where, under the terms of this agreement, a fixed dollar amount is specified for the purpose of determining the time of billing, the parties acknowledge that the dollar amount refers to the total amount outstanding under this agreement, excluding any amount referable to GST.

15.9 The parties acknowledge that any reference in this agreement to a minimum charge or minimum commitment that is a fixed dollar amount (collectively referred to as the "Minimum Charges"), is to the amount of the Minimum Charges, excluding any amount referable to GST.

## 16. General

### Assignment

16.1 The Customer must not assign any of its rights or obligations under this agreement without the prior written consent of Telstra.

16.2 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.

### Waiver

16.3 Waiver of a breach of this agreement, or of any rights created by or arising upon default under this agreement can only be effected in writing

and must be signed by the party granting the waiver.

16.4 A breach of this agreement is not waived by a failure to exercise, a delay in exercising, or a partial exercise of, any remedy available under this agreement or in law or equity.

16.5 Subject to clauses 3.4 and 16.13, a right created by, or arising upon default under, this agreement, is not waived by a failure to exercise, a delay in exercising, or a partial exercise of, that right.

### Entire agreement

16.6 This agreement is the entire agreement between the parties in respect of its subject matter.

### Amendments

16.7 Subject to clauses 16.8, 16.9, 16.10 and 16.11 any amendments to this agreement must be in writing and be signed by both parties.

16.8 Either party may amend the notice details referred to in clause 16.18 at any time by notice in writing to the other party and without the other party's consent.

16.9 Telstra may amend any part of this agreement at any time without the Customer's consent and without notice where the amendment relates to:

- a. improvements in Big Pond Direct; or
- b. changes to, additions to, replacement or withdrawal of (in whole or in part), services offered under this agreement which at the time of the amendment are:
  - i. not being provided to the Customer and have not been Nominated by the Customer;
  - ii. not available to the Customer; or
  - iii. not relevant to the services Nominated by the Customer.

16.10 Telstra may amend this agreement, including changing, removing, adding or withdrawing services, at any time by providing the Customer with one Month's notice where a Change Event has occurred in order to ensure compliance with any notice, direction, declaration, order, directive, judgment, code or standard the subject of the Change Event.

16.11 Telstra may amend this agreement, including changing, removing, adding or withdrawing services, for any other reason at any time by providing the Customer with one Month's notice or such longer period as Telstra may specify ("Amendment Notice Period").

16.12 Upon receipt of a notice under clause 16.11, the Customer may terminate this agreement by giving written notice to Telstra at any time during the Amendment Notice Period, such notice to take effect at the end of the Amendment Notice Period.

16.13 If, at the end of the Amendment Notice Period, the agreement has not terminated, the Customer is taken to have accepted Telstra's amendment and loses its right to terminate the agreement under clause 16.12.

### Conflict of terms

16.14 Subject to clause 7.4, if there is a conflict between the terms of the schedules to this agreement and the terms of the agreement, then the terms of the agreement prevail to the extent of the inconsistency.

### Force Majeure

16.15 If a party is unable wholly or in part to perform any obligation (other than an obligation to pay money or an obligation under clause 9 or 10) under this agreement as a result of a Force Majeure Event, that obligation is suspended so far as the party's ability to perform it is affected by that Force Majeure Event.

### Survival of clauses

16.16 The obligations of confidentiality under clause 8, the relevant payment and security obligations under clauses 5 and 7, the indemnities in clauses 10, 15 and schedule D and the terms of clauses 16.14, 16.16, 16.23 and 16.24 survive the expiration or termination of this agreement for any reason.

### Subcontracting

16.17 Telstra may subcontract any of its obligations under this agreement to a third party without notice to the Customer and without the Customer's consent.

### Notices

16.18 Except as otherwise set out in this agreement, all notices or communications, including permission or consents given pursuant to this agreement by one party to the other:

- a. must be in writing;
- b. must be marked for the attention of the person set out below; and
- c. must be left at the address of the addressee, or sent by prepaid ordinary post (airmail if posted to or from a place outside Australia) to the address of the addressee, or sent by facsimile to the facsimile number set out below:

#### ● Customer:

As set out in the Application Form.

#### ● Telstra:

Address:  
Locked Bag J664, Perth, WA 6000.

Attention:  
Big Pond Direct Customer Care

Fax number:  
1800-644-377

16.19 If either party notifies the other of a different postal address or facsimile number then notices, approvals, and consents must be sent to that address or facsimile number.

16.20 A notice, approval or consent takes effect from the time it is received

unless a later time is specified on it.

A letter or facsimile is taken to be received:

- a. in the case of a posted letter, on the third (seventh, if posted to or from a place outside Australia) day after posting; and
- b. in the case of a facsimile, on production of a transmission report of the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the facsimile number of the recipient.

16.21 Telstra may notify (and is taken to have notified) the Customer of Scheduled Outages or force majeure events by making a notice available from the Big Pond Direct Web Site, or by placing a notice on the Customer's CustData Web Page. The Customer acknowledges that Telstra's notifications of Scheduled Outages are made to all of Telstra's customers and that it is the responsibility of the Customer to determine whether a Scheduled Outage will affect the Customer.

### Governing law

16.22 This agreement is governed by the law in force in New South Wales. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales and courts of appeal from them. Each party waives any right it has to object to an action being brought in those courts including by claiming that the action has been brought in an inconvenient forum or that those courts do not have jurisdiction.

