

Macquarie Telecom Services Agreement Trading Terms

PART 1 – TRADING TERMS

1. TERMS

These Trading Terms apply to all Purchase Orders and Provisioning Requests accepted by Macquarie Telecom.

2. PURCHASE ORDERS FOR SERVICES

2.1 The Customer may submit a Purchase Order requesting that Macquarie Telecom provide the Services specified in the Purchase Order.

2.2 Subject to Macquarie Telecom:

- (a) accepting the Purchase Order (which acceptance may be express or implied by conduct and is subject to Macquarie Telecom's rights under **clause 10**); and
- (b) receiving any other necessary documents and information substantially in the form prescribed by Macquarie Telecom,

the Services specified in the Purchase Order will be provided in accordance with the Agreement.

2.3 Macquarie Telecom has no liability for charges, costs or expenses incurred by or on behalf of the Customer to another Provider or other third party prior to the applicable Service Start Date.

3. SUPPLY OF SERVICES

3.1 The Services will be provided for the Minimum Period.

3.2 The Customer may give a notice of cancellation of all or any of the Services to Macquarie Telecom at least 60 days prior to the earliest applicable Renewal Date in accordance with **clause 20.6**. If no such notice is given in respect of any Services, those Services are automatically renewed as and from that Renewal Date for the Renewal Period and **clause 8.5(b)** will apply to those Services.

3.3 If the Customer gives notice of cancellation in accordance with **clause 3.2**, the effective date of cancellation of the applicable Services will be the Renewal Date and **clause 16** will apply to the affected Services.

3.4 If the Customer cancels any Services or repudiates the Agreement after Macquarie Telecom has accepted the applicable Purchase Order or Provisioning Request but prior to the Service Start Date for those Services, **clause 16** will apply to the affected Services and additional Charges may apply in accordance with **clause 16.9**.

3.5 Subject to **clause 3.6**, Macquarie Telecom will provision new Services in accordance with the accepted Purchase Order or the accepted Provisioning Request and any applicable Service Order Confirmation. A Completion Notice will be issued for each new Service, after the Service has been implemented and the Customer is taken to have accepted the new Services on the Service Start Date. The Customer is liable for all applicable Charges for the new Services from the date of Macquarie Telecom's acceptance of the applicable Purchase Order or Provisioning Request.

3.6 The Customer agrees to provide all necessary assistance, cooperation and information reasonably required by Macquarie Telecom to implement the accepted Purchase Order or accepted Provisioning Request. If the Customer fails to comply with this **clause 3.6**, Macquarie Telecom:

- (a) is not liable for any delays or costs arising from that failure; and
- (b) may charge the Customer for any costs or expenses Macquarie Telecom reasonably incurs but which it would not have incurred had the Customer complied with this **clause 3.6**.

3.7 Macquarie Telecom:

- (a) will determine how the Services are provided, select the Providers, port the Service Numbers or any services to Macquarie Telecom's preferred Providers, or arrange least cost routing of traffic;
- (b) will invoice the Customer for all Charges incurred in connection with:
 - (i) the use of the Designated Numbers and Services; and
 - (ii) the delivery and installation of the Services or any Equipment (including applicable Charges for delivery or installation carried out at the request of the Customer outside business hours, even when installation charges

specified in the Pricing Schedule are waived or discounted);

(c) will carry out any actions necessary or incidental to give effect to this **clause 3.7** (including signing and submitting on the Customer's behalf any necessary authority forms or other details required to provide the Services); and

(d) may engage subcontractors or other service providers to supply some or all of the Services but will remain liable for the performance of its obligations under the Agreement notwithstanding any such engagement.

3.8 The Customer acknowledges that:

- (a) the Services may not be free from fault or interruption;
- (b) the Services may be unavailable during Planned Outages or unscheduled maintenance periods;
- (c) the Expected Ready for Service Date is a target only and Macquarie Telecom will use all reasonable efforts to meet any Expected Ready for Service Date specified by Macquarie Telecom, but is not liable for any costs or delay if it fails to do so;
- (d) no warranties or guarantees are given:
 - (i) that the Services will be free from interruption or external intrusion; or
 - (ii) as to the currency, availability, accuracy, security, privacy or quality of any information or communication received or accessed using the Services or the Website;
- (e) Macquarie Telecom does not warrant that the Services will meet the Customer's requirements, other than as expressly set out in the Agreement; and
- (f) the Customer is solely responsible for:
 - (i) any Customer Content published via websites, email, newsgroups, online forums or other publishing mediums accessed via the Services, whether or not the Customer authorises such publication; and
 - (ii) any reliance on or use of the information received or that is accessed when using the Services or the Website.

4. CUSTOMER REQUESTED ADDS, MOVES AND CHANGES TO AN EXISTING PURCHASE ORDER

4.1 The Customer may at any time request an add, move or change to an existing Purchase Order (including the cancellation of a Service), by issuing a Provisioning Request to Macquarie Telecom. Macquarie Telecom may in its absolute discretion accept or reject any such Provisioning Request, except that Macquarie Telecom must accept a request to cancel a Service where that cancellation is not connected with a request for a substitute Service.

4.2 Macquarie Telecom may issue a Service Order Confirmation in relation to any Provisioning Request upon receipt of all necessary technical information from the Customer. Subject to **clause 4.3**, the issue of a Service Order Confirmation constitutes acceptance by Macquarie Telecom of the Provisioning Request to which it relates, subject to the terms of that Service Order Confirmation and the Agreement.

4.3 The Customer must notify Macquarie Telecom of any requested changes to the Service Order Confirmation within 2 Business Days of receipt, failing which the Customer is deemed to have accepted the Service Order Confirmation. Macquarie Telecom may agree to requested changes and may alter the Charges or the Expected Ready For Service Dates accordingly. If the parties cannot agree on any requested changes to a Service Order Confirmation within 5 Business Days of Macquarie Telecom issuing the Service Order Confirmation, the Provisioning Request will be deemed to have been rejected by Macquarie Telecom.

4.4 The Customer is liable for all Charges incurred in implementing or arising out of an accepted Provisioning Request. If Services are being cancelled, **clause 16** will apply and additional Charges may apply in accordance with **clause 16.9**.

5. SUSPENSION OF SERVICES

5.1 Macquarie Telecom is entitled, without prejudice to its rights under **clause 16**, to suspend any Services immediately where:

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- (a) there is a Planned Outage;
 - (b) it is necessary due to a Force Majeure Event;
 - (c) an Emergency occurs;
 - (d) Macquarie Telecom considers that it is necessary for unscheduled repair, maintenance or service of any part of a Network;
 - (e) Macquarie Telecom has a right under the Agreement to terminate, cancel or suspend the Services (including, without limitation, a right under the Acceptable Use Policy);
 - (f) Macquarie Telecom, acting reasonably, suspects that there has been fraudulent or illegal use of the Services or a Designated Number;
 - (g) the Customer has breached **clause 10.3**;
 - (h) Macquarie Telecom reasonably believes that the Customer has breached the Agreement (other than a breach which separately gives rise to rights under this **clause 5.1**) and either:
 - (i) the breach is not capable of remedy; or
 - (ii) the breach is capable of remedy and the Customer has not remedied that breach within the period specified in a notice by Macquarie Telecom to the Customer requiring the breach to be remedied;
 - (i) Macquarie Telecom reasonably believes that there is excessive or unusual use of the Services (having regard to, amongst other things, the Customer's previous usage or any forecast given to Macquarie Telecom);
 - (j) Macquarie Telecom reasonably believes that the Customer is jeopardising the operation or quality of a Network or the services Macquarie Telecom or a Provider supplies to its customers; or
 - (k) the Customer poses an Unacceptably High Credit Risk.
- 5.2 Macquarie Telecom will end a suspension pursuant to **clause 5.1** as soon as reasonably practicable after the event or circumstance requiring the suspension has ceased (if applicable), or in the case of **clause 5.1(g)** only, the Customer has remedied the breach within a further period specified by Macquarie Telecom in writing.
- 5.3 The Customer acknowledges that (other than in a case of suspension under **clause 5.1(a), (b), (c) or (d)**):
- (a) periodic Charges will continue to accrue during any suspension; and
 - (b) if Macquarie Telecom ends a suspension of Services in accordance with **clause 5.2**, Macquarie Telecom may require the Customer to pay a reactivation Charge in respect of the suspended services.
- ## 6. CONSULTING SERVICES
- 6.1 At the Customer's request Macquarie Telecom may agree to provide Consulting Services at the Charges agreed by the parties and upon the terms (including any Service Level Guarantees), applicable to those Consulting Services as specified by Macquarie Telecom from time to time.
- 6.2 It is solely the Customer's responsibility to decide whether or not to implement any recommendations made pursuant to the Consulting Services or to act in reliance upon any estimate, opinion, conclusion or other information provided as part of those Services. In providing the Consulting Services Macquarie Telecom will rely upon its general telecommunications experience but ultimately will act upon the Customer's written directions.
- 6.3 Macquarie Telecom makes no warranty as to the accuracy or reliability of any estimate, opinion, conclusion or recommendation or other information provided as part of the Consulting Services, and to the maximum extent permitted by law, disclaims all liability for any loss or damage that may be suffered by the Customer through relying upon any estimate, opinion, conclusion or recommendation of the Consulting Services (or anything omitted from the Consulting Services), even if such loss or damage was reasonably foreseeable.
- ## 7. SERVICE LEVEL GUARANTEES
- 7.1 The Services may be supported by a Service Level Guarantee. Depending on the Service Level agreed in writing by the parties, the Service Level Guarantee may entitle the Customer to receive a rebate if it is breached.
- 7.2 Macquarie Telecom will endeavour to supply the Services in accordance with or in excess of the Service Levels (if any), but a breach of a Service Level or Service Level Guarantee is not a breach of the Agreement.
- 7.3 The Service Level Guarantee excludes Outages that result from:
- (a) a Planned Outage;
 - (b) an Emergency;
 - (c) a failure or malfunction with the Customer's property, any Customer Equipment, computer software or power supply to the Premises (unless caused by Macquarie Telecom);
 - (d) a failure or malfunction of an internet connection forming part of the Service;
 - (e) an act or an omission of the Customer or a person under the Customer's direction or control (other than if the act or omission is at Macquarie Telecom's direction);
 - (f) a Force Majeure Event;
 - (g) a requirement imposed upon Macquarie Telecom or a Provider by a Government, statutory or other relevant authority with jurisdiction over the Services; or
 - (h) unauthorised or illegal access by any party to any part of the system providing the Services, including hacking, cracking, virus dissemination and denial of service attacks.
- 7.4 No rebate is payable for a failure to meet a Service Level Guarantee if the Customer fails to notify Macquarie Telecom of the events giving rise to a claim for any rebate based on an alleged breach of a Service Level Guarantee within 60 days of the event occurring.
- 7.5 If a rebate is payable for a failure to meet a Service Level Guarantee:
- (a) the maximum amount payable for any failure to meet a Service Level Guarantee in any one calendar month cannot exceed the total Charges payable by the Customer in that month for the Service affected by the failure giving rise to the claim. Where necessary, this amount will be calculated on a pro-rata basis;
 - (b) the Service Level Guarantee may impose a cap on the amount of rebate payable in relation to a single incident;
 - (c) any rebate payable under the Service Level Guarantee is the Customer's sole and exclusive remedy under the Agreement for that failure; and
 - (d) if the circumstances of a single event or sequence of events are such that a rebate may be claimed for more than one type of failure to meet a relevant Service Level Guarantee, the Customer's entitlement to obtain a rebate is limited to receiving only one rebate, being that rebate which Macquarie Telecom determines (acting in good faith), will provide the greatest benefit to the Customer.
- ## 8. CHARGES
- 8.1 The Customer is liable for all Charges incurred by or on behalf of it under any accepted Purchase Order or Provisioning Request.
- 8.2 The Macquarie Rates:
- (a) will be specified in the Pricing Schedule or an accepted Provisioning Request;
 - (b) unless stated otherwise in the applicable Service Schedule, apply to the Services from their respective Service Start Dates;
 - (c) apply until:
 - (i) the Customer's receipt of a notice of termination pursuant to **clause 16.1(a)**; or
 - (ii) in respect of Macquarie Rates applicable to Services in respect of which Macquarie Telecom has received a notice of cancellation, the effective date of cancellation of those Services (as determined in accordance with **clause 16.5**), unless the notice of cancellation was received before the end of the then current Period and the effective date of cancellation is after the end of that Period in which case the applicable Macquarie Rates cease to apply at the end of that Period; or
 - (iii) Macquarie Telecom's receipt of a request to transfer or preselect some or all of the Designated Numbers to another service provider; and
 - (d) apply only if payment for the Charges is made in accordance with **clause 9**.
- 8.3 Where no Macquarie Rates apply to a Service or as otherwise specified in the Agreement, the Charges are calculated using the applicable Charges for that Service specified in the Macquarie Standard Price List at the time the Charges are incurred.
- 8.4 If the Macquarie Rates cease to apply in accordance with **clause 8.2**,

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the Charges are calculated using the applicable rate in the Macquarie Standard Price List, or if the applicable rate is not listed in the Macquarie Standard Price List, the applicable rate in the SFOA.

8.5 Macquarie Telecom may vary:

- (a) the Macquarie Rates at any time by providing 30 days notice to the Customer to reflect:
 - (i) any increase or decrease in charges passed on to Macquarie Telecom by any Provider; or
 - (ii) the impact of an Exchange Rate Variation on Macquarie Telecom's costs of providing the Services.

Any such variation will take effect from the start of the first billing period not less than 30 days after the notice is given;

- (b) the Macquarie Rates applicable to a particular Service without notice to the Customer if that Service is automatically renewed in accordance with **clause 3.2**, by an amount equal to the increase (if any) in the Consumer Price Index (Sydney) in the period from the date of the accepted Purchase Order (or, if applicable, accepted Provisioning Request) to the Renewal Date for that Service. Any such variation will take effect from the Renewal Date for that Service;
- (c) the Macquarie Standard Price List at any time without notice to the Customer. Any such variation will take effect from the start of the first billing period not less than 30 days after the date that the latest version of the Macquarie Standard Price List is posted by Macquarie Telecom to the website located at <http://www.mspl.macquarie.net.au/>; and
- (d) the Charge imposed by Macquarie Telecom on credit card payments at any time by providing 30 days notice to the Customer. Any such variation will take effect from the start of the first billing period not less than 30 days after the notice is given.

8.6 The Macquarie Rates may also be varied by the written agreement of the parties. Any agreed variation in the Macquarie Rates will take effect from the start of the first billing period not less than 30 days after the change is agreed.

8.7 Macquarie Telecom may round up any Charge to the nearest cent before GST is applied.

9. INVOICING AND PAYMENT

9.1 Macquarie Telecom will invoice the Customer for the Charges. Invoices may be provided in paper format or electronically. Electronic invoices are subject to any terms and conditions that apply to Macquarie Telecom's online services from time to time. To the extent of any inconsistency between the Charges specified in an invoice and those accessed electronically via the Website, the Charges specified in the invoice will prevail.

9.2 The Customer may in writing request that the Charges be invoiced to specified cost centres, billing entities or other formats. Acceptance of any such request is subject to Macquarie Telecom's reasonable requirements (including as to the period of prior notice) and in any event is not retrospective in operation. The Customer at all times remains liable for all invoiced Charges irrespective of whether the Charges are allocated in any particular way.

9.3 The Customer is liable for any Tax, subject to Macquarie Telecom first providing a tax invoice. Any such Tax will be payable by the Customer in accordance with **clause 9.4**. If the Customer is required under the law of any jurisdiction outside Australia to deduct or withhold any sum as a Tax imposed on or in respect of any amount due or payable to Macquarie Telecom, the Customer must make such deduction or withholding as required and the amount payable to the Macquarie Telecom must be increased by any such amount necessary to ensure that Macquarie Telecom receives a net amount equal to the amount which it would have received in the absence of any such deduction or withholding.

