

CLOUD SERVICES**SERVICE DESCRIPTION AND TERMS AND CONDITIONS****PART I - GENERAL****Service Agreement**

1. This Services Description and Terms and Conditions for Cloud Services (the "**Service Provisions**") constitute part of any agreement (the "**Agreement**") between HCE Telecom Inc. ("**Reseller**" or "**Supplier**") and the Customer identified in the Agreement ("**Subscriber**" or "**Customer**") which expressly incorporates by reference these Service Provisions. These Service Provisions and any other any Terms and Conditions, Policies, Service Descriptions and other provisions expressly incorporated by the Agreement collectively constitute the "**Terms and Conditions**". The Agreement and all Terms and Conditions collectively constitute the "**Service Agreement**".

Application of Terms and Conditions

2. These Service Provisions provide a description of, and the terms and conditions that relate specifically to, the particular "Services" (as defined herein) being provided by the Reseller to Subscriber. These Service Provisions together with the other parts of the Service Agreement comprise the entire basis and agreement upon which the Services are provided by Reseller to the Subscriber.

Definitions

3. In these Service Provisions the following terms shall have the meanings provided therefor below:

General Definitions

"**Services**" means the Cloud Services and Network Access Services and "**Service**" means any of the Services separately.

"**Monthly Recurring Charge**" or "**MRC**" has the meaning provided therefor in the Agreement.

"**Supplier's Website**" means the Cloud Services page on the website of Supplier at www.HCE.net.

"**Term**" means the period of time over which Supplier shall provide the Services to Customer identified in the Agreement, subject to earlier termination or extension in accordance with the Service Agreement.

Cloud Services Definitions

"**Cloud Host**" means Reseller's third party Cloud services contractor, from time to time, which Reseller will cause the Cloud Services to be provided by and through.

"**Cloud Services**" means those particular Cloud services subscribed for by Subscriber to Reseller in the Agreement,

which Reseller will cause to be provided by and through, the Cloud Host.

"**Cloud Host Terms and Conditions**" means the terms and conditions of the Cloud Host for the provision of the Cloud Services that are posted on Supplier's Website.

Network Access Services Definitions

"**Network Access Services**" comprise access to and use of Supplier's Network using Customer's Local Loop(s) and an Ethernet interface to connect Customer Locations to the maximum Allowed Bandwidth identified in the Agreement. Network Access Services may be Fibre Access Services and/or Copper Access Services.

"**Supplier's Network**" means the telecommunications network operated or used by Supplier exclusive of all Customer's Local Loops.

"**Customer's Local Loop**" means a telecommunications connection between Supplier's Network and the Demarcation Point of a Customer Location, including all fibre, wire, conduit, transmitters, receivers and facilities used to make the connection.

"**Demarcation Point**" means the UNI port facing Customer from the Supplier's Network at the router or PBX for a particular Customer's Local Loop, which may be located in either Supplier's facilities or Customer's facilities.

"**UNI**" or "**User Network Interface**" means the Ethernet interface physical medium installed by Supplier to provide Customer access to Supplier's Network.

"**Fibre Access Services**" means Network Access Services are provided over Supplier's Network, or a part thereof, where transmission is only over optical fibre and a Customer's Local Loop where transmission is only over optical fibre. Unless otherwise indicated in the Service Agreement, the Fibre Access Services are "symmetrical" (that is, the rate of reception is not less than the rate of transmission) and "full duplex mode" (that is, transmission and reception may occur at the same time).

"**Copper Access Services**" means Network Access Services are provided over a Supplier's Network, or part thereof, where any part of the transmission is over copper wire and/or a Customer's Local Loop where any part of the transmission is over copper wire. Unless otherwise indicated in the Service Agreement, the Copper Access Services are "asymmetrical" (that is, the rate of reception is less than the rate of transmission) and "full duplex mode" (that is, transmission and reception may occur at the same time).



Definitions in Service Agreement & Industry Meanings

4. Terms used and not defined herein shall have the meanings given thereto elsewhere in the Service Agreement. Unless otherwise expressly defined in the Service Agreement, words having well known technical or trade meanings within the telecommunications industry shall have such meanings.

PART II – TERM, PRICE & PAYMENT

Term

5. Subject to the provisions of the Service Agreement, Supplier shall provide the Services to Customer throughout the entirety of the Term.

Charge for Services

6. The Monthly Recurring Charge for the Services provided by Supplier to Customer is provided for in the Agreement. Payments additional to the Monthly Recurring Charge (including one-time charges and charges based on usage) may be required to be made by Customer to Supplier pursuant to other provisions of the Service Agreement.

Invoicing & Payment

7. Invoicing by Supplier to Customer of charges payable by Customer to Supplier pursuant to the Service Agreement will be done in accordance with Supplier’s General Commercial Terms and Conditions. Customer shall make payment to Supplier of all amounts payable by Customer to Supplier under the Service Agreement in accordance with, and subject to, the Agreement and the other provisions of the Service Agreement.