16.23 The United Nations Convention on Contracts for the International Sale of Goods (The Vienna Convention) does not apply to this agreement.

### EXECUTED as an agreement

## Schedule A

These prices are valid from 1 July 2000 until further notice

### 1. Big Pond Direct Help Desk

Service Difficulties can be reported 24 hours a day, seven days a week.

Customers can contact the Big Pond Direct Help Desk on the following numbers, depending upon which type of customer they are.

- Telstra Domestic Wholesale customers - 1800 033 330
- Internet service providers (other than Telstra Domestic Wholesale customers) - 1800 624 512.
- Other customers - 1800 066 594.

Failure to contact the appropriate number may result in a delay in handling the Customer's Service Difficulty for which Telstra is not responsible.

## 2. Initial Period

Connecting Carriage Service	Initial Period* (Months)
Dedicated modem on PSTN	1
OnRamp (ISDN)	3
Accelerate Frame Relay	12
DDS Fastway	12
Megalink	12
Accelerate ATM	12

\* measured from the date of the fax from Telstra confirming connection of the Customer's Access Port to Big Pond Direct.

## 3. Restoration Time Rebate

3.1 Subject to paragraph 3.2 of this schedule A, the Restoration Time Rebate for Access Ports with Option 1, 2 or 3 pricing is 25% of the Monthly Usage Charge, including any amount referable to GST, incurred by the Customer for that Access Port in the Month prior to the Month in which the Fault occurred.

3.2 The Restoration Time Rebate referred to in paragraph 3.1 of this schedule A is subject to a maximum Monthly rebate per Access Port depending upon the Customer's Connecting Carriage Service in accordance with the following table:

Connecting Carriage Service	Maximum Monthly Restoration Time Rebate	
	Exclusive of GST	Inclusive of GST
Dedicated modem on PSTN	\$500	\$550
OnRamp (ISDN)	\$1,000	\$1,100
Accelerate Frame Relay	\$3,000	\$3,300
DDS Fastway	\$3,000	\$3,300
Megalink	\$3,000	\$3,300
Accelerate ATM (2 Mbits per second)	\$3,000	\$3,300
Accelerate ATM (speeds of 4 Mbits to 16 Mbits per second)	\$4,000	\$4,400
Accelerate ATM (speeds of 34Mbits and 155 Mbits per second)	\$5,000	\$5,500

## 4. General Network Availability Level

The General Network Availability Level is the percentage of time an access router in the Big Pond Direct Access Service Network is available to the Customer during each Month taking into account the number of hours for Scheduled Outages in that Month.

The General Network Availability Level is measured from the central point on the Big Pond Direct Access Service Network as nominated by Telstra (the "Central Point"). IP packets will be sent several times an hour each day from the Central Point to each access router in the Big Pond Direct Access Service Network. A record will be kept at the Central Point of the number of times an access router does not respond to the IP packet request as well as the total number of IP packets sent. At the end of each Month, having taken into account Scheduled Outages, the non-responses will be aggregated for each router and divided by the total number of packets sent to such router to calculate the percentage availability for that router.

The General Network Availability Level is measured domestically (measuring availability from the Central Point to each access router) and internationally (measuring availability from the Central Point to the end routers in the US which terminate Telstra's cable and satellite connections between Australia and the USA).

Telstra will use best efforts to ensure the General Network Availability Level at each access router is no less than 99.85% for any Month.

## 5. General Network Performance Levels

### 5.1 The General Network Performance Levels

are defined by "transit delay" in milliseconds and "packet loss" both domestically within Australia and to Telstra's international gateway in the USA.

### 5.2 Transit Delay

The domestic transit delay will be established by measuring the time taken to send an IP packet and receive an acknowledgment to that IP packet sent from the Central Point to an access router in a Big Pond Direct Point of Presence. The transit delay will be measured for each access router in the domestic Big Pond Direct Access Service Network. The minimum transit delay for each access router in each Month will be noted (the "Monthly Minimum").

Telstra will use best efforts to ensure that the time taken in any Month for an IP packet to travel between the Central Point and the Big Pond Direct access router to which the Customer is attached at the Big Pond Direct Point of Presence is no greater than twice the Monthly Minimum for that access router.

### 5.3 Packet Loss

Packet loss will be measured by sending IP packets at random from the Central Point to each access router in the Big Pond Direct Access Service Network. The IP packets will then be counted, a loss figure determined and the percentage loss calculated. These percentages will be averaged each Month to produce a Monthly average.

#### (a) Domestic Network

Telstra will use best efforts to ensure that the average packet loss for any Month between the Central Point and the Big Pond Direct access router to which the Customer is attached at the Big Pond Direct Point of Presence is no greater than 3%.

#### (b) International Network

Telstra will use best efforts to ensure that the average packet loss for any Month between the Central Point and Telstra's international gateway in the USA is no greater than 3%.

## 6. Monitoring Network Levels

For the avoidance of doubt, the IP packets sent by Telstra to determine the General Network Availability and Performance Levels will not be available for download by the Customer and the Customer will not be charged for such IP packets.

## 7. Response and Restoration Times

Response Time 2 hour

Restoration Time 24 hours

## 8. Standard provisioning times

Provisioning times for the connection of an Access Port are calculated from the date that the Customer receives a confirmation fax that its Big Pond Direct Application Form has been processed.