9.4 The Customer must pay the Charges (other than any disputed amount withheld in accordance with **clause 9.7**), in full within the Payment Period. Unless otherwise agreed, payment must be by cheque, direct deposit into Macquarie Telecom's nominated account or credit card. Any applicable Charge will apply to any payments made by way of a credit card.

9.5 Charges set out in an invoice are payable regardless of any circumstances whereby:

- (a) not all Charges incurred in a billing period are included in the same invoice; or

- (b) incorrect invoices are issued and amended or additional invoices are subsequently issued.

9.6 Subject to **clause 9.7**, if some or all invoiced Charges are not paid within the Payment Period, Macquarie Telecom may, in addition to its rights under **clause 16**, do any or all of the following:

- (a) by notice cease using the Macquarie Rates in respect of the Services and assess the Charges by reference to the applicable rate in the Macquarie Standard Price List, or if the applicable rate is not listed in the Macquarie Standard Price List, the applicable rate in the SFOA, until payment in full (including interest and other Charges), is made;
- (b) impose interest on the outstanding amount from the due date until it is paid in full at the official Cash Rate as published in *The Australian Financial Review* plus 3 per cent per annum; and
- (c) by 5 days notice suspend availability of the Services, without terminating the Agreement, until payment in full (including interest and other Charges), is made.

9.7 If the Customer in good faith disputes any invoiced Charges, the Customer may withhold the disputed amount, but only if on or before expiry of the Payment Period:

- (a) the undisputed amount of the invoice is paid in full; and
- (b) notice of the dispute is given to Macquarie Telecom, setting out details of the amount disputed, the reasons for the dispute and the basis for calculating the disputed amount.

Macquarie Telecom will investigate the dispute and (if applicable), raise it with the Provider. The Customer acknowledges and agrees that Macquarie Telecom's decision (or the Provider's decision if applicable), on the disputed amount is, in the absence of fraud or manifest error, final. Macquarie Telecom will provide, on request by the Customer, the reasons for any Provider's decision. If the disputed amount is found to be payable (in whole or in part), then the Customer must pay that amount within 14 days of receiving notice of the decision.

9.8 If any Invoiced Charges are not disputed in accordance with **clause 9.7** and not paid within the Payment Period, **clause 9.6** will apply.

9.9 If any Invoiced Charges are not disputed in accordance with **clause 9.7** within six months of the date of the invoice, they are deemed to be correct.

9.10 Macquarie Telecom may offset any amounts payable to the Customer (including rebates and any amount to be credited under **clause 16.8(b)(iv)**), against any outstanding Charges.

10. CREDIT ASPECTS

10.1 The Customer consents to Macquarie Telecom obtaining at any time a credit report from a credit reporting agency.

10.2 If:

- (a) any credit report obtained pursuant to **clause 10.1** is in Macquarie Telecom's view unfavourable; or
- (b) the Customer has breached **clause 9.4** on two or more occasions; or
- (c) the Customer poses an Unacceptably High Credit Risk, Macquarie Telecom reserves the right (without prejudice to its rights under **clauses 3.4** or **16**), to:
 - (d) require the Customer to provide a Security or to increase the amount of any existing Security or provide an additional form of Security; or
 - (e) impose a Credit Limit for any Charges that may be incurred under the Agreement.

10.3 Any Security required under **clause 10.2** must be provided in a form and method acceptable to Macquarie Telecom within 7 days of the date of Macquarie Telecom's notice.

11. CUSTOMER OBLIGATIONS

11.1 The Customer is responsible for:

- (a) controlling access to and use of the Services, except to the extent otherwise agreed in writing by the parties;
- (b) controlling access to and use of any passwords provided by Macquarie Telecom (including, but not limited to, the Customer's personal identification numbers);

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- (c) ensuring that the Services are used only in accordance with the Agreement (including the Acceptable Use Policy) and all applicable laws;
- (d) ensuring the security of any communications made using the Services or any Customer Equipment connected to the Services; and
- (e) payment of all Charges, even if it resells or distributes any of the Services.

12. PURCHASE OF EQUIPMENT

- 12.1 The Customer may at any time order Equipment, using a Purchase Order or Provisioning Request for the Equipment. Macquarie Telecom may in its absolute discretion accept or reject such an order.
- 12.2 The following conditions will apply to any Purchased Equipment:
- (a) title to any Purchased Equipment does not pass and remains with Macquarie Telecom until the Purchased Equipment is paid for in full; and
 - (b) the Purchased Equipment is at the Customer's risk immediately on delivery to the Customer, irrespective of when payment is due from the Customer.
- 12.3 The Customer accepts exclusively the applicable terms and conditions of the manufacturer's warranty in respect of all Purchased Equipment and agrees that Macquarie Telecom has no obligation to the Customer for any malfunction of or damage to any Purchased Equipment.
- 12.4 The Customer acknowledges that it has relied upon its own skill and judgement in selecting the Purchased Equipment.

13. MACQUARIE TELECOM EQUIPMENT

- 13.1 This **clause 13** only applies if Macquarie Telecom is providing Macquarie Telecom Equipment as part of the Services.
- 13.2 During the Term, the Customer is granted a non-exclusive, non-transferable, restricted licence to use the Macquarie Telecom Equipment in accordance with the Agreement for its business purposes only.
- 13.3 Title to the Macquarie Telecom Equipment is retained by Macquarie Telecom or (if applicable), the third party (including any Provider), involved in the supply of the Services and nothing in the Agreement will be construed as conferring ownership upon the Customer. The Customer acknowledges that despite any law to the contrary or any affixation of the Macquarie Telecom Equipment to the Premises, the Macquarie Telecom Equipment is and remains the property of Macquarie Telecom or the relevant third party.
- 13.4 Macquarie Telecom reserves all rights in the Macquarie Telecom Equipment not expressly granted to the Customer.
- 13.5 The Customer must:
- (a) operate the Macquarie Telecom Equipment with due care and skill and by using appropriately qualified personnel;
 - (b) comply with all Macquarie Telecom's reasonable directions in respect of any Macquarie Telecom Equipment;
 - (c) not allow any Macquarie Equipment to be altered, repaired, serviced, moved or connected to or disconnected from any power source other than by personnel approved by Macquarie Telecom;
 - (d) not transfer, sell, hire or give away any Macquarie Telecom Equipment or any of its rights in any Macquarie Telecom Equipment; and
 - (e) assume all risk of loss or damage to any Macquarie Telecom Equipment while it is in its possession or control (except to the extent of Macquarie Telecom's negligence).

14. INFORMATION

- 14.1 Subject to the Privacy Act and except in relation to the Customer Content, the Customer:
- (a) will promptly provide Macquarie Telecom with all information that Macquarie Telecom (including Macquarie Telecom's contractors and agents), may reasonably require in order to fulfil its obligations under the Agreement or any of its contractual obligations to any Provider or other supplier;
 - (b) authorises Macquarie Telecom to obtain such information as Macquarie Telecom may need from time to time from any Provider for the purpose of fulfilling its obligations under the Agreement or as otherwise required or permitted by law;

- (c) authorises Macquarie Telecom to obtain from or give to any credit providers named in a credit report or credit reporting agency, information about the Customer's credit arrangements which may include any information as to the Customer's creditworthiness, credit standing, credit history or credit capacity that credit providers or credit reporting agencies are allowed to give or receive under the Privacy Act; and
- (d) consents to Macquarie Telecom and any service provider involved in the supply of the Services exchanging call charging and other information concerning the Customer's account.

- 14.2 The Customer consents to Macquarie Telecom collecting and authorises Macquarie Telecom to use, exchange or disclose any information provided by the Customer (other than Customer Content), with Macquarie Telecom's Providers, contractors and agents to the extent necessary to install and supply the Services. The Customer acknowledges that this may contain personal information as defined under the Privacy Act. A copy of Macquarie Telecom's privacy policy is available on the Website and the Customer specifically consents to Macquarie Telecom using and disclosing personal information in accordance with the privacy policy.

