

Macquarie Telecom Services Agreement

Service Schedule 3 to Trading Terms – Data Services

The terms set out in this Service Schedule apply to the provision of Data Services in addition to the Trading Terms. Any capitalised terms not defined in this Service Schedule have the meaning given to them in the Trading Terms.

1. SUPPLY OF SERVICES

- 1.1 Macquarie Telecom will provide the Data Services specified in the accepted Purchase Order or Provisioning Request.
- 1.2 The Data Services may comprise any of the services (including Consulting Services) referred to in this Service Schedule.

2. MACQUARIE RATES

- 2.1 The Macquarie Rates may comprise a fixed monthly component for the Data Services and a variable component to reflect usage of the Data Services (particularly data transfer).
- 2.2 Additional Charges may apply if the Customer exceeds any agreed usage limits or any upload/download ratios specified in the Pricing Schedule or accepted Provisioning Request.
- 2.3 The Customer acknowledges that the Macquarie Rates for the Data Services may vary as a result of Macquarie Telecom's acceptance of a Provisioning Request in accordance with **clauses 3.4 – 3.6** (inclusive) and **clause 4** of the Trading Terms.

3. ACCESS AND TRANSMISSION SERVICES

- 3.1 If specified in the accepted Purchase Order or Provisioning Request, Macquarie Telecom will provide:
 - (a) the Macquarie Telecom Equipment and the access tail connecting the Customer Equipment to the Macquarie Telecom Backbone or the World Wide Web (**Access Services**); and
 - (b) services enabling the transmission of data on the Customer's Network from point to point or point to any point across the Macquarie Telecom Backbone within Australia or utilising other carriers for international destinations (**Transmission Services**).
- 3.2 Macquarie Telecom will provide the Access Services to the Customer's sites at the agreed speeds or bandwidths specified in an accepted Purchase Order or Provisioning Request. In providing the Access Services, Macquarie Telecom may use any access technology it determines is appropriate, subject to availability, technical feasibility and **clause 3.3**.
- 3.3 The Customer acknowledges that:
 - (a) each Access Service specified in an accepted Purchase Order or Provisioning Request that utilises xDSL access technology will be subject to a pre-installation service qualification process by Macquarie Telecom to determine:
 - (i) copper pair availability;
 - (ii) line quality of the copper pair; and
 - (iii) copper pair distance from the exchange to the Customer's site;
 - (b) Macquarie Telecom reserves the right not to proceed with installation of an Access Service if Macquarie Telecom, acting reasonably, believes that the service qualification process indicates a possibility of failure of that Access Service on installation;
 - (c) if Macquarie Telecom determines not to proceed with installation of the Access Service:
 - (i) the Customer may cancel that Access Service by notice to Macquarie Telecom and no cancellation Charges will be payable in respect of that cancellation; and
 - (ii) the Customer may order an alternative Access Service by issuing a Provisioning Request to Macquarie Telecom in accordance with **clauses 3.4 – 3.6** (inclusive) and **clause 4** of the Trading Terms.
- 3.4 On request, the Customer may also be provided with Access Services remotely via Macquarie Telecom's Business Anywhere IP Dial Service or any other remote access service offered by Macquarie Telecom (including Macquarie Telecom's Secure Remote Access Service). The Access Services are available on a per user basis subject to the Charges.

- 3.5 The Customer is responsible for communicating with its own end users and for handling all complaints and trouble reports made by such users.