PART III – CLOUD SERVICES

Necessary Protocols Included

8. The Cloud Services that Reseller will cause to be provided by and through the Cloud Host will include all protocols required for the Cloud Services to function over the Network Access Services.

Cloud Services Attributes & Cloud Host

9. The attributes of the Cloud Services shall be the attributes of the Cloud Services provided by the Cloud Host at any particular time, which attributes may change from time to time. The Cloud Services are subject to the limitations of the services provided by the Cloud Host. The Cloud Services shall have the attributes posted, from time to time, on Supplier’s Website and which may be changed by Cloud Host from time to time. Subscriber acknowledges and agrees that it shall be the responsibility of Subscriber to regularly visit Supplier’s Website to determine if there has been any changes to the attributes of Cloud Services. If there are changes to the Cloud Services, it is the responsibility of Subscriber to adapt to the changes at Subscriber’s expense.

Provision of Cloud Services

10. Reseller will use commercially reasonable efforts to have the Cloud Services provided to Subscriber by the Cloud Host in accordance with the Services Agreement. Notwithstanding the foregoing, inasmuch as the Cloud Services are provided to Subscriber by and through the Cloud Host, a third party, Reseller shall have no liability to Subscriber with respect to the provision of the Cloud Services. Inasmuch as the Cloud Services are being provided by the Cloud Host the Cloud Services, insofar as Reseller is concerned, are provided “as is” and “as available” from the Cloud Host and without warranty or representations of any nature whatsoever from Reseller, express or implied. Subscriber will not be entitled to any refund or other compensation whatsoever from Reseller in relation to the provision of the Cloud Services. Inasmuch as the Cloud Services are provided by the Cloud Host and not Reseller, Reseller shall pass along to Subscriber the credits, if any, that Reseller may become entitled to from the Cloud Host in connection with the provision of the Cloud Services to Subscriber.

PART IV – SUBSCRIBER

Customer’s Obligations re Cloud Host

11. The provision of the Cloud Services by the Cloud Host through Reseller is subject to and conditional upon the full compliance by Subscriber with all of the Cloud Host Terms and Conditions. The consequences of failing to do so are provided for in the Cloud Host Terms and Conditions. In addition Subscriber shall fully and unconditionally indemnify and hold harmless the Cloud Host, as a third party beneficiary hereof, for all liability and costs that may befall the Cloud Host as a consequence of Subscriber failing to be in full compliance with all of the Cloud Host Terms and Conditions and the provisions of the Service Agreement.

Customer’s Obligations re Reseller

12. The provision of the Services by Reseller is subject to and conditional upon the full compliance by Subscriber with all of the provisions of the Services Agreement. The consequences of failing to do so are provided for in the Services Agreement. In addition Subscriber shall fully and unconditionally indemnify and hold harmless Reseller for all liability and costs that may befall Reseller as a consequence of Subscriber failing to be in full compliance with all of the provisions of the Service Agreement and the Cloud Host Terms and Conditions.

Subscriber’s Obligations, Generally

13. Subject to express contrary provision elsewhere in a Service Agreement, Subscriber shall be solely responsible for the provision and maintenance of all equipment necessary to access the Cloud Services except any equipment provided by or through Reseller pursuant to the Service Agreement.

Subscriber initials

PART V - NETWORK ACCESS SERVICES

Allowed Bandwidth

14. The bandwidth of the Network Access Services allowed for use by Customer in relation to the Network Access Services is identified in the Agreement.

Network Access at Demarcation Point

15. Supplier will provide access to Supplier's Network through a Customer's Local Loop at the Demarcation Point. The connection from the Demarcation Point to, and the installation and maintenance of, Customer's communication network and equipment is the responsibility and cost of the Customer.

Right of Access and Use Only

16. Customer does not by virtue of the Service Agreement or otherwise howsoever acquire any ownership or other interest whatsoever in Supplier's Network except the right to access and use Supplier's Network in relation to the Network Access Services in accordance with, and subject to, the terms of the Service Agreement.

PART VI –SERVICE LEVELS, INTERRUPTION & RESTORATION

Requests for Assistance re Services (Cloud & Network Access)

17. All requests by a Customer for assistance in respect of the Services shall be made in accordance with Part VII of the General Commercial Terms and Conditions comprising part of the Service Agreement.

Mean Time to Restore Network Access Services

18. Unless otherwise indicated in the Service Agreement, the objectives of the Supplier is to have a mean time to restore ("**MTTR**") an interruption of the Network Access Services related to the Supplier's electronics and systems: **(i)**, of four hours for Fibre Access Services; and, **(ii)** of forty-eight hours for Copper Access Services. While the Supplier will use commercially reasonable efforts to achieve such objectives, the Supplier shall not have any liability for failing to achieve such objectives except for the provision of the Performance Discount in applicable circumstances in accordance with other provisions of these Service Provisions.