15. CONFIDENTIALITY

- 15.1 The Customer acknowledges that the contents of the Agreement and any pricing or product information (including in any proposal) provided by Macquarie Telecom, constitutes commercially sensitive and confidential information, except to the extent that it is published on a publicly available portion of the Website. The Customer must not disclose that information to any third party without Macquarie Telecom's prior written consent, unless legally compelled to do so, and then only after providing notice to Macquarie Telecom of the basis of that legal compulsion.
- 15.2 Macquarie Telecom acknowledges that the information supplied by the Customer or received by Macquarie Telecom from a Provider in relation to the Services is commercially sensitive and may contain confidential information. Subject to its rights under **clause 14** and Macquarie Telecom's privacy policy, Macquarie Telecom must not disclose to any third party any information provided by the Customer and that the Customer asserts is confidential information without the Customer's prior written consent, unless Macquarie Telecom is legally compelled to do so, and then only after providing notice to the Customer of the basis of that legal compulsion.

16. TERMINATION AND CANCELLATION

- 16.1 Macquarie Telecom is entitled to:
- (a) terminate the Agreement or cancel any Services with immediate effect by notice to the Customer if:
 - (i) subject to **clause 9.7**, the Customer fails to pay in full the Charges due under an accepted Purchase Order or Provisioning Request within 14 days of the end of the Payment Period;
 - (ii) the Customer breaches a material term of the Agreement and:
 - (A) the breach is not capable of remedy; or
 - (B) the breach is capable of remedy and the Customer fails to rectify that breach within 14 days of receipt of a notice from Macquarie Telecom requiring it to do so;
 - (iii) the Customer is subject to an Insolvency Event; or
 - (iv) the Customer breaches a material term of any licence, permit, authorisation or law relating to the use of any of the Services;
 - (b) terminate the Managed Handset Services:
 - (i) with immediate effect without notice to the Customer if:
 - (A) the Managed Handset Services Agreement is terminated by the Managed Handset Services Provider as a result of the occurrence of an event of default in respect of the Customer; or
 - (B) the Customer repudiates the Managed Handset Services Agreement and the Managed Handset Services Provider accepts that repudiation;
 - (ii) with immediate effect by notice to the Customer if the Managed Handset Alliance Agreement is terminated and the Managed Handset Service Agreement is not assigned or novated to Macquarie Telecom; or

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- (iii) on 60 days notice if the Managed Handset Alliance Agreement is terminated without cause by either Macquarie Telecom or the Managed Handset Services Provider; and
 - (c) cancel Services on 30 days notice if Macquarie Telecom's right to provide those Services is revoked, terminated or otherwise restricted as a result of government action, regulatory change, or any action lawfully taken by a Provider under any agreement between the Provider and Macquarie Telecom for the supply of services.
- 16.2 The Customer is entitled to cancel any Services with immediate effect by prior notice to Macquarie Telecom if Macquarie Telecom is subject to an Insolvency Event.
- 16.3 Either party is entitled to cancel any Service without reason by providing at least:
- (a) in the case of Fixed Line Services and Mobile Services, 60 days prior notice; or
 - (b) in the case of Data Services and Hosting Services, 90 days prior notice.
- Clause 16.9** applies in the case of a cancellation by the Customer under this clause.
- 16.4 A notice of cancellation of any Service by either party must be given in accordance with the requirements for notices of cancellation in **clause 20.6**, unless **clause 16.10** applies.
- 16.5 The effective date of a cancellation of any Services is determined as follows:
- (a) where the Customer gives a notice of cancellation of any Services, the effective date of cancellation of those Services is:
 - (i) if the notice is given under **clause 3.2**, the Renewal Date;
 - (ii) in any other case, the date the notice is given (or any later date specified in the notice);
 - (b) where the Customer is deemed to have given a notice of cancellation of a Service under **clause 16.10**, the effective date of cancellation of that Service is the date the Customer removes the Designated Number from the scope of the applicable Services;
 - (c) where Macquarie Telecom accepts a Provisioning Request which requests any Services be cancelled (including by way of requesting that the Designated Number for the Service be swapped to another Service or plan), the effective date of cancellation of those Services is:
 - (i) the date specified in the Service Order Confirmation;
 - (ii) if no date is specified in the Service Order Confirmation, the date specified in the Provisioning Request; or
 - (iii) if no date is so specified in the Service Order Confirmation or the Provisioning Request, the date on which Macquarie Telecom accepts the Provisioning Request; and
 - (d) where all Services are cancelled under **clause 16.6**, the effective date of the cancellation is the date the notice of termination is given (or any later date specified in the notice) or the repudiation is accepted.
- 16.6 If the Agreement is terminated or repudiated (and the repudiation is accepted), all Services are cancelled.
- 16.7 If any Services are cancelled for any reason:
- (a) where prior notice of the cancellation is given, the Customer and Macquarie Telecom must co-operate to agree a schedule for the orderly transfer or shutdown of each of the cancelled Services on or before the effective date of the cancellation;
 - (b) where no prior notice of cancellation is given, or where no agreement is reached under paragraph (a) by the earlier of:
 - (i) the date thirty days before the effective date of the cancellation; and
 - (ii) 30 days after the notice of cancellation is given, Macquarie Telecom may notify the Customer of a schedule for the shutdown of the cancelled Services which Macquarie Telecom considers meets as nearly as practicable those requirements of the Customer which have been made known to Macquarie Telecom;
- (c) Macquarie Telecom may, subject to **clause 16.11**, cease providing the cancelled Services on and from the effective date of the cancellation or any earlier date for doing so in the schedule agreed with the Customer under paragraph (a) or notified by Macquarie Telecom under paragraph (b);
 - (d) all Charges and any other amounts owing by the Customer for those Services, including the amounts calculated in accordance with **clause 16.9**, are immediately due and payable on the effective date of the cancellation;
 - (e) the Customer must:
 - (i) in accordance with **clause 16.8**; and
 - (ii) within 3 Business Days of the effective date of cancellation of the applicable Service return to Macquarie Telecom or permit Macquarie Telecom to collect:
 - (iii) all Macquarie Telecom Equipment which is in the Customer's possession or under the Customer's control and is provided as part of a cancelled Service; and
 - (iv) any Purchased Device or Purchased Equipment which is being purchased as part of a cancelled Service and has not been fully paid for.
- 16.8 In relation to Equipment to which **clause 16.7(e)** applies:
- (a) the Customer must return the Equipment unless Macquarie Telecom has by written notice to the Customer elected to collect it;
 - (b) if Macquarie Telecom has so elected to collect the Equipment:
 - (i) the Customer must permit Macquarie Telecom to do so and must provide all such assistance as Macquarie Telecom may require for the purpose of exercising its rights under this clause;
 - (ii) Macquarie Telecom may without notice collect all such Equipment in full and may through its authorised representatives during business hours enter the Customer's premises or any other premises where that Equipment may be kept without being liable for any loss or damage occasioned by such action;
 - (iii) the Customer indemnifies Macquarie Telecom against any claim made against Macquarie Telecom for loss or damage arising out of any permissible action taken in accordance with this clause; and
 - (iv) on collecting any such Purchased Device or Purchased Equipment, Macquarie Telecom may (at its sole discretion) credit the Customer's account with an amount equal to the amounts (if any), paid by the Customer in respect of the Purchased Device or Purchased Equipment prior to the date of repossession, less the costs incurred by Macquarie Telecom in connection with the collection; and
 - (c) the return or collection of the Equipment will be at the Customer's cost, except where the Customer has cancelled the applicable Services in accordance with **clause 16.2**.
- 16.9 In addition to any other Charges due under the Agreement:
- (a) if:
 - (i) the Customer cancels some or all of the Services, other than in accordance with **clause 16.2**, and the effective date of the cancellation is prior to the expiry of the current Period;
 - (ii) the Customer cancels some or all of the Services at a time referred to in **clause 3.4**;
 - (iii) the Customer repudiates the Agreement;
 - (iv) Macquarie Telecom terminates the Agreement or any Services in accordance with **clause 16.1(a)**; or
 - (v) Macquarie Telecom terminates the Managed Handset Services in accordance with the Service Schedule for those Services,the Customer will be liable to pay to Macquarie Telecom as a genuine estimate of the loss Macquarie Telecom will incur from early cancellation of the Services (including charges payable to the applicable Provider), any early cancellation payments for the Services calculated in accordance with the applicable Service Schedule, Pricing Schedule or accepted Provisioning Request; and