Connecting Carriage Service	Standard provisioning time (Business Days)
Dedicated modem on PSTN	5
On Ramp 2	5
On Ramp 10, 20, 30	5
Accelerate Frame Relay	5
Accelerate Frame Relay PVC	5
Accelerate ATM PVC	5
Megalink	10
DDS Fastway	10

## 9. Standard provisioning times for Seamless Access

If the Customer requests that Telstra provide a Connecting Carriage Service as well as Big Pond Direct by submitting a duly completed Seamless Access application form, the standard provisioning times to provide such services are as set out below. Provisioning times are calculated from the date that the Customer receives a confirmation fax that its Seamless Access application form has been processed.

Connecting Carriage Service	Seamless Access standard provisioning time (Business Days)
Dedicated modem on PSTN	5
On Ramp 2	15
On Ramp 10, 20, 30	30
Accelerate Frame Relay	30
Accelerate Frame Relay PVC	30
Accelerate ATM PVC	50
Megalink	30
DDS Fastway	50

Where the Customer submits a Seamless Access application form, Big Pond Direct will be provided on the terms and conditions of this agreement but the Connecting Carriage Service will be provided on the terms and conditions of the standard form of agreement formulated by Telstra for the purposes of Part 23 of the Telecommunications Act 1997 (as varied by Telstra from time to time), unless otherwise agreed by Telstra.

#### 10. Big Pond Direct Customer Care

Customers can contact Big Pond Direct Customer Care on the following numbers depending upon which type of customer they are:

- Telstra Domestic Wholesale customers - 1800 033 330
- Internet service providers (other than Telstra Domestic Wholesale customers) - 1800 624 512
- Other customers - 1800 065 744.

Failure to contact the appropriate number may result in a delay in handling the Customer's request or query for which Telstra is not responsible.

#### 11. Big Pond Direct Proxy Cache

Customers can use the Big Pond Direct Proxy Cache to receive faster and, if a Single-homed Customer, cheaper, downloads of web and ftp traffic. To receive traffic via the Proxy Cache, the Customer must "attach" to the Proxy Cache by reconfiguring its browser or cache equipment. There is no charge for attaching to the Proxy Cache and the Customer may terminate its attachment or re-attach to the Proxy Cache at any time (subject to the other provisions of this agreement). Further details on the Big Pond Direct Proxy Cache and how to attach to it can be found on the Big Pond Direct Web Site.

#### 12. Secondary MX mail server

The Customer may apply via CustData to Telstra for the Big Pond Direct Secondary MX mail server service so that in the event of a failure of the Customer's primary SMTP server, a back up service is available. Subject to the Customer configuring its service and records correctly, Telstra will provide redundancy via the Big Pond Secondary MX mail server service. The Customer acknowledges that the Big Pond Direct Secondary MX mail server service is only a temporary service designed to provide redundancy in the event of a problem with the Customer's primary SMTP server. Telstra may terminate or suspend the Big Pond Direct Secondary MX mail server service on notice to the Customer if it becomes aware or has reason to believe that the Customer is making improper use of the service.

### Schedule B

#### Big Pond Direct Price List

These prices are valid from 1 July 2000 until further notice and are inclusive of GST.

#### 1. Introduction

1.1 The standard price structure has two main components:

- a) a once only Access Port Connection Charge; and
- b) a Monthly Usage Charge.

1.2 The Access Port Connection Charge depends upon the Customer's Connecting Carriage Service.

1.3 The Monthly Usage Charge depends on the Option Nominated for the Access Port, the service speed and, unless the relevant Cable or Satellite BackChannel Threshold Ratio is exceeded, the amount of traffic the Customer receives. If the Cable and/or Satellite BackChannel Threshold Ratio exceeds the specified threshold, a BackChannel Charge will be payable per Megabyte sent by the Customer above such threshold.

1.4 A minimum monthly charge as set out in paragraph 4 below ("Minimum Monthly Charge") also applies to Access Ports with Option 1, 3 or 4 pricing. If the Monthly Usage Charge for any such Access Port does not equal or exceed the relevant Minimum Monthly Charge in any Month, then the Customer will be billed the Minimum Monthly Charge for that Month for such Access Port. Any BackChannel Charges are in addition to and cannot be included in the Minimum Monthly Charge.

1.5 Charges for each Access Port are payable on and from the date that Telstra notifies the Customer that the Access Port is available for use.

1.6 1.6 With effect from 2 March 2001 no new satellite services will be provided. This means that, from that date, Customers can no longer

request a new service with, or a change of an existing service to, Option 3 or 4 pricing and, unless a Customer has Nominated Option 3 or Option 4 (or other tailored option using a satellite service) for an Access Port, it will not be able to receive a satellite service via that Access Port.

## 2. Pricing Options

2.1 Option 1 pricing will apply by default unless a different Option is Nominated.

#### Option 1

2.2 Option 1 pricing is based on a submarine cable service and is available with any Connecting Carriage Service.

#### Option 2

2.3 Option 2 pricing is based on a submarine cable service that is only available with dedicated modems and ISDN services. The Customer can only have one service with Option 2 pricing per Big Pond Direct Point of Presence.

