

# Service Schedule 3 – Data Services

Further terms regarding Data Services that apply to the Trading Terms and form part of our Agreement.

## 1. WHAT TERMS APPLY TO DATA ACCESS AND TRANSMISSION SERVICES?

- 1.1 If specified in the Order, we will provide:
- (a) Our Equipment and the access tail connecting the Customer Equipment to Our Backbone and/or internet (**Access Services**); and
  - (b) transmission services enabling the transmission of data across your network, using Our Backbone within Australia and other Providers for international destinations.
- 1.2 We will provide Access Services to the Premises, and at the speeds or bandwidths, specified in the Order. Subject to **clause 1.3**, we will determine the appropriate access technology having regard to availability, technical feasibility and any other factors we consider relevant.
- 1.3 For each Access Service, we may conduct a pre-installation service qualification process (**Service Qualification**) in which case:
- (a) we may decide not to proceed with the installation of an Access Service if we reasonably believe, based on the findings of the Service Qualification, that: (i) the Access Service may fail on installation; or (ii) the installation cannot be undertaken safely;
  - (b) if the Order specifies that an Access Service will use xDSL access technology at a site, then as part of the Service Qualification, we will also determine: (i) copper pair availability; (ii) line quality of the copper pair; and (iii) copper pair distance from the exchange to the site; and
  - (c) if the Order specifies that an Access Service will use fixed wireless (microwave) access technology at a site, then as part of the Service Qualification, we will also determine: (i) the structural condition of any Premises on which the technology will be installed; and (ii) whether any environmental factors may affect the performance or operation of the Access Service.
- 1.4 We will notify you if we decide not to proceed with the installation of an Access Service for any reason, in which case you may cancel that Access Service by notice to us, and no early cancellation charges will be payable in respect of that cancellation of those Access Services. You may also request an alternative Access Service in accordance with **clause 1** of the Trading Terms.

## 2. WHAT TERMS APPLY TO INTERNET SERVICES?

- 2.1 If specified in the Order, we will provide you with access to the internet and enable you to upload and download data from the internet (**Internet Services**).
- 2.2 Service Level Guarantees apply to accessing the internet but not to the operation of the internet outside Our Core Network.
- 2.3 To the extent permitted by law and except to the extent set out in the relevant Service Level Guarantee for accessing the internet, neither we nor Our Providers give any warranties or guarantees, or make any representations (express or implied), regarding the Internet Services. You are solely responsible for:
- (a) all consequences of your use of the Internet Services, including any service interruptions or failures, and any access to, or loss or corruption of, Customer Content, or your access to other content, even if those consequences are caused by a Provider's intentional or negligent acts or omissions; and
  - (b) any associated Liabilities you or anyone else may incur.
- 2.4 We are not responsible for monitoring, throttling or otherwise controlling your use of the Internet Services or any content you access. However, we may block, limit or otherwise alter your access to or use of the Internet Services without incurring any Liabilities to you or anyone else pursuant to **clause 4** of the Trading Terms and our Acceptable Use Policy.

## 3. WHAT TERMS APPLY TO MANAGED CPE SERVICES?

- 3.1 If specified in the Order, we will provide managed customer premises equipment services in relation to Rented Equipment or Customer Equipment (**Managed CPE Services**) that may comprise maintenance, the monitoring of the WAN port, the regular back-up of configurations and the provision of remote support services (including external programming changes).
- 3.2 The Managed CPE Services do not include:
- (a) monitoring of any local area network ports or other WAN ports not connected to Our Backbone; and
  - (b) support where supply of the Services is interrupted by a failure or malfunction of your property, any Customer Equipment, computer software or power supply.
- 3.3 Additional Charges may apply if our Personnel need to attend any Premises to support the relevant Equipment the subject of the Managed CPE Services, (including an upgrade of any internal operating system software).
- 3.4 We are not responsible or Liable for any failure of the Equipment, or any failure by us to provide Managed CPE Services, where the failure is caused or contributed to by any act or omission of you, your Personnel or another person under your direction or control, your failure to upgrade any operating system software in the Equipment or any failure of, or malfunction in, any Customer Equipment or the power supply to any Premises.