4. INTERNET SERVICES

- 4.1 If specified in the accepted Purchase Order or Provisioning Request, Macquarie Telecom will provide the Customer with access to the World Wide Web and allow the upload or download of data from the internet (**Internet Services**).
 - 4.2 The Customer acknowledges that Macquarie Telecom does not throttle or otherwise limit the Customer's internet usage and the Customer is liable for all Charges incurred in using the Internet Services, whether or not the use of the Internet Services has been authorised by the Customer.
 - 4.3 The Customer acknowledges and agrees that neither Macquarie Telecom nor any Provider:
 - (a) exercises any control over content accessible through use of the Internet Services;
 - (b) makes any representations or provides warranties (express or implied), in respect of the Internet Services or has any other liability to the Customer in respect of the Internet Services; and
 - (c) is responsible for any damage or loss that the Customer may suffer arising from using:
 - (i) the Internet Services (including loss of data, delays, non-deliveries, mis-deliveries or service interruptions whether or not caused by any Provider's intentional or negligent acts or omissions); or
 - (ii) any content accessed through the Internet Services (including inaccurate, incomplete or out-of-date information).
 - 4.4 No Service Level Guarantees apply to the Internet Services.
 - 4.5 Macquarie Telecom has no obligation to control or monitor the Customer's use of the Internet Services or Customer Content stored or transmitted using the Internet Services.
 - 4.6 Notwithstanding **clause 4.5**, and without limiting its rights under the Trading Terms, Macquarie Telecom may at any time, without liability to the Customer, block, alter or suspend the Customer's access to or use of the Internet Services if:
 - (a) Macquarie Telecom considers that the Customer's use of the Services is in breach of the Agreement (including the Acceptable Use Policies), in breach of any law or regulation or infringes the rights of any third party;
 - (b) Macquarie Telecom considers that the Customer Content could threaten the security or integrity of any Network; or
 - (c) required to do so by any law, regulation, or regulatory body (including the ACMA).
- ### 5. MANAGED NETWORK SERVICES
- 5.1 If specified in the accepted Purchase Order or Provisioning Request, Macquarie Telecom will provide some or all of the services specified in **clauses 5.2, 5.6, 5.7 and 5.7** as Consulting Services in conjunction with the Data Services.
 - 5.2 **Managed Network Services** – these services comprise:
 - (a) maintenance of routers or other Equipment managed by Macquarie Telecom;
 - (b) monitoring of the WAN port on the Equipment managed by Macquarie Telecom;
 - (c) regular back-up of the router configuration; and
 - (d) the provision of remote support services for the router (including external programming changes).
 - 5.3 Notwithstanding the terms of **clause 5.2**, Macquarie Telecom accepts no liability for any router failure arising as a result of:
 - (a) 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);
 - (b) the Customer not upgrading any operating system software in the router.