#### Option 3

2.4 Option 3 pricing is based on an international satellite service available with any Connecting Carriage Service.

#### Option 4

2.5 Option 4 pricing is based on an international satellite service for Customers with high Monthly Traffic Volumes. Additional restrictions apply and the pricing is as negotiated with Telstra based on Traffic Volumes and minimum commitment levels amongst other things.

#### Other options

2.6 Other pricing options may be available. Refer to your Telstra Business Manager for further details.

## 3. Access Port Connection Charges

Connecting Carriage Service	Access Port Connection Charge* (Once Only)	Customers may Nominate the following Pricing Options
Dedicated modem on PSTN (any speed up to 56kbps)	\$550	1 or 2
ISDN (speeds between 64 and 256kbps)	\$1,100	1 or 2
DDS Fastway	\$3,300	1
Megalink	\$3,300	1
Accelerate Frame Relay	\$4,400	1
Accelerate ATM	price on application	1
Others	price on application	tha

\* These charges are for Access Port connections performed during Business Hours. An additional fee for service will apply for requests to implement Access Port connections outside Business Hours.

**NOTE:** Access Port Connection Charges apply only to the connection of the Customer's Connecting Carriage Service to the Big Pond Direct Point of Presence. Additional charges may apply to the Customer's Connecting Carriage Service.

## 4. Monthly Usage Charges

#### Option 1 Pricing (Inclusive of GST)

Minimum Monthly Charge	\$22.00
Per Megabyte rate for traffic received	\$0.209
Proxy Cache per Megabyte rate* for traffic received via the Proxy Cache	\$0.132
BackChannel Charge (per Megabyte sent above the relevant ratio) if in any Month the Cable BackChannel Threshold Ratio exceeds 2.75:1	\$0.088

\* Single-homed Customers under Option 1 pricing who attach to the Big Pond Direct Proxy Cache will be charged \$0.132 (inclusive of GST) per Megabyte received for web and ftp traffic only which is served via the



Big Pond Direct Proxy Cache. All other traffic received by the Customer will be charged at the standard per Megabyte rate of \$0.209 (inclusive of GST) per Megabyte received.

**Option 2 Pricing\* (Inclusive of GST)**

Connecting Carriage Service	Monthly rate**	
Dedicated modem on PSTN (any speed up to 56kbps)	\$385.00 unlimited traffic received	
64 kbps access	\$1089.00 unlimited traffic	
128 kbps access	\$2310.00 for £ 40% Utilisation	31.9 cents per Megabyte received thereafter
256 kbps access	\$4620.00 for £ 40% Utilisation	31.9 cents per Megabyte received thereafter

\* Only available for Dedicated modems (on PSTN) and ISDN services. The Customer can only have one service with Option 2 pricing per Big Pond Direct Point of Presence.

\*\* Single-homed Customers under Option 2 pricing who attach to the Big Pond Direct Proxy Cache will receive a proportional reduction to their Monthly rate based on the Monthly volume of Proxy Cache traffic (web and ftp only) received by the Customer compared to total Usage through Access Ports with Option 2 pricing. Worked examples clarifying how these reductions are calculated are set out on the Big Pond Direct Web Site.

**Option 3 Pricing (Inclusive of GST)**

Minimum Monthly Charge	\$550.00
Per Megabyte rate for traffic received	\$0.165
Proxy Cache per Megabyte rate* for traffic received via the Proxy Cache	\$0.132
BackChannel Charge (per Megabyte sent) if in any Month the Satellite BackChannel Threshold Ratio exceeds 2.25:1	\$0.088

\* Single-homed Customers under Option 3 pricing who attach to the Big Pond Direct Proxy Cache will be charged \$0.132 (inclusive of GST) per Megabyte received for web and ftp traffic only which is served via the Big Pond Direct Proxy Cache. All other traffic received by the Customer will be charged at the standard per Megabyte rate of \$0.165 (inclusive of GST) per Megabyte received.

**Option 4 Pricing (Inclusive of GST)**

Minimum Monthly Charge	\$550.00 for each Access Port configured for satellite routing \$22.00 for each Access Port configured for submarine cable routing
Total minimum charge payable per Month per Account	charge on application
Per Megabyte rate for traffic received	price on application
BackChannel Charge (per Megabyte sent above the relevant ratio) in any Month if Cable BackChannel Threshold Ratio exceeds 2.75:1 or Satellite BackChannel Threshold Ratio exceeds 2.25:1	\$0.088

**BPD Business Mail**

The Monthly Usage Charge for BPD Business Mail is \$82.50 (inclusive of GST) which entitles the Customer to:

- (a) up to 100 mailboxes; and
- (b) 30 hours access to the BPD Business Mail service each Month.

After the access referred to in (b) has been used up, the Customer must pay \$3.30 (inclusive of GST) per hour (or part hour) if in a Metro Zone or \$6.325 (inclusive of GST) per hour (or part hour) if in a Non-Metro Zone for access to the BPD Business Mail service. To determine in which zone the Customer Premises are located, the Customer can access the Big Pond Business web site found at [www.bigpond.com/business](http://www.bigpond.com/business) or contact the Big Pond Business Help Desk by telephone on 13 22 84.

**5. Important Information and other charges**

**Notice of pricing option changes**

5.1 All requests by the Customer to change its pricing Option from Option 1 to Option 2, or from Option 2 to Option 1 must be made using the CustData Web Page and by giving Telstra at least one Month's notice of the requested change before the end of a Month.