## 4. WHAT TERMS APPLY TO RENTED EQUIPMENT SERVICES?

- 4.1 If specified in the Order, we will provide the following support services for any Rented Equipment provided to you that may comprise:
- (a) the supply and maintenance of the Rented Equipment and operating system software;
  - (b) upgrades to the Rented Equipment and operating system software; and
  - (c) the repair and maintenance of the Rented Equipment in accordance with any applicable Service Levels.
- You acknowledge that the Rented Equipment may not be new at the time we supply it to you.
- 4.2 If we provide you with any software in connection with the Rented Equipment, we may vary the applicable monthly charges for that software on 30 days' notice to reflect any variations to our Providers' licensing fees and other charges.
- 4.3 We are not responsible or Liable for any failure of the Rented Equipment or related support services, where the failure is caused or contributed to by any act or omission of you, your Personnel or another person under your direction or control or any failure of, or malfunction in, any Customer Equipment or the power supply to any Premises.

- 4.4 If we receive notice from the manufacturer of any Rented Equipment supplied to you that it will cease supporting the operating system software for that Rented Equipment from a date specified in the notice (**End of Life Date**) we may notify you, and you will then have 14 days to notify us in writing of your election to either:
- (a) replace the affected Rented Equipment. In that case, you must pay us all Charges set out in the Provisioning Request relating to the replacement of the Rented Equipment; or
  - (b) retain the affected Rented Equipment, in which case we will not be responsible for any operating system software support issues that arise in relation to the affected Rented Equipment after its End of Life Date, or for any related Liabilities suffered or incurred by you or anyone else.
- If you do not notify us of your decision within the 14-day period or do not sign the Provisioning Request relating to the replacement Rented Equipment, you will be deemed to have decided to retain the affected Rented Equipment and **clause 4.4(b)** will apply.

- 4.5 If you request us to replace any Rented Equipment (other than under **clause 4.4** due to our notification of its End of Life Date):

- (a) if we notify you that, in our opinion, the applicable Rented Equipment is capable of being redeployed to another customer then you must permit us to collect the applicable Rented Equipment at the time of installation of the replacement Rented Equipment;
- (b) if we notify you that, in our opinion, the applicable Rented Equipment is not capable of being redeployed to another customer and following such notification, you still wish to proceed with the replacement, then you will be liable to pay us 100% of the Minimum Charges that apply to that Rented Equipment;
- (c) if you do not return the Rented Equipment to us in accordance with **clauses 4.5(a)** or **4.5(b)**, then **clause 6.2(a)** of the Trading Terms will apply; and
- (d) the applicable Charges for the replacement Rented Equipment will be set out in a new Provisioning Request.

## 5. WHAT TERMS APPLY IF YOU MANAGE THE ROUTERS?

- 5.1 This **clause 5** applies if we are providing you with Data Services but we do not manage the associated routers which you may either own or rent from us (**Customer Managed Routers**). If this **clause 5** applies:
- (a) the following Service Level Guarantees do not apply: (i) Macquarie Telecom Private IP Network – Service Level Guarantee – Business Class; (ii) Macquarie Telecom Private IP Network Service Level Guarantee – Premier Class; and (iii) Macquarie Telecom Private IP Network – Quality of Service Class Service Level Guarantee;
  - (b) you will be required to pay for any support services provided by us (or a Provider) in relation to the Customer Managed Routers. We will charge you for those support services on a time and materials basis, at our (or the relevant Provider's) standard rates applicable at the time of providing the services which will be notified to you;
  - (c) we will not be able to provide you with any reports that rely on data collected from the Customer Managed Routers; and
  - (d) we will not provide any proactive alarm monitoring of the Customer Managed Routers.
- 5.2 You must:
- (a) maintain the Customer Managed Routers to relevant industry standards, including by using the most recent internal operating software versions, upgrades and patches and maintaining backups of configurations; and
  - (b) provide all necessary support and helpdesk services in relation to the Customer Managed Routers and promptly notify us of any changes to the specifications or configuration of the Customer Managed Routers.
- 5.3 If the Services include Macquarie Telecom Private IP with quality of service:
- (a) you must configure the Customer Managed Routers using the specifications and policies we notify to you, including: (i) the internal operating system software version specifications; and (ii) the quality of service (**QoS**) configuration (together, the **Required QoS Configuration**); and
  - (b) you must not change the Required QoS Configuration without our prior written approval (to be granted in our discretion and subject to any conditions which we consider necessary). If we approve your proposed changes to the Required QoS Configuration you will be solely responsible for implementing those changes.

