



## DEDICATED INTERNET ACCESS (DIA)

### Telava™ Business Dedicated Internet Access (Business DIA) Service Terms

**1.1 SERVICE DESCRIPTION.** Dedicated Internet Access ("DIA") Service ("Service"), which includes T1, DS-3, Ethernet, Fast Ethernet, Gigabit Ethernet and OC-n speeds, provides Internet access to the Customer via either a cross-connect or a local loop from the Customer Premises router to a port on the Telava Internet access network interface. Where access is provided via a local loop, the local loop is provided by Telava between the Telava Internet access network interface and the Customer Premises router. Service may accommodate special routing access requests by the Customer and/or by Telava. If the Customer Premises router is located in a Telava collocation facility, access to Service will be provided to the Customer via a cross connect and access to the collocation will be available to Customer under the terms of the applicable Telava Collocation License Agreement.

**1.2 BUSINESS DIA EQUIPMENT AND MAINTENANCE:** Service must terminate into a Telava-approved router on the customer premises (CPE). A CPE router is required for the exchange of traffic between the Telava Network and the Customer and may be furnished by Customer or provided by Telava for a monthly recurring fee, depending on the speed of Service. If provided by the Telava, Telava will maintain, manage and support all Business DIA Equipment, including all associated device configurations and operational usernames and passwords. Customer must provide Telava unrestricted access to Telava-provided Business DIA Equipment for purposes of testing, upgrading, and other maintenance activities. Customer will provide continuous electrical service to Telava-provided Business DIA equipment. Telava will not be responsible for management of Telava-provided Business DIA Equipment if Customer has modified the Business DIA Equipment, including making any configuration changes. Customers who choose to provide their own Business DIA routers will be solely responsible for all router maintenance, management, and support. In addition, Customer must provide a single Layer-3 (IP) interface on Customer provided Business DIA router for the termination of Service. Telava will configure a single IP address on the single Layer-3 IP interface. Multiple Layer-3 or Layer-2 interfaces may not be used to connect directly to any single Business DIA Service circuit.

**1.3 BUSINESS DIA SERVICE DEMARCATION:** The point of demarcation for Service is the physical network location to which the Customer provided Business DIA router is connected or, if Business DIA Equipment is furnished by Telava, the LAN port at which interconnection takes place. Customer will provide Telava with access to Customer's premises, as necessary, to facilitate Service installation, testing and maintenance requirements.

**1.4 SERVICE PROVISIONING:** If the Company, in its sole discretion, decides to provide Service via wireless facilities acquired from a Wireless Internet Service Provider or via copper facilities acquired from a serving Local Exchange Carrier and subsequently ascertains that said facilities are unavailable for use, the Company may cancel the Service Order Agreement or Master Service Order Agreement without liability and without any further obligation to Customer.

**1.5 SERVICE USE:** Service use is limited to Customer and its End Users.

**1.6 NOTICES:** Customer shall notify Telava within five (5) days of any information or notices served on Customer that might adversely affect Telava including, but not limited to, notices of any claims or proceedings that involve Service. In addition, Customer shall promptly notify Telava of any errors, "bugs," or Service problems of which Customer becomes aware when using Service.

**1.7 DISCLAIMERS:** Telava exercises no control over, and therefore accepts no responsibility for information or content passing through the Company's host computers, Telava Network hubs and POPs (the "Telava Network"). EXCEPT AS EXPRESSLY SET FORTH IN SECTION 1.12 INFRA, Telava MAKES NO WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, FOR THE SERVICE OR EQUIPMENT IT PROVIDES, AND IT DISCLAIMS ANY WARRANTY OF TITLE, MERCHANTABILITY, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE. Telava expressly denies any responsibility for the accuracy or quality of information obtained by Customer or its End-Users through the use of Service. The use of any information obtained via the Telava Network is at Customer's and End User's own risk.