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- (b) if the Customer fails to return or, if Macquarie Telecom elects in accordance with **clause 16.8** to collect, fails to permit Macquarie Telecom to collect, the Macquarie Telecom Equipment, Purchased Device or Purchased Equipment in accordance with that clause, the Customer will be liable to pay to Macquarie Telecom as a genuine estimate of the loss Macquarie Telecom will incur from such failure an amount calculated in accordance with the applicable Service Schedule.;
- 16.10 The Customer will be deemed to have given a notice of cancellation of a Fixed Line Service or Mobile Service if:
- (a) in the case of Fixed Line Services, the Customer removes any Designated Numbers from the scope of the Fixed Line Services in breach of **clause 1.2** of Service Schedule 1 - Fixed Line Services; and
- (b) in the case of Mobile Services, the Customer removes any Designated Numbers from the scope of the Mobile Services in breach of **clause 1.3** of Service Schedule 2 - Mobile Services.
- 16.11 The Customer acknowledges that if Macquarie Telecom is providing Fixed Line Services or Mobile Services, in line with industry practice, termination of the Agreement or cancellation of those Services (other than for the Customer's default), does not mean that those Services will automatically cease to be supplied. In addition to terminating the Agreement or cancelling those Services, the relevant Services must be either:
- (a) transferred to a new service provider (in accordance with the Code); or
- (b) cancelled upon the Customer's written direction in accordance with **clause 20.6**,
- and the Customer remains liable for all Charges incurred in relation to those Services until they are either shutdown, or transferred to the gaining service provider, notwithstanding any termination of the Agreement.
- 16.12 If Macquarie Telecom is providing Fixed Lines Services or Mobile Services, Macquarie Telecom will comply with its obligations under the Code in relation to any transfer upon termination or cancellation. The Customer acknowledges that under the Code it is the responsibility of the gaining service provider to arrange and complete the transfer.
- 16.13 Despite any provision in the Agreement to the contrary, the termination of the Agreement takes effect on the date upon which Macquarie Telecom ceases to provide any Services to the Customer.
- 16.14 For the purposes of **clause 16.1(a)(ii)**, a breach of a material term of the Agreement includes, without limitation, each of the following:
- (a) a failure to comply with the requirements for provision of Security under **clause 10.3**;
- (b) a failure to comply with the requirements relating to confidential information under **clause 15**;
- (c) a failure to comply with a direction of a Government agency or regulatory authority in accordance with **clause 19.1(c)**;
- (d) a failure to comply with **clause 21.3** in relation to an assignment or other dealing;
- (e) a failure to comply with the Acceptable Use Policy;
- (f) a failure to comply with the following provisions of Service Schedule 2 - Mobile Services - **clauses 3.1(a), (f) or (g) or 8.1(f)**; or
- (g) a failure to comply with the following provisions of Service Schedule 4 - Hosting Services - **clauses 3.2 and 4.3**.
- 17. LIMITATION OF LIABILITY**
- 17.1 To the extent permitted by law, Macquarie Telecom is not liable to the Customer (or any party claiming through the Customer), in tort, contract or otherwise for any:
- (a) loss of profits, opportunity, revenue, data, goodwill, business or anticipated savings, pure economic loss, loss of value of equipment (other than cost of repair) or expectation loss; or
- (b) any indirect, consequential, special, punitive or exemplary loss or damage,
- even if such loss or damage was reasonably foreseeable, arose naturally or was in the contemplation of the parties.
- 17.2 To the extent permitted by law, Macquarie Telecom's liability to the Customer in relation to the Services and the Agreement is limited (at Macquarie Telecom's option), to:
- (a) in the case of Services, resupplying the Services or paying the cost of having the Services resupplied; or
- (b) in the case of goods, repairing or replacing the goods or paying the cost of having the goods repaired or replaced.
- 17.3 If, notwithstanding **clauses 17.1 and 17.2**, Macquarie Telecom is liable to the Customer in relation to the Services or the Agreement, Macquarie Telecom's liability is limited to a sum equal to the total amount paid or payable by the Customer under the Agreement in relation to the Services affected by the circumstances giving rise to the claim for the period of 12 months prior to the date of the liability arising.
- 17.4 Notwithstanding any other provision of the Agreement, the Customer is liable to Macquarie Telecom (including Macquarie Telecom's directors, officers, employees, contractors and agents), for and indemnifies Macquarie Telecom and its directors, officers, employees, contractors and agents against any loss, damage, claim, proceeding and cost (including all legal costs on an indemnity basis), including as a result of a third party claim against Macquarie Telecom, arising out of:
- (a) the use or attempted use (including fraudulent use), by any person (including the Customer), of a Service or equipment connected to a Service (including any use that constitutes a breach of the Acceptable Use Policy);
- (b) any information, data, images, graphics or material produced, stored, transmitted, accessed, downloaded or used by the Customer or any other person using the Services;
- (c) any loss or damage caused by the Customer Equipment stored at the Location, or the acts or omissions of employees, agents or contractors of the Customer at the Location;
- (d) any breach by the Customer of the Agreement, including the Acceptable Use Policy; and
- (e) any loss or damage to any Macquarie Telecom Equipment while it is in its possession or control (except to the extent of Macquarie Telecom's negligence).
- 17.5 Each party's liability to the other party under the Agreement (including without limitation under an indemnity), will be reduced to the extent that such liability was caused by the other party, its employees, subcontractors and authorised representatives or a related body corporate (as defined in the *Corporations Act 2001*) of that other party.
- 18. FORCE MAJEURE**
- 18.1 Notwithstanding any other provision in the Agreement, neither party will be liable for any delay or failure in performance of any part of the Agreement, other than for any delay or failure in an obligation to pay money, to the extent that such delay or failure is attributable to a Force Majeure Event.
- 18.2 Each party's obligations under a Purchase Order affected by the Force Majeure Event will be suspended to the extent of the Force Majeure Event. The parties will work together in good faith to minimise the impact of any Force Majeure Event (including implementing any commercially practicable work-arounds).
- 19. REGULATORY ASPECTS**
- 19.1 The Customer:
- (a) consents to Macquarie Telecom disclosing any information in relation to the Customer's account or use of the Services to the extent required by any law enforcement agency without notifying the Customer of the request or the information provided;
- (b) acknowledges that, where the Service is a carriage service (as defined in the Act), Macquarie Telecom may be required to intercept communications over the Service and may also monitor usage of the Service and communications sent over it as required by law;
- (c) must promptly comply with any direction issued by any Government agency or regulatory authority, including the ACMA or the Australian Competition and Consumer Commission, in connection with the supply of the Services;
- (d) will co-operate with Macquarie Telecom if Macquarie Telecom is required to comply with any such direction (which may include suspending Services); and

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- (e) will provide reasonable assistance to Macquarie Telecom or, if applicable, a Government agency or regulatory authority, in any investigation by a Government agency or regulatory authority in connection with the supply of the Services in which Macquarie Telecom is involved, whether or not required by law to do so.