5.2 For any other change of pricing Option, the Customer must send Telstra a signed Big Pond Direct Application Form with the request to change its pricing option and must give at least one Month's notice of the requested change before the end of a Month.

**Change of pricing Option**

5.3 The Customer may not change its pricing Option during the Initial Period for the relevant service.

**Connecting Carriage Service**

5.4 The Customer will need a Connecting Carriage Service for each Access Port.

5.5 Charges and terms and conditions for the Connecting Carriage Service are separate from and in addition to charges and terms and conditions for Big Pond Direct.

**Upgrade Charges**

5.6 If the Customer changes the Access Transmission Rate or configuration of its Connecting Carriage Service, the Customer must pay a Big Pond Direct upgrade charge at Telstra's then current rate ("Upgrade Charge"). Telstra's current Upgrade Charge is \$550.00 (inclusive of GST).

5.7 If the Customer changes the type of Connecting Carriage Service, it must pay the standard Access Port Connection Charges for such new Connecting Carriage Service.

**Administration Fees**

5.8 Administration Fees of the specified amounts are payable in the following circumstances:

Event	Administration Fee (Inclusive of GST)
a suspension under clause 13.1(a), (b), (c), (d) or (e) of the agreement	\$550.00
changing Customer's name, Customer Premises, billing address, Customer Site Contact or other contact details	\$110.00
changing the Big Pond Direct Point of Presence to which a Connecting Carriage Service is connected*	\$275.00
change of Customer (subject to Telstra's consent in accordance with clause 16.1 of the agreement and completion of appropriate transfer documentation)	\$165.00
implementing Access Port connections outside of Business Hours	charges to be determined on a time and materials basis

\* This does not cover charges relating to the Connecting Carriage Service, if any.

**Traffic calculations**

5.9 Traffic Volumes referred to in this agreement relate only to traffic received by the Customer through Access Ports under this agreement (i.e. under the same Account) and cannot be combined with traffic received through Access Ports under a different Account.

**6. Temporary Services**

A Temporary Service will attract a once only Access Port Connection Charge double that of a similar permanent connection, i.e. in accordance with the following table:

Connecting Carriage Service	Temporary Service Connection Charge (Inclusive of GST)
Dedicated modem on PSTN	\$1,100
ISDN (speeds between 64 and 256kbps)	\$2,200
DDS Fastway or Megalink	\$6,600
Accelerate Frame Relay	\$8,800
Others	price on application

The standard Monthly Usage Charges and other relevant charges set out in paragraph 5 of this Big Pond Direct Price List apply to the provision of Temporary Services.

**7. Schools Installation Price**

Primary and secondary schools, if eligible, may qualify for a 50% reduction in the Access Port Connection Charges for dedicated modems on PSTN and 64kbps ISDN (OnRamp 2) connections.

**8. Early Termination Fees**

Early Termination Fees are payable based on the Option Nominated for an Access Port and the number of Months left in the Initial Period for the relevant service.

For the purpose of this paragraph 8,

"Y" is the number of Months left in the Initial Period for a service; and

"A" is the average Monthly Usage Charge for each Access Port with Option 2 pricing, calculated from commencement of the provision of such service up to the date of termination, or, if termination occurs during the first Month of the Initial Period, A is determined in accordance with the following table:

Speed of Connecting Carriage Service	Value of A (Inclusive of GST)
128 kbps	\$2,310.00
256 kbps	\$4,620.00

The Early Termination Fee payable by the Customer is the sum of the Early Termination Fees set out below for each Access Port in respect of which the service has been terminated:

Pricing Option	Early Termination Fee (Inclusive of GST)
Option 1	\$22.00 x Y
Option 2	\$385.00 x Y
- Dedicated modem on PSTN (up to 56kbps access)	
- ISDN 64kbps access	\$1089.00 x Y
- ISDN 128 kbps access	A x Y
- 256 kbps access	A x Y
Option 3	\$550.00 x Y
Option 4	\$550.00 x Y per Access Port configured for satellite routing plus \$22.00 x Y per Access Port configured for submarine cable routing, or as otherwise agreed with Telstra

## 9. Equipment

The charges for Routers are as shown below:

Router/service	Charge (Inclusive of GST)
Software Upgrade (Cisco 761)	
Upgrade from 4 LAN addresses to 30 LAN addresses (site visit required)	\$544.50

## 10. Maintenance Fees

The Monthly Maintenance Fees for Routers are as follows:

Level of Maintenance	Monthly Maintenance Fee (Inclusive of GST)
Standard Maintenance	\$66
Extended Router Maintenance	\$132

## Schedule C

### Settlement Credit Plan

The following terms and conditions are for the Settlement Credit Plan ("Plan") if it is Nominated by the Customer on a Settlement Credit application form and accepted by Telstra. In this schedule, "Credits" refers to the amount calculated in accordance with the tables and terms and conditions set out below.