## 6. WHAT TERMS APPLY TO SECURITY SERVICES?

- 6.1 If specified in the Order, we will provide network, cloud or Equipment based security services as part of the Data Services (**Data Security Services**). The Data Security Services include the provision of the security application specified in the Order (**Security Product**).
- 6.2 You must provide us with a suitable rule base (**Security Policy**), which we will use to configure the Security Product (unless you have assumed responsibility for configuring your own Security Policy.) You must also ensure the Security Policy is adequate to protect the Customer Content and your network.
- 6.3 We are not responsible for the Security Policy you provide (including in relation to its failure or inadequacy) and you acknowledge that security incidents may occur notwithstanding our provision of the Data Security Services. Notwithstanding any other provision of this Agreement, we exclude all Liabilities arising in connection with the Data Security Services (including the Security Policy) or any security incident, except only to the extent caused as a direct result of our failure to configure the Security Product in accordance with the Security Policy.
- 6.4 No Service Level Guarantees apply to the Data Security Services.

## 7. WHAT TERMS APPLY TO SIP SERVICES?

- 7.1 If specified in the Order, we will provide you with multi-line voice services delivered over a Data Service for the purposes of originating and terminating voice traffic using the session initiated protocol (**SIP Services**), in which case in addition to this Schedule 3 - Data Services, the terms of Schedule 1 - Voice Services will also apply to the provision of SIP Services (except for **clause 1.6** of Schedule 1 - Voice Services regarding Service Level Guarantees).

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### 8. WHAT OTHER TERMS APPLY TO DATA SERVICES?

#### 8.1 You acknowledge and agree that:

- the Services may not be free from fault, interruption or external intrusion;
- we (and our Providers) are not responsible or Liable in relation to the content or security of any information or communications you receive, access or rely on using the Services and there is no guarantee of security or privacy on the Internet;
- notwithstanding any other term of this Agreement, we exclude all Liability to you arising in connection with any third party security incidents (including any form of hacking or denial of service attacks);
- you are solely responsible for all Customer Content, even if you do not authorise its creation, storage, access or transmission;
- you are solely responsible for deciding whether or not to implement any advice or recommendation provided by us, or to rely on any estimate, opinion, conclusion or other information;
- you are solely responsible for communicating with your End Users in relation to the Services. This includes handling their complaints and trouble reports;
- nothing in this Agreement gives you ownership of, or any interest in, any IP addresses we allocate to you or Our Equipment. Title to Our Equipment stays with us or the relevant third-party owner at all times and you must not purport to transfer, sell, hire or give away Our Equipment, or any rights in relation to Our Equipment (including any mortgage, pledge, charge, lien or other encumbrance or security interest); and
- if you purchase any Equipment then: (i) title to the Purchased Equipment does not pass to you until it is paid for in full, but risk in the Purchased Equipment passes to you immediately on delivery, regardless of when you are required to pay us; and (ii) you acknowledge that to the extent permitted by law we do not provide any warranty in relation to Purchased Equipment, but you will have the benefit of any applicable warranty provided by the manufacturer. To the extent permitted by law, we have no obligation or Liability to you for any failure of, or malfunction in, the Purchased Equipment.

#### 8.2 You must:

- comply with the Acceptable Use Policy and all applicable laws, and also maintain and comply with any licences, consents, permits or other authorisations required for you to use the Services;
- control access to and use of the Services and protect any passwords, PINs or other access methods we provide to you. You are responsible for all consequences of the use (including any unauthorised use or access by third parties) of the Services and of those access methods, including all Charges incurred and any Liabilities suffered by you or anyone else;
- provide us (and any Providers) with any information or assistance we reasonably request, and with authorised and safe access to Premises or Customer Equipment or Rented Equipment (including obtaining consent from landlords or building managers), so we can perform our obligations under the Agreement; and
- comply with any direction or request of a Regulator and provide us with any information or assistance we reasonably require to comply with a direction or request of, or investigation by, a Regulator.

#### 8.3 If you do not comply with any of your obligations under the Agreement, we are not responsible for any delays or Liabilities arising from your failure and we may charge you for any amounts we reasonably incur as a result.