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- 5.4 The following support activities are not supplied as part of the managed network services:
- (a) monitoring of any LAN ports or other WAN ports not connected to the Macquarie Telecom Backbone; and
 - (b) support where supply of the Services is interrupted by a failure or malfunction of the Customer's property, any Customer Equipment, computer software or power supply.
- 5.5 Additional charges may apply for any physical attendance at the Customer's Premises to support the router or for any physical upgrades of the internal operating system software.
- 5.6 **Macquarie Inview** – these services comprise:
- (a) traffic reporting and fault reporting tools, including network health; and
 - (b) help and product explanation assistance.
- The Customer acknowledges that the Macquarie Inview software is subject to technical limitations as set out in the product specification advised by Macquarie Telecom from time to time.
- 5.7 **Macquarie Managed WAN Optimisation Service** – These services comprise:
- (a) detailed application reporting features;
 - (b) application acceleration and traffic flow across the Customer wide area network (**WAN**);
 - (c) bandwidth optimization of traffic flow across the Customer's WAN;
 - (d) maintenance of Third Party Equipment managed by Macquarie Telecom;
 - (e) proactive fault monitoring and detection of the WAN port on the Third Party Equipment managed by Macquarie Telecom;
 - (f) regular back-up of the Third Party Equipment configuration; and
 - (g) the provision of remote support services for the Third Party Equipment (including external programming changes).
- 5.8 As part of the Macquarie Managed WAN Optimisation services, Macquarie Telecom:
- (a) will supply and maintain the Third Party Equipment and operating system software as Macquarie Telecom Equipment;
 - (b) reserves the right at any time to upgrade the Third Party Equipment and operating system software to the current version; and
 - (c) will, in the event of any failure of the Third Party Equipment, provide a replacement in accordance to the appropriate Service Level Agreement.
- 5.9 The following support activities are not supplied as part of the Macquarie Managed WAN Optimisation services:
- (a) monitoring of any Third Party Equipment not connected to the Macquarie Telecom Backbone Network; and
 - (b) support where supply of the Services is interrupted by a failure or malfunction of the Customer's property, any Customer Equipment, computer software or power supply.
- 5.10 The following provisions will apply if, during the current Period, the Customer elects to replace (for the purpose of an upgrade), any Third Party Equipment being provided as part of the Managed WAN Optimisation Service:
- (a) if Macquarie Telecom determines, in its absolute discretion, that the Third Party Equipment being replaced is not obsolete and is capable of being redeployed to another Macquarie Telecom customer, Macquarie Telecom will notify the Customer of that fact and:
 - (i) the Customer must at its cost return the replaced Third Party Equipment to Macquarie Telecom within 30 days of the date of installation of the replacement Third Party Equipment;
 - (ii) upon the return of the replaced Third Party Equipment, the Customer will be liable to pay Macquarie Telecom a fee equal to 2 months' periodic Charges payable in respect of the replaced Third Party Equipment, calculated from the date that the replaced Third Party Equipment is returned to Macquarie Telecom; and
 - (iii) subject only to payment of the fee specified in clause 5.10 (a)(ii) and any other Charges payable by the Customer in respect of the replaced Third Party Equipment for the period prior to its return to Macquarie Telecom, no further Charges (including any early termination payments that might otherwise have been payable under clause 16.9 of the Trading Terms) will be payable by the Customer in respect of the replaced Third Party Equipment;
 - (b) unless Macquarie Telecom determines, in its absolute discretion, that the Third Party Equipment being replaced is obsolete and not capable of being redeployed to another Macquarie Telecom customer, clause 4.4 of the Trading Terms will apply to the replacement of that Third Party Equipment; and
 - (c) if the Customer fails to return the replaced Third Party Equipment in accordance with clause 5.10(a)(i) or (b), clause 16.9(b) of the Trading Terms will apply as if that failure were a failure to comply with clause 16.8 of the Trading Terms.
- ## 6. SECURITY SERVICES
- 6.1 If specified in the accepted Purchase Order or Provisioning Request, Macquarie Telecom will provide network and CPE based security services as part of the Data Services (**Data Security Services**). The Data Security Services will include the provision of the Security Product specified in the accepted Purchase Order or Provisioning Request.
- 6.2 The Customer must provide a suitable rule base (**Security Policy**) for the Security Product and ensure that such Security Policy is adequate for the protection of the Customer Content and the Customer's network. Macquarie Telecom will configure the Security Product in accordance with the Security Policy, but accepts no responsibility or liability arising out of the failure of and makes no representation and provides no warranty (express or implied) in respect of the adequacy or suitability of the Security Policy for the Customer's purposes.
- 6.3 Macquarie Telecom will from time to time provide reports to the Customer on any Data Security Incidents detected by Macquarie Telecom that may be relevant to the Data Services.
- 6.4 The Customer may in writing request changes to the Security Policy. Subject to payment of the then applicable Charges, Macquarie Telecom will make the changes by the agreed date. The Customer acknowledges that the feasibility of any changes to the Security Policy is subject to the technical functionality of the Security Product.
- 6.5 The Customer acknowledges and agrees that:
- (a) it assumes all risks of use, quality and performance of the Data Security Services;
 - (b) Data Security Incidents may still occur notwithstanding the supply of the Data Security Services; and
 - (c) except to the extent directly caused by Macquarie Telecom's failure to configure the Security Product in accordance with the Security Policy, Macquarie Telecom accepts no liability for any and all Data Security Incidents (including any loss or damage suffered by the Customer), arising out of:
 - (i) any failure of the Security Product to protect the Customer's data, network, systems, software or equipment; or
 - (ii) any third party gaining access (whether authorised or not), to the Customer's data network.
- 6.6 Unless otherwise agreed in writing by the parties, no Service Level Guarantees apply to the Data Security Services.
- ## 7. CUSTOMER MANAGED ROUTERS
- 7.1 This **clause 7** only applies in circumstances where routers (in respect of which Macquarie Telecom is not providing managed router services pursuant to **clause 5.2**) are used for the provision of the following Data Services:
- (a) Macquarie Telecom Layer 2 DSL; and
 - (b) Macquarie Telecom Private IP with Quality of Service, (**Customer Managed Routers**).
- 7.2 The Customer acknowledges that if this **clause 7** applies:

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- (a) the following Service Level Guarantees do not apply to the Data Services:
 - (i) Macquarie Telecom Private IP Network – Service Level Guarantee – Business Class;
 - (ii) Macquarie Telecom Private IP Network Service Level Guarantee – Premier Class;
 - (iii) Macquarie Telecom Private IP Network – Quality of Service Class Service Level Guarantee; and
 - (iv) Private IP Core and Edge Service Level Guarantee;
 - (b) any support services provided by Macquarie Telecom or its nominated Provider in relation to the Customer Managed Routers will be at the Customer's sole cost and will be charged on a time and materials basis at the then current standard rates of Macquarie Telecom or any relevant Provider;
 - (c) Macquarie Telecom will be unable (if requested by the Customer), to provide reports that rely on data collected from the Customer Managed Routers; and
 - (d) Macquarie Telecom will not provide any proactive alarm monitoring of the Customer Managed Routers.
- 7.3 The Customer must:
- (a) ensure that the Customer Managed Routers are maintained to relevant industry standards, including ensuring the Customer Managed Routers have the then current internal operating software versions, upgrades and patches installed;
 - (b) at all times maintain backups of the configurations for the Customer Managed Routers;
 - (c) provide all support and helpdesk services in relation to the Customer Managed Routers (unless otherwise agreed in writing by the parties); and
 - (d) advise Macquarie Telecom immediately upon any changes to the Customer Managed Router specifications or configuration.
- 7.4 If the Services include Macquarie Telecom's Private IP Quality of Service:
- (a) any Customer Managed Routers must be configured using the specifications and policies notified by Macquarie Telecom from time to time, including without limitation:
 - (i) the internal operating system software version specifications; and
 - (ii) the QoS configuration,**(Required QoS Configuration);**
 - (b) the Customer must not change the Required QoS Configuration without Macquarie Telecom's prior written approval; and
 - (c) the Customer may on 2 Business Days notice to Macquarie Telecom request changes be made to the Required QoS Configuration. Any such notice must contain details of the proposed changes. The Customer will be responsible for implementing any changes to the Required QoS Configuration approved by Macquarie Telecom.
- 8. RENTED ROUTER SERVICES**
- 8.1 If specified in the accepted Purchase Order or Provisioning Request, Macquarie Telecom will provide Macquarie Telecom Equipment owned by a third party (**Third Party Equipment**) as part of the Data Services (**Rented Router Service**). Macquarie Telecom does not represent or warrant that the Third Party Equipment will, at the time of installation at the Customer's Premises, be new.
- 8.2 The following provisions will apply if, during the current Period, the Customer elects in accordance with **clause 4** of the Trading Terms to replace (for the purpose of an upgrade), any Third Party Equipment or a component of any Third Party Equipment being provided as part of the Rented Router Service:
- (a) if Macquarie Telecom determines, in its absolute discretion, that the Third Party Equipment being replaced is capable of being redeployed to another Macquarie Telecom customer, Macquarie Telecom will notify the Customer of that fact and:
 - (i) the Customer must at its cost return the replaced Third Party Equipment to Macquarie Telecom within 30 days of the date of installation of the replacement Third Party Equipment;
 - (ii) upon the return of the replaced Third Party Equipment the Customer will be liable to pay Macquarie Telecom a fee equal to 2 months' periodic Charges payable in respect of the replaced Third Party Equipment, calculated from the date that the replaced Third Party Equipment is returned to Macquarie Telecom; and
 - (iii) subject only to payment of the fee specified in **clause 8.2(a)(ii)** and any other Charges payable by the Customer in respect of the replaced Third Party Equipment for the period prior to its return to Macquarie Telecom, no further Charges (including any early termination payments that might otherwise have been payable under **clause 16.9** of the Trading Terms) will be payable by the Customer in respect of the replaced Third Party Equipment;
 - (b) if Macquarie Telecom determines, in its absolute discretion, that the component being replaced is capable of being redeployed to another Macquarie Telecom customer, Macquarie Telecom will notify the Customer of that fact and:
 - (i) the Customer must at its cost return the replaced component to Macquarie Telecom within 30 days of the date of installation of the replacement component;
 - (ii) upon the return of the replaced component the Customer will be liable to pay Macquarie Telecom a one-off fee of \$400 (exclusive of GST); and
 - (iii) subject only to payment of the fee specified in **clause 8.2(b)(ii)** and any other Charges payable by the Customer in respect of the replaced component for the period prior to its return to Macquarie Telecom, no further Charges (including any early termination payments that might otherwise have been payable under **clause 16.9** of the Trading Terms) will be payable by the Customer in respect of the replaced component;
 - (c) unless Macquarie Telecom determines, in its absolute discretion, that the Third Party Equipment or component being replaced is not capable of being redeployed to another Macquarie Telecom customer, **clause 4.4** of the Trading Terms will apply to the replacement of that Third Party Equipment or component; and
 - (d) if the Customer fails to return the replaced Third Party Equipment or component in accordance with **clause 8.2(a)(i)** or **(b)(i)**, **clause 16.9(b)** of the Trading Terms will apply as if that failure were a failure to comply with **clause 16.7(e)** of the Trading Terms.
- 8.3 The following provisions will apply if, during the current Period, Macquarie Telecom receives notice from the manufacturer of any Third Party Equipment being provided as part of the Rented Router Service that the manufacturer will cease supporting the operating system software for the Third Party Equipment from the date specified in the notice (**End of Life Date**):
- (a) if the End of Life Date is more than 6 months from the end of the Minimum Period for the Rented Router Service to which the Third Party Equipment relates, Macquarie Telecom will notify the Customer of the receipt of the notice and the Customer must (at its option and by notice to Macquarie Telecom) elect within 14 days of the date of Macquarie Telecom's notice to either:
 - (i) immediately replace the affected Third Party Equipment in accordance with **clause 4** of the Trading Terms, in which case the Customer will be liable to pay to Macquarie Telecom:
 - (A) all Charges incurred in implementing or arising out of the accepted Provisioning Request relating to the replacement Third Party Equipment; and
 - (B) 100% of the Minimum Charges relating to the replaced Third Party Equipment; or