- The Plan commences on the first day of the Month following the Month in which it is accepted by Telstra. The Customer must give Telstra a minimum of five Business Days' notice before the end of the Month when nominating the Plan in order to be eligible to receive a Credit in the following Month. On acceptance by Telstra, the Plan will then apply in each subsequent Month until the Customer gives Telstra ten Business Days' notice of its intention to cancel it.
- The Credit is given towards the Customer's Monthly Usage Charges and, subject to paragraph 3 of this schedule C, is calculated on the basis of the Monthly Traffic Volume as set out in Table A below. Credits are not transferable, and cannot be redeemed for cash.
- For the purposes of this Plan, Monthly Traffic Volume is based solely on traffic received by the Customer via all Access Ports for which Option 1 or Option 3 pricing has been Nominated. Any traffic received via an Access Port for which Option 2 or Option 4 pricing has been Nominated (for the whole or any part of the relevant Month) does NOT count.
- The Credit applicable in each Month will be deducted from the amount payable for Usage by the Customer for all Monthly Usage Charges shown on the Big Pond Direct invoice for that Month.
- The Credit cannot be used to reduce the Minimum Monthly Charge applying to

Access Ports for which Option 1, 3 or 4 pricing has been Nominated.

- Telstra may withdraw the application of the Plan at any time on ten (10) Business Days notice to the Customer.
- If the Customer exceeds the relevant Cable and/or Satellite BackChannel Threshold Ratio on any Access Port in any Month then the Settlement Credit Plan will not apply in that Month to the Customer's Account.
- Traffic Volumes relate only to traffic received by the Customer through Access Ports under this agreement (i.e. under the same Account) and cannot be combined with traffic received through Access Ports under a different Big Pond Direct agreement.

## TABLE A

The charges set out in these tables are based on the Charges set out in the Big Pond Direct Price List.

### Option 1

Monthly traffic received through Access Ports with Option 1 pricing (including via the Proxy Cache) (Gbytes)		Credit Rate (Cents/Megabyte) (Option 1 only) (Inclusive of GST)	Effective Customer Charge (Inclusive of GST)
Lower Threshold	Upper Threshold		
Greater than or equal to 5	Less than 100	1.045c/Megabyte	19.855c/Megabyte
Greater than or equal to 100	Less than 500	2.09c/Megabyte	18.81c/Megabyte
Greater than or equal to 500	Less than 2000	3.135c/Megabyte	17.765c/Megabyte
Greater than or equal to 2000	Less than 4500	4.18c/Megabyte	16.72c/Megabyte
Greater than or equal to 4500		5.225c/Megabyte	16.675c/Megabyte

### Option 3

Monthly traffic received through Access Ports with Option 3 pricing (including via the Proxy Cache) (Gbytes)		Credit Rate (Cents/Megabyte) (Inclusive of GST) (Option 3 only)	Effective Customer Charge (Inclusive of GST)
Lower Threshold	Upper Threshold		
Greater than or equal to 5	Less than 100	0.825c/Megabyte	15.675c/Megabyte
Greater than or equal to 100	Less than 500	1.65c/Megabyte	14.85c/Megabyte
Greater than or equal to 500	Less than 2000	2.475c/Megabyte	14.025c/Megabyte
Greater than or equal to 2000	Less than 4500	3.30c/Megabyte	13.20c/Megabyte
Greater than or equal to 4500		4.125c/Megabyte	12.375c/Megabyte

### Proxy Cache Rate

Monthly traffic received via the Proxy Cache or through Access Ports with the same pricing option (Gbytes)		Credit Rate (Cents/Megabyte) (Inclusive of GST)	Effective Customer Charge (Inclusive of GST)
Lower Threshold	Upper Threshold		
Greater than or equal to 5	Less than 100	0.66c/Megabyte	12.54c/Megabyte
Greater than or equal to 100	Less than 500	1.32c/Megabyte	11.88c/Megabyte
Greater than or equal to 500	Less than 2000	1.98c/Megabyte	11.22c/Megabyte
Greater than or equal to 2000	Less than 4500	2.64c/Megabyte	10.56c/Megabyte
Greater than or equal to 4500		3.3c/Megabyte	9.9c/Megabyte

**Note:** The Customer acknowledges that any Credits are provided in recognition of the Customer's contribution to the overall value of the Internet in Australia. Accordingly, the Customer must maintain the volume of Internet traffic delivered to Telstra, the amount of content of general interest to the Internet community, the standard and scale of Customer infrastructure connected to all Access Ports, and the number of end users connected to that infrastructure, at a level broadly commensurate with the level of the Credit allowed under the Plan. The baseline for measuring the Customer's compliance with this provision will be the volumes, standard, scale and number of end users that applied at the time that the Customer's nomination was accepted by Telstra.

## Schedule D

### Equipment

#### 1. Equipment

**1.1** If requested by the Customer and purchased under this schedule D, Telstra will provide the Customer with Equipment which may comprise a Router (in the standard configuration), IOS IP router software and Ethernet LAN connection for connection to Big Pond Direct or such other equipment as offered by Telstra and agreed between the parties.

**1.2** The types of Router available depends upon the Customer's Connecting Carriage Service as follows:

Router Type	Connecting Carriage Service
Cisco 761/30	ISDN only
Cisco 1603	ISDN (up to 128 kbps) but upgradeable to Serial
Cisco 1601	Serial only (ie DDS Fastway, Megalink or Accelerate Frame Relay)

**1.3** Telstra will only provide the Equipment to the Customer if:

- the Customer is using a Telstra supplied Connecting Carriage Service;
- the Customer Premises are within 50km of the Big Pond Direct Point of Presence; and
- the Customer chooses to have Telstra maintain the Equipment.