#### 1.8 TERM AND TERMINATION.

**1.8.1 SERVICE START DATE:** Telava will notify Customer when: (a) Service is installed or connected, successfully tested, and available for Customer use; and (b) if Telava is installing Business DIA Equipment, that the Business DIA Equipment has been installed and is operational. Billing will begin on the Start of Service Date regardless of whether Customer is prepared to use Service. Telava shall not be liable for any damages of any nature resulting from delays in meeting requested or specified service dates or its inability to provide Service.

**1.8.2 TERM:** The minimum term of Service is one (1) year beginning on the Start of Service Date. Unless one Party notifies the other in writing at least thirty (30) days prior to the expiration of the original or any renewal term of Service that it intends not to renew Service, Service shall automatically renew for the same term of Service period at the same pricing, terms and conditions.

## 1.9 CANCELLATION AND TERMINATION CHARGES

**1.9.1** If Customer cancels Service after an order has been placed but before the Start of Service Date, Customer will (a) pay Telava one (1) month's monthly recurring charges for Service, plus any applicable service ordering and installation charges incurred by Telava in undertaking to provision Service, and (b) return, at customer's expense, any Telava equipment in the same condition as when it initially was delivered and installed, reasonable wear and tear excepted, as well as any software or other materials provided by Company.

**1.9.2** If Customer terminates Service after the Start of Service Date, Customer must pay for all charges associated with the ordering and installation of Service, as well as the first month's recurring charges and for the monthly recurring charges for the remainder of the Service term, unless the Customer's termination is for cause. In addition, Customer will return, at its expense, any Telava equipment in the same condition as when it initially was delivered and installed, reasonable wear and tear excepted, as well as any software or other materials provided by the Company.

**1.9.3** Customer agrees that the damages specified in Sections 1.9.1 and 1.9.2 are difficult or impossible to ascertain with certainty and, therefore, the damages specified therein are intended to serve as liquidated damages and not a penalty.

## 1.10 ACCEPTABLE USE POLICY

**1.10.1** Customer acknowledges it has reviewed the Company's Acceptable Use Policy ("AUP") located at ([www.telava.com/aup](http://www.telava.com/aup)). Said Policy, which may be amended by Telava from time to time, is incorporated by reference herein and binding on Customer.

## 1.11 PRICING

**1.11.1** Pricing for Business DIA Service is as set forth in the applicable Service Order Agreement (SOA) and may vary depending on port speed, access costs or Business DIA Equipment costs required to deliver Business DIA Service to Customer.

**1.11.2 COMMITTED DATA RATE:** If Customer selects a burstable Service and a minimum per Mbps data rate ("Committed Data Rate") applies to a particular IP port, Customer's per-port usage of Service (both Send Traffic and Receive Traffic) via such port will be sampled every five (5) minutes for the previous five (5) minute period. At the end of each monthly billing period, the top five percent (5%) of Send Traffic and Receive Traffic samples for such port will be discarded. The higher of the resulting ninety-fifth (95th) percentile value for Send Traffic or Receive Traffic for such port will be compared to the Committed Data Rate applicable to the port. If the ninety-fifth (95th) percentile of either Send Traffic or Receive Traffic is higher than the applicable Committed Data Rate, Customer, in addition to being liable for the Committed Data Rate, will be liable for payment at the ninety-fifth (95th) percentile level for any usage in excess of the Committed Data Rate at the contracted per Mbps rate. For the purposes of this Exhibit, "Receive Traffic" means traffic from any origination point that is received by Customer from the Telava IP Network and "Send Traffic" means traffic from any origination point that is sent by Customer onto the Telava IP Network.

**1.12 BUSINESS DEDICATED INTERNET ACCESS SERVICE LEVEL AGREEMENT ("SLA"):** Customer acknowledges it has reviewed the Business Dedicated Internet Access Service Level Agreement ("SLA") located at [www.telava.com/legal/broadband/business/DIA/business\\_dia\\_sla.pdf](http://www.telava.com/legal/broadband/business/DIA/business_dia_sla.pdf). Said SLA, which may be amended from time to time, is incorporated by reference herein and is binding on Telava and Customer.