#### 8.4 We may provide you with access to Self Service Management Tools. If we do:

- you are solely responsible for the consequences (including all associated Liabilities) of your use of the Self Service Management Tools, except to the extent caused by a failure of the Self Service Management Tools to perform in accordance with their published specifications (if applicable); and
- we may charge you for work we undertake to restore or repair Services affected by your use of the Self Service Management Tools.

#### 8.5 Where, in connection with the Services there has been (or there is a risk of) an incident that meets the definition of an eligible data breach under the *Privacy Act 1988 (Cth)*, including where we have instructed you that this **clause 8.5** applies, you must comply with the obligations under the *Privacy Act*. This includes making any notifications required, in which case you must provide us as soon as practicable with all the information relevant to any proposed notifications and request our approval to the content and timing of the notifications. To the extent permitted under the *Privacy Act*, you must not make a notification that refers to us unless you have received our approval to do so. Where under the terms of the *Privacy Act* there may be an obligation on us to make any notifications but no obligation on you, you must co-operate with us by providing all relevant information and assistance required by us immediately upon request.

### 9. HOW WILL MACQUARIE RATES BE APPLIED TO DATA SERVICES?

#### 9.1 For Data Services, the Macquarie Rates may comprise:

- a fixed monthly component for the Data Services billed monthly in advance;
- a variable component to reflect usage of the Data Services (particularly data transfer) billed monthly in arrears; and
- in the case of SIP Services, an additional component for usage and voice traffic or other applicable Charges which will be calculated in accordance with the rates applicable to Voice Services, as specified in Schedule 1 - Voice Services and **clause 2** of the Trading Terms.

#### 9.2 Additional Charges may apply if you exceed any agreed usage limits specified in the Order. Additional Charges may also apply if our Providers inform us that additional work is required in connection with the installation or provisioning of the Data Services. If additional Charges are applicable, you will be notified prior to the commencement of installation or provisioning.

### 10. ARE THERE ANY SERVICE LEVEL GUARANTEES?

#### 10.1 Certain Data Services may be supported by a Service Level Guarantee, which may entitle you to a rebate if we do not achieve the Service Levels set out in the Service Level Guarantee. To claim a rebate under a Service Level Guarantee, you must notify us of the events giving rise to the claim within 60 days of their occurrence. Rebates will not be provided if you do not notify us within that timeframe.

#### 10.2 The Service Level Guarantee does not apply, and no rebates are payable:

- during any Planned Outage or for an interruption required in order to respond to, or deal with the consequences of, an Emergency; or
- in respect of an Outage that is caused or contributed to by: (i) any failure of, or malfunction in, any Customer Equipment; (ii) any act or omission of you,

your Personnel or another person under your direction or control (unless we directed you to do that act or omission); (iii) an External Circumstances Event; (iv) any action taken by us or a Provider to comply with a requirement of a Regulator, or under any applicable law; or (v) any unauthorised or illegal access by any person to any part of the system providing the Services, including hacking, cracking, virus dissemination and denial of service attacks.

#### 10.3 You acknowledge and agree that:

- any rebates payable under a Service Level Guarantee are your sole and exclusive remedy for our failure to achieve the Service Levels set out in the Service Level Guarantee or to otherwise provide the Services or to satisfy any other service levels (if any) and any such failure does not constitute a breach of the Agreement;
- the maximum amount of rebates payable to you in respect of any Service in any calendar month will not exceed the total Charges payable for that Service for that month. This amount may be pro-rated for periods of less than a full month;
- only one rebate is payable in respect of any single incident or sequence of related incidents, even if they give rise to more than one rebate claim. If this occurs, we will determine the single rebate that applies;
- any service levels not set out in a Service Level Guarantee (if any) are indicative targets only and any failure to satisfy those service levels does not constitute a breach of this Agreement. Other than your right to claim rebates under a Service Level Guarantee, we exclude all Liability to you for any failure to satisfy any service levels not expressly included in the Service Level Guarantee.

### 11. WHAT ARE THE CONSEQUENCES OF EARLY TERMINATION OR CANCELLATION OF DATA SERVICES?

#### 11.1 For the purpose of **clause 6.3** of the Trading Terms, the early cancellation charge for a Data Service (including, for clarity, a SIP Service) is the sum of:

- an amount equal to 55% of the Minimum Charges for the Service; plus
- the amount of any waived installation charges or any one-off discounts; plus
- in the case of Our Equipment associated with a cancelled Data Service, any amounts owing to us under **clause 6.2** of the Trading Terms; plus
- in the case of Purchased Equipment, the total amount that you are required to pay us for that Purchased Equipment less any amounts already paid by you; plus
- for SIP Services (if applicable), any additional early cancellation charges calculated in accordance with Schedule 1 - Voice Services.