**1.4** The Customer must not modify the configuration of the Equipment unless instructed to do so by Telstra or Telstra's authorised representatives.

**1.5** Risk of loss in the Equipment passes to the Customer upon delivery of the Equipment to the Customer Premises.

**1.6** Title in the Equipment passes to the Customer when it has paid Telstra, in full, for the Equipment and any installation charges relating to the Equipment.

**1.7** Where the Customer does not have title in the Equipment, the Customer must:

- take reasonable care of the Equipment;
- take sole responsibility for the storage and security of the Equipment;
- not distribute, sell, lease, license or otherwise encumber or dispose of the Equipment;
- not modify the Equipment without the prior written consent of Telstra; and

5. on termination or expiration of this agreement for any reason and at Telstra's option:

- pay Telstra the balance owing on the Equipment (in which case Telstra will transfer title in the Equipment to the Customer); or
- return the Equipment to Telstra in good working order.

**1.8** Telstra may repossess the Equipment if the Customer:

- breaches clause 1.7 of this schedule D;
- in Telstra's reasonable opinion, is about to breach clause 1.7 of this schedule D; or
- fails to pay Telstra for the Equipment within seven days of payment becoming due.

**1.9** The Customer grants Telstra and Telstra's authorised agents:

- an irrevocable licence to enter the Customer Premises during business hours in order to repossess the Equipment; and
- an irrevocable authority to sell the Equipment or any part of it by way of auction within 30 days of repossession and to apply the funds from the sale to pay any amount the Customer owes to Telstra under this agreement and any costs that Telstra incurs under this clause 1.9.

**1.10** The Customer indemnifies Telstra and its authorised agents for any loss, damage and expenses incurred by Telstra and any loss or damage sustained by the Customer or any third person as a result of actions taken by Telstra or Telstra's authorised agents under clause 1.9 of this schedule D.

#### Routers

**1.11** Telstra provides Routers in a standard configuration, pre-configured for connection to Big Pond Direct prior to delivery to the Customer Premises. No other configurations are available.

**1.12** If the Customer has paid for a Router in full and this agreement terminates for any reason, then Telstra must provide the Customer with any password(s) necessary to enable the Router's configuration to be changed.

## 2. Installation

**2.1** Telstra or one of its authorised agents will install the Equipment at the Customer Premises or other location as Nominated and agreed to by Telstra.

**2.2** Prior to the installation of any Equipment the Customer must provide (where relevant):

- information necessary for Telstra to configure and maintain the Equipment; and
- a clean, dry operating environment for the Equipment within 3 metres of a Telstra supplied Connecting Carriage

Service termination and an appropriate mains power supply.

**2.3** Installation of the Equipment only covers (where relevant):

- delivery of the Equipment to the Customer Premises and connection to mains power supply;
- standard configuration of software; and
- connection of the Equipment to a Telstra supplied Connecting Carriage Service and confirmation that the Equipment is communicating with that Connecting Carriage Service.

**2.4** Telstra is not responsible for:

- connection or cabling of Equipment to Customer Equipment; or
- any variation to the standard configuration of the software or Equipment.

## 3. Maintenance

**3.1** Telstra will provide Maintenance during Business Hours on Business Days or at other times as advised by Telstra.

**3.2** If the Customer Nominates and pays for extended maintenance on a Router, Telstra will provide Maintenance for that router 24 hours a day, 7 days a week, including public holidays ("Extended Router Maintenance").

**3.3** If the Customer has paid only for standard Maintenance, Telstra will use best efforts to respond to reported Service Difficulties within two hours, each such hour falling within the hours of maintenance set out in clause 3.1 of this schedule D.

#### Router faults

**3.4** If the Customer has not paid for Extended Router Maintenance, Telstra will use reasonable efforts to repair Router Faults requiring physical replacement or intervention within two Business Days.

**3.5** If the Customer has paid for Extended Router Maintenance, Telstra will use its best efforts to address Service Difficulties in relation to Routers within an Equipment Response Time of two hours and an Equipment Repair Time of 24 hours.

#### Other faults

**3.6** For all Faults in Equipment other than Routers, Telstra will address such Faults within a reasonable period.

#### Exclusions

**3.7** Maintenance Fees do not cover correction of faults or problems caused by:

- items attached to the Equipment which have not been

- approved by Telstra;
2. damage resulting from:
    1. misuse of Equipment;
    2. negligent acts or omissions of the Customer (or its contractors or agents);
    3. malfunction or abnormal operation of external electrical power or air conditioning;
    4. fire, heat, smoke or water damage; or
    5. burglary, theft, vandalism or civil disturbance;
  3. relocation of the Equipment without Telstra's consent;
  4. the use of an incorrectly installed consumable, or a consumable that has not been approved by Telstra;
  5. connection to or use with third party hardware and/or software which is not maintained by Telstra or its authorised agents;
  6. failure to comply with the Equipment manufacturer's or supplier's specifications or recommendations;
  7. exceeding the Equipment manufacturer's or supplier's specifications or recommendations;
  8. modifications or repairs by persons other than Telstra or its authorised agents; or
  9. failure by the Customer to implement any release or upgrade of Equipment issued by Telstra within 12 months of it first being issued.