20. NOTICES

- 20.1 Subject to **clause 20.6**, all notices, consents, requests and other communications required to be given under the Agreement must be in writing and delivered or sent by mail, fax or e-mail to the Customer's address, fax number or e-mail address on the Purchase Order, or to Macquarie Telecom at:
- Macquarie Telecom Pty Limited
Level 20, 2 Market Street
Sydney NSW 2000
Facsimile: (02) 8221 7788
E-mail: legal@macquarietelecom.com
Attention: The General Counsel
- 20.2 Subject to **clause 20.3** a notice, consent, request or other communication under the Agreement is, in the absence of earlier receipt, regarded as given and received:
- (a) if it is delivered, upon delivery at the address of the relevant party;
- (b) if it is sent by mail, on the third Business Day after the day of posting, or if to or from a place outside Australia, on the seventh Business Day after the day of posting;
- (c) if it is sent by fax, at the time and on the day it was successfully sent; and
- (d) if it is sent by e-mail, at the time and on the day it was successfully sent.
- 20.3 If a notice, consent, request or other communication under the Agreement is given and received on a day that is not a Business Day or after 5.00 pm (local time in the place of receipt), on a Business Day, it is regarded as being given and received at 9.00 am on the next Business Day.
- 20.4 Either party may change its address, fax number or e-mail address for service by providing not less than 7 days prior notice to the other party.
- 20.5 Where Macquarie Telecom has prescribed a form of notice for the purposes of the Agreement, "in writing" means in that prescribed form.
- 20.6 A notice of:
- (a) cancellation of any Service must be sent by submitting a Provisioning Request on the Website or (only if the Website can't be accessed for any reason or if not reasonably practicable in the circumstances) delivered or sent by fax or letter; or
- (b) termination of the Agreement must be delivered or sent by mail or fax only.

All such notices under this **clause 20.6** must be addressed as specified in **clause 20.1**.

21. MISCELLANEOUS

- 21.1 The Agreement constitutes the entire agreement and understanding between the Customer and Macquarie Telecom in relation to its subject matter. All previous negotiations and representations (express or implied) are excluded to the maximum extent permissible at law or in equity.
- 21.2 Macquarie Telecom may at any time assign the whole or any part of the Agreement to a related body corporate or a third party without the Customer's consent and the Customer irrevocably appoints Macquarie Telecom as its lawful attorney to execute all documents and to do all acts as are necessary and desirable to give effect to any such assignment or novation. Without limiting the generality of the preceding part of this **clause 21.2**, if:
- (a) Macquarie Telecom is providing Mobile Services to the Customer; and
- (b) Macquarie Telecom wishes to assign the benefit of and novate its rights and obligations under the Agreement insofar as they relate to those Mobile Services to Vodafone Network Pty Ltd (ACN 081 918 461) (or its nominee),

- Macquarie Telecom may do so in accordance with this **clause 21.2**.
- 21.3 The Customer may assign or deal with its rights or obligations under the Agreement only with Macquarie Telecom's prior written consent, which Macquarie Telecom will not unreasonably withhold.
- 21.4 If a part of the Agreement is held to be void, voidable or unenforceable or an invalid part severed, the remainder of the Agreement is not affected.
- 21.5 The Customer acknowledges and agrees that the only individuals who have authority to deal with the terms and conditions of the Agreement are Macquarie Telecom's directors, Chief Financial Officer, Company Secretary, legal counsel or such other individuals authorised by Macquarie Telecom's directors.
- 21.6 If Macquarie Telecom considers it necessary to do so (in its discretion) in order to address a change in circumstances initiated by a Provider or a Government agency or regulatory authority, it may vary the Agreement whilst the Services continue to be provided by giving the Customer 30 days prior notice. The Customer may object to the variation provided that Macquarie Telecom receives the Customer's objection within 10 days of Macquarie Telecom's notice. If the Customer objects, then the parties will negotiate in good faith to agree upon an acceptable variation. If no agreement is reached before expiry of the original 30 day notice period, then Macquarie Telecom reserves the right to terminate the Agreement upon 30 days notice.
- 21.7 No waiver by a party, whether express or implied, of any provision in the Agreement or of any breach or default by the other party will constitute a continuing waiver or a waiver of any other provision of the Agreement, unless expressly so provided in writing and signed by the first party's authorised representative.
- 21.8 The laws of New South Wales govern the Agreement and both parties irrevocably submit to the exclusive jurisdiction of the courts of New South Wales.
- 21.9 In the event of any inconsistency between a written variation to the Agreement, an accepted Provisioning Request or Purchase Order, a Pricing Schedule, a Service Schedule, the Trading Terms, the Macquarie Standard Price List, a Service Level and Service Level Guarantee (where applicable), the Prepaid Terms (where applicable), the Acceptable Use Policy and any documents incorporated into the above documents by way of reference, the order of precedence between them will be as listed in this **clause 21.9**. There is no order of precedence between different Service Schedules.
- 21.10 Termination of the Agreement will not affect the accrued rights or remedies of either party, including any rights or remedies arising as a result of the termination.
- 21.11 All clauses which are either expressly or by implication intended to survive termination will continue to apply after termination including without limitation, **clauses 15, 16, 16.14(f)**, and **21**.

PART 2 – DICTIONARY

1. Definitions

In the Agreement:

ACMA means the Australian Communications and Media Authority.

Acceptable Use Policy means Macquarie Telecom's Acceptable Use Policy as published on the Website from time to time.

Act means the *Telecommunications Act 1997 (Cth)* and definitions used in the Act have that meaning unless the contrary intention otherwise appears.

Agreement means the agreement between Macquarie Telecom and the Customer which comprises the Trading Terms, the accepted Purchase Order and each accepted Provisioning Request, each applicable Service Schedule, Pricing Schedule, Service Level and Service Level Guarantee, the Macquarie Standard Price List, the Prepaid Terms (where applicable), the Acceptable Use Policy and any documents incorporated into the above documents by way of reference.

BlackBerry Availability Services means any service available for use by the Customer or its End Users by using a Blackberry Handheld, and may include Vodafone *live!*.

BlackBerry Handheld means the BlackBerry Wireless Handheld™ or any successor product, which may be marked with the trade mark of a Provider, and which may contain the Vodafone *live!* interface and may enable End Users to access and use, amongst other things, Vodafone *live!*.

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Business Day means any day other than a Saturday, Sunday or official public holiday in the State or Territory in which acts or things must be done on or by the relevant day.

CAF means a customer authorisation form substantially in the form prescribed by Macquarie Telecom.

Charges means:

- (a) any amounts payable by the Customer for the provision of the Services and the supply of any Purchased Device, Purchased Equipment, Purchased Handset Equipment or Rented Handset Equipment under any accepted Purchase Order or Provisioning Request;
- (b) any amounts payable by the Customer in accordance with **clause 16.9**;
- (c) any other early termination cancellation payments for the Services; and
- (d) any service charge imposed by Macquarie Telecom on credit card payments,

calculated in accordance with the Pricing Schedule, or if the relevant charges are not contained in the Pricing Schedule, the Macquarie Standard Price List or the applicable Service Schedule.

Code means:

- (a) in the case of Fixed Line Services, the ACIF Commercial Churn Code (or any code which replaces that Code); and
- (b) in the case of Mobile Services, the ACIF Mobile Number Portability Code (or any code which replaces the Code).

Completion Notice is a notice issued by Macquarie Telecom notifying the date that work in an accepted Provisioning Request is completed.

Connection means connection of a Designated Number to a Mobile Network enabling that Designated Number to use the Mobile Services.

Consulting Services means any or all services supplied by Macquarie Telecom in the course of, or related to, the supply of the Services to the Customer, or any other services that may be provided by Macquarie Telecom as agreed with the Customer from time to time. Consulting Services may be identified in an applicable Service Schedule.

Credit Limit means, where applicable, the maximum credit limit imposed by Macquarie Telecom upon the Customer for the Services or the supply of any Purchased Devices.

Customer means the person, company or other legal entity nominated as the customer in the Purchase Order. It includes any additional person or company nominated by the Customer, whether orally or in writing, to receive the Services and in relation to a company the term "the Customer" includes a body corporate which is related to it within the meaning of section 9 of the *Corporations Act 2001* and which uses the Services. Where the Customer comprises more than one person the Agreement will bind each of those persons jointly and severally.

Customer Content means any data or software loaded onto the Customer Equipment or Macquarie Telecom Equipment from time to time, including, but not limited to, all text, words, names, likenesses, trademarks, logos, artwork, graphics, video, audio, HTML or other coding, domain names, image maps, links, software applications and any other content whatsoever.

Customer Equipment means all hardware and software supplied by the Customer.