## 1.13 NETWORK NUMBERS AND DOMAIN NAME POLICIES.

**1.13.1** Telava Network Number and Domain Name Policies are set forth in the AUP located at [www.telava.com/aup](http://www.telava.com/aup). In all instances, the Telava Domain Name and TCP/IP Addresses provided in connection with Service remain the property of Telava and upon Service termination, Customer's right to use Telava Domain Name and TCP/IP Addresses will cease. Unless otherwise mutually agreed in writing, Customer at all times is responsible for maintaining its own Domain Name when

purchasing Service and for paying all charges associated with the Domain Name, including charges billed to Customer for Domain Name registration by third parties.

- 1.13.2** Telava will have sole and exclusive discretion with regard to the Internet routing of Telava-provided IP addresses.

#### **1.14 SOFTWARE LICENSE**

**1.14.1** Customer will not reproduce, modify, translate, transform, decompile, reverse engineer, disassemble, or otherwise determine, or attempt to determine, source code from any Telava or third party software, nor will it permit or authorize any third party to do so. Title to such software, and all related technical know-how and intellectual property rights therein, will remain the exclusive property of Telava and/or its suppliers. Customer must not take any action to jeopardize, limit or interfere in any manner with Telava's or a supplier's ownership rights with respect to any licensed software.

**1.14.2** TELAVA PROVIDES, AND CUSTOMER HEREBY ACCEPTS, ANY TELAVA OR THIRD PARTY SOFTWARE PROVIDED TO OR USED BY CUSTOMER IN CONNECTION WITH SERVICE "AS IS," WITH NO EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS OF ANY KIND INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE. NOTHING HEREIN MAY BE INTERPRETED TO ENHANCE OR CREATE ANY WARRANTY WITH RESPECT TO ANY THIRD PARTY SOFTWARE. TELAVA DISCLAIMS ANY AND ALL LIABILITY ARISING OUT OF THE DELIVERY, INSTALLATION, SUPPORT OR USE OF ANY SOFTWARE AND ASSUMES NO OBLIGATION TO CORRECT ERRORS IN ANY SOFTWARE. CUSTOMER UNDERSTANDS AND ACCEPTS ALL RESPONSIBILITY FOR ANY SOFTWARE MEETING CUSTOMER'S REQUIREMENTS OR EXPECTATIONS.

#### **1.15 LIMITATION OF LIABILITY**

**1.15.1** NEITHER PARTY WILL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES THAT RESULT FROM CUSTOMER'S OR CUSTOMER'S ENDUSERS' USE OF THE TELAVA NETWORK AND SERVICE INCLUDING, WITHOUT LIMITATION, ANY SUCH DAMAGES FOR LOSS OF DATA RESULTING FROM DELAYS, NON-DELIVERIES OR SERVICE INTERRUPTIONS. NOTWITHSTANDING ANY OTHER PROVISION HEREOF, CUSTOMER'S SOLE REMEDIES FOR ANY CLAIMS RELATING TO SERVICE OR THE TELAVA NETWORK ARE LIMITED TO CREDIT OUTAGE ALLOWANCES FOR WHICH THE CUSTOMER MAY BE ELIGIBLE.

**1.15.2** Telava will not be liable for any action it takes to remove or restrict access to obscene, indecent or offensive content made available by Customer, nor for any action taken to restrict access to material made available in violation of any law, regulation or rights of a third party including, but not limited to, rights under the copyright law and prohibitions on libel, slander and invasion of privacy.

#### **1.16 INDEMNIFICATION**

**1.16.1** Customer will indemnify, defend and hold Telava and its officers, directors, employees, agents, affiliates and suppliers harmless from and against any claims, actions, demands, losses, damages and expenses, including attorney's fees, relating to any violation including, but not limited to, a breach by Customer, its End Users or other users of its account of their obligations with regard to Service, the placement or transmission of any message, information, software or other materials on the Internet by Customer, its End Users or other users of its account, a violation of the AUP, or Customer's traffic being processed through the Company's switch, port or node. This indemnification will survive the termination of the Service Term.

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