**3.8 Maintenance of Routers does not include:**

1. monitoring of Router availability or performance; or
2. changes to the configuration and/or cabling of the Router required as a result of changes to the access speed or the configuration of the Connecting Carriage Service.

**4. Fees and Payment**

**4.1** The Customer must pay for the Equipment (and any installation charges related to the Equipment) and for Maintenance ("Maintenance Fees") in the amounts set out in the Big Pond Direct Price List or as advised to the Customer by Telstra at the time the Customer orders the Equipment or Maintenance and Telstra accepts the order.

**4.2** Telstra may refuse to provide Equipment to the Customer while the Customer is in default of any of its obligations under clause 4.1 of this schedule D.

**5. Warranty**

**Telstra warranties**

**5.1** Telstra warrants that the Equipment will perform in accordance with the manufacturer's or supplier's published specifications for a period of ninety days from the date of shipment to the Customer from Telstra or Telstra's authorised agent's premises.

**5.2** If the Equipment fails to meet the warranty set out in clause 5.1 of this schedule D ("Warranty Item"), then the Customer may return it to Telstra, with freight and insurance pre-paid, and Telstra will, at its option, within 10 Business Days of receiving it from the Customer:

1. repair or replace the Warranty Item; or
2. refund the price paid by the Customer to Telstra for the Warranty Item.

**5.3** To the maximum extent permitted by law, the remedy in clause 5.2 represents the Customer's sole remedy for a Warranty Item.

**5.4** The warranty set out in clause 5.2 of this schedule D does not apply if the Warranty Item:

1. has been altered, repaired or maintained by a person other than Telstra or one of its authorised agents;
2. has not been operated in a suitable environment with a clean stable power supply and in accordance with its specifications; or
3. has been subjected to abnormal physical or electrical stress, misuse, negligence, or accident.

**Schedule E**

**BPD Business Mail**

**1. Service**

**1.1** The terms of the agreement apply to the provision of BPD Business Mail except as varied by this schedule E.

**1.2** BPD Business Mail has two components:

1. subject to clause 1.6 of this schedule E, outward electronic mail relay using SMTP protocol and inward electronic mail collection using POP3 for protocol; and
2. linking of a domain name to the electronic mail addresses of the Customer's electronic mail users through the appropriate domain name delegation and electronic mail record creation and management in Telstra's domain name server (DNS) system.

**1.3** The Customer must apply for a virtual domain which will be provided by Telstra as part of the BPD Business Mail service.

**1.4** The Customer acknowledges that BPD Business Mail is a feature of Big Pond Direct and the Customer must be a customer of Big Pond Direct to enable BPD Business Mail to function. Any electronic mail

messages received by the Customer are traffic under this agreement and will attract charges in accordance with the Big Pond Direct Price List.

**1.5** In consideration of the Customer paying the Monthly Usage Charge for BPD Business Mail, Telstra agrees to provide BPD Business Mail, including suitable electronic mail software to enable the Customer to send and receive electronic mail using the POP3 and SMTP protocols. The Customer's use of such software is subject to the terms and conditions in the licence agreement accompanying the software.

**1.6** Outgoing electronic mail relay exchange services are not available to Customers under this agreement. Customers with their own mail servers must not use BPD Business Mail to relay their outgoing electronic mail.

**1.7** The maximum number of electronic mail addresses per BPD Business Mail service is 100.

**1.8** Telstra will discard, without notice to the Customer, any Internet electronic mail message addressed to the Customer's SMTP mail server identified in the BPD Business Mail Application Form:

1. that exceeds 10 Megabytes in size; or
2. if at the time the electronic mail message is received by the Big Pond Business electronic mail server:
  1. the size of the message (including attachments when multiplied by the number of recipients on the Big Pond Business electronic mail server of the message) exceeds 30 Megabytes; or
  2. the aggregate size of the undeleted messages (including attachments) in the mailbox of the addressee exceeds 15 Megabytes.

**1.9** Telstra may delete any electronic mail message sent to the Customer (whether read or unread) where the message has not been deleted within 90 calendar days of it becoming available to the Customer or its electronic mail users.

**1.10** Telstra is not required to notify the Customer, its electronic mail users nor the sender of any electronic mail message if Telstra discards or deletes any electronic mail message under the terms of this agreement.

**2. Domain Names**

**2.1** The Customer must have a domain name acceptable to Telstra.

**2.2** If requested by the Customer, Telstra will, as agent for the Customer, apply for the domain name requested by the Customer for use in the provision of BPD Business Mail ("Requested Domain Name").

**2.3** Telstra does not guarantee that it will be successful in its application for the Requested Domain Name.

**2.4** If the application for the Requested Domain Name is successful, then Telstra will, for the duration of the provision of BPD Business Mail under this agreement, become the delegated domain name administrator for the Requested Domain Name.

**2.5** Where a Customer has already registered a domain name that it wishes to use, and Telstra agrees to accept such domain name, then the

Customer agrees to make Telstra the delegated domain name administrator for that domain name for the duration of the provision of BPD Business Mail under this agreement.

**2.6** All costs and expenses in relation to any application for or renewal of a domain name will be paid by the Customer.

**3. Termination**

In addition to the other rights and remedies of the parties under the agreement, either party may terminate the BPD Business Mail service on 30 days' written notice to the other party.