Data Security Incident means any unauthorised access (or attempted access) to the Customer's data network that occurs during any use of the Data Services.

Data Services means the data services specified in the accepted Purchase Order or Provisioning Request and, to the extent applicable, detailed in Service Schedule 3 – Data Services.

Designated Numbers means:

- (a) the Service Numbers relating to the Provider account numbers converted to Macquarie Telecom including but not limited to those account numbers the Customer informs Macquarie Telecom of in writing prior to or after Macquarie Telecom's acceptance of a Purchase Order; and
- (b) any new Service Numbers subsequently introduced to the Purchase Order.

Device means a device capable of interfacing with the Services or transmitting and receiving communications and any equipment or accessories that are capable of being used with that device by an End User and includes a BlackBerry Handheld.

Disconnection means the disconnection of a Connection.

Early Life Failure means a Purchased Device ceases to function within the Early Life Failure Period (other than as a result of any damage caused by the Customer, an End User or any other third party).

Early Life Failure Period means the period specified by the manufacturer of the Purchased Device.

Emergency means a situation that, unless immediately remedied, has the potential to jeopardise human life or safety or to cause immediate risk to property.

End User means the Customer's end users of the Mobile Services (including Prepaid Mobile Services), and Designated Numbers (including Prepaid Numbers).

End User Prepaid Terms means the terms and conditions applying to the use of Prepaid Services by End Users as specified by Macquarie Telecom from time to time.

Equipment means hardware (including Devices), and software but excludes any Purchased Handset Equipment or Rented Handset Equipment.

Estimated Traffic Profile is the estimated total monthly expenditure for Fixed Line or Mobile Services call charges (i.e. excluding service and equipment and other non-call charges), specified by the Customer in the Purchase Order.

Exchange Rate means the then current exchange rate for exchanges between those currencies required to be converted by Macquarie Telecom as quoted in *The Australian Financial Review* on the date of the conversion by Macquarie Telecom.

Exchange Rate Variation means any change in the Exchange Rate of more than five per cent (5%) from:

- (a) the Exchange Rate at the date of the Purchase Order; or
- (b) the Exchange Rate at the date of the last adjustment.

Expected Ready For Service Date means the date from which Macquarie Telecom expects to supply the Services, which may or may not be the same as the date requested by the Customer.

Fixed Line Services means any or all telecommunications services (including local, national long distance, international, fixed to mobile and inbound calls but excluding Mobile Services), supplied by Macquarie Telecom to the Customer using the Designated Numbers and includes (but is not limited to), any audio or video conferencing, video on demand or any other products offered by Macquarie Telecom as part of the Fixed Line Services and services that are supplied using Macquarie Telecom's own Network or those of other Providers.

Force Majeure Event means any cause beyond a party's reasonable control affecting the performance of its obligations under the Agreement, including, but not limited to, fire, flood, explosion, accident, war, act of terrorism, strike, embargo, governmental requirement, civil or military authority, Act of God, inability to secure materials, industrial disputes, and acts or omissions of other providers of telecommunications services.

GPRS means a general packet radio service.

Hosting Security Incident means any unauthorised access (or attempted access), to any Customer Equipment, Macquarie Telecom Equipment or Customer Content that occurs during any use of the Hosting Services.

Hosting Services means the hosting services specified in the accepted Purchase Order or Provisioning Request and, to the extent applicable, detailed in Service Schedule 4 – Hosting Services and the statement of work attached to the accepted Purchase Order or Provisioning Request.

HSPA means a high speed packet access service.

Insolvency Event means any of the following events in relation to a party:

- (a) having a receiver or manager appointed over any of its assets and property;
- (b) having a liquidator appointed (whether under a creditor's petition, voluntary liquidation or otherwise);
- (c) passing a resolution for winding-up (otherwise than for a purpose of amalgamation or reconstruction);
- (d) being placed under any form of insolvency administration;
- (e) entering into any composition or arrangement with its creditors;
- (f) becoming insolvent; or
- (g) ceasing to carry on business.

Location means:

- (a) the location of the Macquarie Telecom Intellicentre; or

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(b) any other location (including any location owned or controlled by a Provider or any other third party),

where the Hosting Services are provided.

Logistics Services means the logistics services Macquarie Telecom provides to the Customer in connection with the supply and replacement of Devices and SIMs.

Macquarie Rates means any rates specified in a Pricing Schedule to be used to calculate the applicable Charges for the Services. The Macquarie Rates are the specific rates for the Customer expressly agreed with Macquarie Telecom.

Macquarie Standard Price List means the document specifying:

- (a) standard rates for the Services that are used to calculate the Charges in the absence of a particular Macquarie Rate; and
- (b) in respect of a particular Service, supplementary pricing terms and conditions applicable to that Service,

as modified by Macquarie Telecom from time to time. The Macquarie Standard Price List is available electronically through the website located at <http://www.mspl.macquarie.net.au/>, or upon written request from the Macquarie Telecom account manager allocated to the Customer. For the avoidance of doubt, the Macquarie Standard Price List is confidential information of Macquarie Telecom.

Macquarie Telecom means Macquarie Telecom Pty Limited ABN 21 082 930 916 and includes Macquarie Telecom's employees, subcontractors and authorised representatives.

Macquarie Telecom Backbone means the ATM and internet protocol network owned and operated by Macquarie Telecom. For the purpose of providing the Services, the Macquarie Telecom Backbone may include other Provider's networks connecting to the Backbone.

Macquarie Telecom Customer Care Representative means Macquarie Telecom's nominated representative, whose contact details will be advised to the Customer or can be obtained from the Website.

Macquarie Telecom Equipment means any Equipment supplied by Macquarie Telecom for the purpose of providing the Services, whether owned by Macquarie Telecom or a third party (including a Provider), but excludes any Purchased Equipment, Purchased Device, Purchased Handset Equipment or Rented Handset Equipment.

Managed Handset Alliance Agreement means the agreement dated 30 March 2007 between Macquarie Telecom and the Managed Handset Service Provider.

Managed Handset Purchase Agreement means an agreement between the Customer and the Managed Handset Services Provider for the purchase of PBX equipment and handsets, in the form specified by the Managed Handset Services Provider from time to time.

Managed Handset Rental Agreement means an agreement between the Customer and the Managed Handset Services Provider for the rental of PBX equipment and handsets, in the form specified by the Managed Handset Services Provider from time to time.

Managed Handset Services means the services specified in Service Schedule 5 – Managed Handset Services.

Managed Handset Services Agreement means all or any of the following agreements:

- (a) the Managed Handset Purchase Agreement;
- (b) the Managed Handset Rental Agreement; and
- (c) the Managed Handset Support Agreement.

Managed Handset Services Provider means BTAS Pty Ltd (ACN 050 331 925), or such other party nominated by Macquarie Telecom from time to time.

Managed Handset Support Agreement means an agreement between the Customer and the Managed Handset Services Provider for the provision of hardware and software support services for PABX equipment and handsets, in the form specified by the Managed Handset Services Provider from time to time.

Minimum Charges means, in relation to each Data Service or Hosting Service which is cancelled, the sum of all fixed one-off or periodic Charges specified in the applicable Pricing Schedule and the Macquarie Standard Price List that would be payable if the Services were provided from the date on which Macquarie Telecom ceases to provide the Service to the end of the current Period.

Minimum Period means:

- (a) in the case of Data Services, Fixed Line Services, Hosting Services and Managed Handset Services, the period of 12 months or such

longer period as specified in the Purchase Order, commencing on the Service Start Date;

- (b) in the case of Mobile Services, in respect of each Designated Number, the period of 12 months, or such longer period as specified in the Purchase Order, commencing on the Service Start Date for that Designated Number; and
- (c) in respect of any new Service provisioned under **clause 4**, the longer of:
 - (i) the longest Minimum Period applicable to the Services currently being obtained by the Customer; or
 - (ii) 12 months from the Service Start Date for the new Services.

Mobile Data Solution means each mobile data solution offered by Macquarie Telecom from time to time, including GPRS and HSPA.