### 12. NBN

Notwithstanding anything else in this Agreement:

#### 12.1 Data Services may include products or services provided by NBN Co Limited ACN 136 533 741 (**nbn**), which are subject to the following conditions:

- access to and use of nbn products or services is subject to all terms and conditions specified by nbn from time to time; and
- you agree to the undertaking set out in **clause 12.2**.

#### 12.2 To the extent permitted by law and without excluding, restricting or modifying any rights or remedies to which you or your End Users may be entitled to under the consumer guarantee provisions in Parts 3-2 and 5-4 of the Australian Consumer Law you or your End Users must not bring any claim (including any action, suit or proceedings of any nature or kind, whether in contract, tort (including negligence) at common law, in equity, under statute or otherwise however arising) against nbn, its Related Bodies Corporate or any of their respective Personnel in connection with:

- the supply (or any delay, failure to or defect in relation to the supply) of any products or services which are direct or indirect inputs to the Services; or
- the design and installation of any infrastructure required for the nbn network to be made available to nbn's customers at the premises;

which are the subject of this Agreement.

#### 12.3 **Clause 12.2** does not apply to a claim by you or your End Users for loss or damage suffered or incurred by you or your End Users arising from or in connection with:

- any damage to, or loss of, tangible property to the extent that such losses are caused or contributed to by nbn, its Related Bodies Corporate or any of their respective Personnel or third party suppliers; or
- the death or personal injury of any person to the extent caused or contributed to by:
  - negligent or wilful acts or omissions of nbn, its Related Bodies Corporate or any of their respective Personnel or third party suppliers; or
  - any equipment or network owned, operated or controlled by nbn.

#### 12.4 We may assign the benefit of this **clause 12** to nbn or its nominee without consent or, to the extent that consent is required, you or your End Users hereby give that consent.

#### 12.5 This **clause 12** survives expiry or termination of this Agreement.

#### 12.6 In this **clause 12** Related Body Corporate has the meaning given to that term in section 50 of the *Corporations Act 2001 (Cth)*.

### 13. WHAT TERMS APPLY TO SD-LAN SERVICES?

#### 13.1 If specified in the Order, we will provide you with managed software defined local area network services (**SD-LAN Services**) at the site(s) defined in the Order, including the supply, installation and configuration of the hardware, software licence, dashboard, and associated service assurance support.

#### 13.2 You acknowledge that in using the SD-LAN Services:

- the dashboard will be hosted in Juniper's secure cloud environment(s) in or outside Australia;
- you consent for our dashboard to collect, use, transfer, disclose, and otherwise process Customer Content, including Personal Information, for the purpose of providing you with the SD-LAN Services;
- you consent that as a result of such offshore hosting arrangements outlined in this **clause 13.2** above that such Customer Content (including Personal Information) collected through your use of the SD-LAN Services may be transferred, stored and processed outside Australia by Juniper, their service providers and or subcontractors;
- you shall be bound by the Juniper end user terms set out in the End User Schedule available at <https://support.juniper.net/support/eula>, or the applicable active end user licensing or purchasing agreement (the Pass Through Terms);

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(e) in the event we or Juniper become aware of a violation of the Pass Through Terms, we reserve the right in our or Juniper's sole discretion, for ourselves or Juniper to suspend or terminate the provision of the SD-LAN Services in response to such violation, or suspected violation, of any of the Pass Through Terms, and neither we nor Juniper shall have any liability to you as a result of any such suspension or termination; and

(f) you must keep accurate records of your compliance with these terms and furnish such records to us or Juniper on demand.

### 14. WHAT DO THE CAPITALISED TERMS MEAN?

14.1 In this Service Schedule the terms in capital letters have the meaning set out in the Dictionary available at [www.macquarietechnologygroup.com](http://www.macquarietechnologygroup.com). Unless otherwise indicated, any reference in this Service Schedule to a "clause" is a reference to a clause of this Service Schedule.