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- (ii) retain the affected Third Party Equipment, in which case:
 - (A) the Customer acknowledges that Macquarie Telecom will have no responsibility or liability in respect of any operating system software support issues that arise in respect of the affected Third Party Equipment after the End of Life Date; and
 - (B) if an operating system software support issue arises in respect of the affected Third Party Equipment after the End of Life Date, the Customer may replace the affected Third Party Equipment in accordance with **clauses 3.4 – 3.6** (inclusive) and **clause 4** of the Trading Terms and the Customer will be liable to pay to Macquarie Telecom the Charges specified in **clause 8.3(a)(i)**.

If the Customer fails to notify Macquarie Telecom of its election within that 14 days period, the Customer will be deemed to have elected to retain the affected Third Party Equipment and **clause 8.3(a)(ii)** will apply accordingly; and

- (b) if the End of Life Date is less than 6 months from the end of the Minimum Period for the Rented Router Service to which the Third Party Equipment relates:
 - (i) Macquarie Telecom will not be obliged to notify the Customer of the receipt of the notice; and
 - (ii) if an operating system software support issue arises in respect of the affected Third Party Equipment after the End of Life Date, Macquarie Telecom will provide to the Customer a short term replacement item of Third Party Equipment until the end of the Minimum Period for the Rented Router Service to which the Equipment relates.