Mobile Data Solution Compatible Device means a Device that is approved by Macquarie Telecom's nominated Provider as suitable to access the Mobile Data Solution.

Mobile Network means a 2G Network, a 2.5G Network, a 3G Network or any other Network used to supply Mobile Services.

Mobile Services means any or all mobile telecommunications services supplied by Macquarie Telecom to the Customer using the Designated Numbers, including any Mobile Data Solution.

Network has the same meaning as "Telecommunications Network" in the Act.

Numbering Plan means the Numbering Plan made by the ACMA under the Act.

Outage is a period of time that the supply of the Services to the Customer is interrupted other, than an interruption that is less than 1 second in duration.

Payment Period means 14 days from the date of the invoice or such other period agreed in writing by the parties.

Period means the Minimum Period and each subsequent Renewal Period.

Planned Outage means a period of time that Macquarie Telecom may interrupt its supply of the Services to the Customer for routine maintenance or up-grading or other similar processes, after giving the Customer 5 days prior notice, and which does not exceed the period of time specified in that notice.

Premises means a building, structure or vessel owned, occupied or used by the Customer containing a facility, or to which a Service is supplied or at which any of the Customer's or a Provider's property is located.

Prepaid Account means the bank account established and maintained by an End User for the purpose of paying for the use of Prepaid Mobile Services by that End User.

Prepaid Mobile Services means prepaid Mobile Services provided outside normal business hours in accordance with **clause 5** of Service Schedule 2 – Mobile Services.

Prepaid Numbers means Designated Numbers in respect of which the Customer have elected, in accordance with **clause 5** of Service Schedule 2 – Mobile Services, to receive the Prepaid Mobile Services.

Prepaid Terms means the terms and conditions for the Prepaid Mobile Services appearing on the Website or otherwise notified to the Customer.

Pricing Schedule means the Schedule attached to each accepted Purchase Order or Provisioning Request that specifies the Macquarie Rates.

Privacy Act means the *Privacy Act 1988 (Cth)* and definitions used in the Privacy Act have that meaning unless the contrary intention otherwise appears.

Provider means a carrier, service provider or other supplier used by Macquarie Telecom to provide some or all of the Services or Equipment to a Customer.

Provisioning Request means any Customer order to add to, vary, or cancel Services. It may, without limit, include a request to vary the bandwidth or speed of any scalable service. Any such request must be in writing and substantially in the form prescribed by Macquarie Telecom for that type of Service.

Purchased Device means a Device purchased by the Customer from Macquarie Telecom.

Purchased Equipment means any Equipment purchased by the Customer from Macquarie Telecom.

Purchased Handset Equipment means any equipment and software purchased by the Customer from the Managed Handset Services Provider under the terms of the Managed Handset Purchase Agreement.

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Purchase Order means a purchase order for any Service, New Service or Equipment in the form prescribed by Macquarie Telecom.

Reconnection means the re-activation of a Connection which has been Disconnected.

Renewal Date means, in respect of any Services the date on which the Minimum Period or any subsequent Renewal Period expires for the relevant Services.

Renewal Period means, unless a longer term is agreed in writing by the parties, a period of 12 months.

Rented Handset Equipment means any equipment and software rented by the Customer from the Managed Handset Services Provider Macquarie Telecom under the terms of the Managed Handset Rental Agreement.

Roaming means where the Customer uses a mobile service on another Provider's Network to make calls or access mobile services either within or outside Australia.

Security means any personal guarantee, director's guarantee, bill of sale, charge, undertaking, mortgage, irrevocable standby letter of credit issued by an Australian licensed bank, unconditional and irrevocable bank guarantee issued by a licensed Australian bank or such other form of security reasonably required by Macquarie Telecom.

Security Product means the application used by Macquarie Telecom for the purpose of providing Data Security Services (as defined in **clause 6** of Service Schedule 3 – Data Services), or Hosting Security Services (as defined in **clause 7** of Service Schedule 4 – Hosting Services).

Service Level means the reliability and performance standard that applies in regard to Macquarie Telecom's supply of the Services to the Customer, as agreed in writing between the parties.

Service Level Guarantee means the extent of the guarantee given by Macquarie Telecom for the Services, having regard to the Service Level, as modified by Macquarie Telecom from time to time.

Service Number means any telephone, facsimile, data or other service number which is capable, in accordance with the Numbering Plan, of being used as an individual Network address.

Service Order Confirmation means a written confirmation issued by Macquarie Telecom in response to a Provisioning Request and which states, in relation to any new Services, the Expected Ready for Service Dates.

Services means the Fixed Line Services, the Mobile Services, the Data Services, the Hosting Services, the Managed Handset Services and the Consulting Services (as applicable), in relation to which an accepted Purchase Order or Provisioning Request is in effect.

Service Schedule means a schedule to these Trading Terms setting out supplementary terms and conditions applicable to a particular Service.

Service Start Date means:

- (a) in the case of a Data Service, the date from which Macquarie Telecom commences the supply of the Service to the Customer;
- (b) in the case of a Hosting Service, the date from which Macquarie Telecom has completed provisioning and testing of the Service as per the relevant statement of work and provided the baseline test results to the Customer as notification that the Service is ready for use;
- (c) in the case of Managed Handset Services, the date from which the Managed Handset Services Provider commences the supply of those Services to the Customer;
- (d) in the case of a Mobile Service, the date on which the Provider Connects the Designated Number and the Mobile Charges are billable by that Provider to Macquarie Telecom; and
- (e) in the case of a Fixed Line Services, the date on which the Provider activates the Designated Number and the Charges for the Service are billable by that Provider to Macquarie Telecom,

except in the case of Services already being supplied by Macquarie Telecom on the date of the accepted Purchase Order, in which case it means the date on which the Purchase Order is accepted.

SFOA means the standard form of agreement for non-preselected Telstra customers published by Telstra Corporation Limited ACN 051 775 556 from time to time, currently titled "*Business Line Part*", and which forms part of the standard form of agreement currently referred to by Telstra Corporation Limited as "*Our Customer Terms*".

SIM means a subscriber identity module card, provided by Macquarie Telecom to be used with a Device to enable use of the Mobile Services.

Tax means any tax (including goods and services tax applicable to any taxable supply but excluding any tax on Macquarie Telecom's income), duty, levy and other similar charge (and any related interest and penalty),

however designated, imposed under the laws of Australia or any jurisdiction outside Australia, with respect to the provision of any Services or on any Charges.

Term means the Minimum Period and each successive Renewal Period.

Trading Terms means this document consisting of "*Part 1 – Trading Terms*" and "*Part 2 - Dictionary*".

Unacceptably High Credit Risk means that Macquarie Telecom considers there is reasonable doubt as to the Customer's ability to pay the Charges by the end of the Payment Period, including as a result of:

- (a) the Customer's previous payment history and payment behaviour (e.g. late payment, dishonoured payments or failure to pay);
- (b) any previous advice from the Customer about a potential inability or unwillingness to pay; or
- (c) the Customer's use of the Services being inconsistently high when compared with previous usage patterns.

Vodafone live! means Vodafone's customer proposition by that name which includes, without limitation, the unique interface provided by Vodafone Network Pty Ltd ACN 081 918 461 enabling End-Users to access via a BlackBerry Handheld a combination of downloadable arcade games, information, images and polyphonic ring tones via Vodafone's unique, easy-to-use, colour, icon-based menu structure and embedded links.

Website means the website located at <http://www.macquarietelecom.com/>.

2. Interpretation

In the Agreement:

- (a) terms defined in the Act have the same meaning when used in the Agreement;
- (b) the singular includes the plural and vice versa;
- (c) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (d) the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions;
- (e) a reference to a document includes any amendment, replacement or novation of it;
- (f) a reference to a party includes its successors and assigns;
- (g) a reference to a law includes a constitutional provision, treaty, decree, convention, statute, regulation, ordinance, by-law, judgment, rule of common law or equity or a rule of an applicable stock exchange and is a reference to that law as amended, consolidated or replaced; and
- (h) a reference to a statutory or regulatory authority includes any replacement or successor authority.