Service Level Objective for Network Access Services Provided Over Copper Access Services

19. "**Supplier's Copper Access Service Level Objective**" with respect to Network Access Services provided, in any part, over Copper Access Services is to provide those services on a best efforts basis and, while Supplier will use commercially reasonable efforts to achieve Supplier's Copper Access Service Level Objective, Supplier shall not have any

liability to Customer should Supplier fail to achieve Supplier's Copper Access Service Level Objective. .

Additional Definitions

20. In these Service Provisions the following terms shall have the meanings provided therefor below:

"**Supplier's Fibre Access Service Level Objective**" with respect to the Network Access Services provided entirely over Fibre Access Services is an Availability of not less than 99.999%.

"**Supplier's Fibre Access Service Level Agreement**" with respect to the Network Access Services provided entirely over Fibre Access Services is an Availability of 99.8%;

"**Performance Discount**" means a discount of ten per cent of the Monthly Recurring Charge for the Network Access Services for the month in which Supplier's Fibre Access Service Level Agreement is not met

Calculation of Availability

21. "**Availability**" is the time that the Network Access Services are available for use by Customer. Acceptable Downtime shall not be included in the calculation of Availability. Acceptable Downtime includes time when the Network Access Services are not Available to Customer due to: **(i)** interruptions for the purposes of allowing Supplier to maintain, repair, implement a request from Customer in relation to, upgrade or change Supplier's Network, a Local Loop or the Services; **(ii)** interruptions not reported to Supplier; **(iii)** interruptions due to Force Majeure; **(iv)** interruptions and delays caused by Customer (including delays in Customer providing Supplier access to facilities to investigate or correct interruption of service or failure of Customer's equipment or resulting from breaches or non-compliance by Customer of its obligations under the Service Agreement); **(v)** interruptions and delays caused by third parties (including denial of service attacks); **(vi)** the failure of equipment, systems or services not controlled by Supplier; **(vii)** outages of less than sixty seconds in duration; and **(viii)** transient service degradation of short duration which clears before any repair action is taken; **(ix)** troubles resolved with 'no trouble found'; **(x)** the failure of any Customer owned and maintained equipment; **(xi)** failures or security breaches of systems and applications not configured by Supplier; **(xii)** failures or security breaches caused by improper use, improper care, or damage to devices by Customer's employees or a third party; **(xiii)** failures or security breaches caused by the movement of hardware by Customer or a third party, electrical and power irregularities, or abnormal use; **(xiv)** failures or security breaches, where a device's configuration, IOS/Software, or hardware has been modified by Customer or a third party; **(xv)** failures or security breaches caused by undocumented hardware, IOS, software or other manufacturer deficiency; or **(xvi)** failures or security breaches caused by hardware, IOS/Software, or other deficiencies. The time that the Network Access Services are not Available begins when Supplier opens a "Service Ticket" in response to an interruption



in the provision of the Network Access Services reported to Supplier by Customer and ends when the Service Ticket indicates the Services are no longer interrupted.

Supplier's Fibre Access Service Level Objective

22. While Supplier will use commercially reasonable efforts to achieve Supplier's Fibre Access Service Level Objective, Supplier shall not have any liability to Customer should the Supplier fail to achieve any of Supplier's Fibre Access Service Level Objectives.

Supplier's Fibre Access Service Level Agreement - Performance Discount

23. If the Availability of the Network Access Services for any calendar month is less than the Supplier's Fibre Access Service Level Agreement, then Customer shall be entitled to the Performance Discount for that calendar month. The Performance Discount shall be the only liability of Supplier to Customer in relation to Supplier not achieving Supplier's Fibre Access Service Level Agreement or the failure of the Services to fulfill the requirements of the Service Agreement.

Performance Discount Applies Only With Respect to Supplier's Network

24. Notwithstanding the preceding section hereof, Supplier will provide a Performance Discount only in relation to traffic over Supplier's Network. In the event that a Customer Location is provisioned through a network not owned or operated by Supplier then no Performance Discount will be provided in relation to traffic between such Customer Location and another Customer Location and, instead, Supplier shall pass along to Customer the credits, if any, that Supplier may become entitled to from the third party provider.

Limit on All Credits & Discounts

25. In the event Customer is entitled to a Performance Discount, then Customer shall not be entitled to any other discounts or credits from Reseller in relation to the Network Access Services under other provisions of the Service Agreement with respect to the calendar month for which Customer receives a Performance Discount. In no event shall the total Performance Discounts for any calendar month exceed the Monthly Recurring Charge for the Network Access Services for that calendar month.

Confidentiality of Access Codes and Passwords

26. Customer shall not disclose to anyone that does not have a need to know, shall keep and require to be kept confidential and shall not transfer all or any access codes and passwords that Supplier or Cloud Host may provide to Customer for use in relation to the Services.