9. EARLY TERMINATION AND CANCELLATION

9.1 The Charges payable for early termination or cancellation of a Data Service pursuant to **clause 16** of the Trading Terms are:

- (a) if the Data Services are terminated or cancelled other than in accordance with **clauses 3.3** or **16.2** of the Trading Terms prior to the expiry of the current Period for those Data Services and:
 - (i) the date of termination is prior to the Service Start Date for those Data Services, 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 those Data Services were provided for a period equal to the Minimum Period;
 - (ii) the date of termination or cancellation is less than 12 months after the Service Start Date or, if applicable, the Renewal Date, for those Data Services, 100% of the Minimum Charges; or
 - (iii) the date of termination or cancellation is more than 12 months after the Service Start Date or, if applicable, the Renewal Date, for those Data Services, the aggregate of:
 - (A) 75% of the Minimum Charges in respect of Data Services other than those consisting of Macquarie Telecom's "Rented Router Service"; and
 - (B) if applicable, 100% of the Minimum Charges in respect of Data Services consisting of Macquarie Telecom's "Rented Router Service",plus any installation charges that may have been waived by Macquarie Telecom on the basis that the relevant Data Services continue for the duration of the Minimum Period; and
- (b) if the Data Services are cancelled in accordance with **clause 3.4** of the Trading Terms, the sum of:
 - (i) 100% of the Minimum Charges; and
 - (ii) any installation charges that may have been waived by Macquarie Telecom on the basis that the relevant Data Services continue for the duration of the Minimum Period.

9.2 The Charges payable pursuant to **clause 16.9(b)** of the Trading Terms are:

- (a) in the case of Macquarie Telecom Equipment:
 - (i) if the Data Services are terminated or cancelled in accordance with **clauses 3.3** or **16.2** of the Trading Terms and:
 - (A) the Customer returns or, if Macquarie Telecom elects in accordance with **clause 16.7(c)** of the Trading Terms to collect, permits Macquarie Telecom to collect, any Macquarie Telecom Equipment in accordance with that clause within 30 days after the effective date of termination or cancellation, an amount equal to the periodic Charges specified in the applicable Pricing Schedule or accepted Provisioning Request in respect of that Macquarie Telecom Equipment, calculated on a pro rata basis; and
 - (B) the Customer fails to return or, if Macquarie Telecom elects in accordance with **clause 16.7(c)** of the Trading Terms to collect, fails to permit Macquarie Telecom to collect, any Macquarie Telecom Equipment in accordance with that clause within 30 days after the effective date of termination or cancellation, an amount equal to:
 - (I) if the Macquarie Telecom Equipment is owned by Macquarie Telecom, an amount equal to:
 - a. if Macquarie Telecom determines, in its absolute discretion, that the equipment is capable of being redeployed to another Macquarie Telecom customer, the replacement value of the equipment; and
 - b. if Macquarie Telecom determines, in its absolute discretion, that the equipment is not capable of being redeployed, nil; or
 - (II) if the Macquarie Telecom Equipment is owned by a third party, an amount equal to any costs imposed on Macquarie Telecom by that third party as a direct result of that failure; and
 - (ii) if the Data Services are terminated or cancelled other than in accordance with **clauses 3.3** or **16.2** of the Trading Terms prior to the expiry of the current Period for those Data Services and the Customer fails to return or, if Macquarie Telecom elects in accordance with **clause 16.7(c)** of the Trading Terms to collect, fails to permit Macquarie Telecom to collect, any Macquarie Telecom Equipment in accordance with that clause within 30 days after the effective date of termination or cancellation, an amount equal to:
 - (A) if the Macquarie Telecom Equipment is owned by Macquarie Telecom, an amount equal to the written down value of the equipment in the books of Macquarie Telecom as at the effective date of termination or cancellation; or
 - (B) if the Macquarie Telecom Equipment is owned by a third party, an amount equal to any costs imposed upon or otherwise incurred by Macquarie Telecom as a direct result of that failure; and
- (b) in the case of Purchased Equipment, an amount equal to the difference between:
 - (i) the Charges invoiced to or, if not yet invoiced by Macquarie Telecom, for which the Customer is otherwise liable to pay in respect of the Purchased Equipment; and
 - (ii) the amounts (if any), paid by the Customer in respect of the Purchased Equipment.