

# Service Schedule 4 – Cloud and Hosting Services

Further terms regarding Cloud and Hosting Services that apply in addition to the Trading Terms and form part of our Agreement.

## 1. WHAT TERMS APPLY TO CLOUD AND HOSTING SERVICES?

- 1.1 The Cloud and Hosting Services include any of the Services specified in this Service Schedule and may comprise Co-Location Services, dedicated or virtual compute resources, Hosting Security Services, data storage, back-up, network services and Internet Services. We will provide you with the Cloud and Hosting Services specified in the applicable Order.
- 1.2 We will provide Cloud and Hosting Services at our Intellicentre or other location specified in the Order (**Location**). You must:
- (a) comply with our policies, manuals, procedures and standards that apply to the Cloud and Hosting Services as advised from time to time including in connection with: (i) access to the Location; (ii) any Customer Equipment that interfaces with Our Equipment or Our Backbone; and (iii) any other operational or security matters;
  - (b) not damage, or engage in any unauthorised activity (including any unauthorised access or interference) with respect to, any of Our Equipment or any of our land, sites or facilities or any third party property or equipment;
  - (c) comply with any directions we give you to resolve interference between Customer Equipment and Our Equipment or equipment of a third party;
  - (d) assume all responsibility for the delivery, installation and removal of any Customer Equipment at the Location; and
  - (e) obtain all cross-connections (including cabling from your rack to any carrier equipment) directly from us.
- 1.3 If you or your Personnel do not comply with any of our access or operating requirements, or if you breach the Agreement, we may deny you access to, or require you immediately to leave, the Location.

## 2. WHAT TERMS APPLY TO CO-LOCATION SERVICES?

- 2.1 If specified in the Order, we will host the Customer Equipment at the Location (**Co-Location Services**). We will determine the necessary rack space and reserve it for your use. You must comply with the maximum rack weights specified in our customer manual as amended from time to time.
- 2.2 We may, on 14 days' notice, require you to relocate any Customer Equipment within the Location. In that case, we will pay your reasonable costs, actually incurred, for that relocation.
- 2.3 You must remove all Customer Equipment from the Location on or prior to the effective date of termination of the Agreement or cancellation of the Co-Location Services. If you do not, we may continue to invoice you for monthly recurring Charges until you remove all Customer Equipment and we may also remove and store the Customer Equipment ourselves (at your risk and cost).
- 2.4 You are solely responsible for the configuration and on-going maintenance of the Customer Equipment at the Location.
- 2.5 You must maintain all risk property and comprehensive general liability insurance (including products and completed operations liability and broad form property damage) covering the Customer Equipment and your Liabilities under this Agreement with a minimum limit of \$10,000,000 per occurrence for personal injury and property damage. The policies must be taken out with reputable insurers, at your cost, for the term of the Co-Location Services. You must ensure our interests are noted on the insurance policies and, if requested by us, provide us with certificates of currency.

## 3. WHAT TERMS APPLY TO HOSTING SECURITY SERVICES?

- 3.1 If specified in the Order, we will provide network and host based security services as part of the Cloud and Hosting Services (**Hosting Security Services**). The Hosting Security Services include the provision of the security application specified in the Order (**Security Product**).
- 3.2 You must:
- (a) provide us with a suitable rule base (**Security Policy**), which we will use to configure the Security Product; and
  - (b) ensure the Security Policy is adequate to protect the Customer Content and your network.
- 3.3 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 Hosting Security Services. Notwithstanding any other provision of this Agreement, we exclude all Liabilities arising in connection with the Hosting 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.
- 3.4 No Service Level Guarantees apply to the Hosting Security Services.

## 4. WHAT TERMS APPLY TO INTERNET SERVICES?

- 4.1 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**).
- 4.2 Service Level Guarantees apply to accessing the internet but not to the operation of the internet outside Our Core Network.
- 4.3 To the extent permitted by law, and except to the extent set out in the relevant Service Level Guarantee for Internet Services, 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:

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

- (a) any associated Liabilities you or anyone else may incur.

- 4.4 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.

## 5. WHAT TERMS APPLY TO CONTENT AND SOFTWARE?

- 5.1 If specified in the Order or Statement of Work, we will provide Software Licensing Services (which may include Microsoft SPLA Licensing) subject to the following conditions:

- (a) access to and use of the software is subject to all terms and conditions specified by the Provider (in the case of Microsoft, this includes Microsoft's Service Provider Use Rights document) available at [www.microsoft.com/licensing/spur](http://www.microsoft.com/licensing/spur);
- (b) we may vary the applicable monthly charges on 30 days' notice to reflect any variations to the Provider's licensing fees and other charges;
- (c) the software must be used on Our Equipment unless any applicable licence mobility has been approved by the Provider (e.g. Microsoft), in which case you must provide the signed mobility form to us; and
- (d) you must not exceed the maximum number of end users set out in the Order or the Provider's terms and conditions. In the case of Microsoft Licensing Services this means you must not allow the number of unique users with remote access to applications and data to exceed the maximum permitted number of unique users, as specified in the Order and you must not reassign remote access rights from one user to another during a calendar month.

- 5.2 Except where we provide you with software under an Order or Statement of Work, if you import, download, install or otherwise reproduce any software on one of our virtual machines or Our Equipment (including where you request any other person to do so on your behalf), you must ensure that:

- (a) you either own the software, or have the right to use it under a licence or other agreement with the software provider (or someone authorised by them);
- (b) you will comply at all times with the terms of that agreement; and
- (c) you will provide us, within 7 days of our request, with a copy of the agreement or any other relevant documentation that confirms your right to use the software, and any other information about your use of the software that we may require (including for the purposes of an audit by one of our software providers),

and you will be liable to us for any unpaid licensing fees or other amounts (including retrospectively) arising in connection with any breach of this **clause 5.2**.

- 5.3 We may notify you of our minimum acceptable versions of operating systems, devices, software or firmware. Any Service Level Guarantees that apply to Cloud and Hosting Services will only apply if the Services are operating on those versions or higher. Any software not provided by us as part of the Services is deemed to be Customer Content (for which you are responsible).

- 5.4 You indemnify us and our Personnel against any Liabilities we may suffer or incur (including in connection with a third-party claim brought or threatened against us), in connection with your breach of this **clause 5**.

## 6. WHAT TERMS APPLY TO CUSTOMER CONTENT?

- 6.1 You retain sole responsibility and accept sole liability for all Customer Content and any other software, information, data or material of any nature stored on its servers or transmitted using the Cloud and Hosting Services even if you do not authorise its creation, storage, access or transmission (including any unauthorised on-line access). You warrant that:

- (a) to the best of your knowledge, the Customer Content is and will remain free from any form of malicious code; and
- (b) you or your licensors hold the necessary rights in the Customer Content to authorise you to use, publish, communicate, distribute and otherwise deal with the Customer Content.

- 6.2 If the Customer Content breaches our Acceptable Use Policy, we may, without notice to you, remove, alter or disable access to any Customer Content in accordance with our Acceptable Use Policy. We are not responsible for any Liabilities that you or anyone else may suffer or incur as a result of our actions under this **clause 6.2**.

- 6.3 You grant us a limited, royalty-free, non-exclusive licence to reproduce, display, distribute, communicate and store Customer Content to the extent necessary for us to provide the Cloud and Hosting Services.

## 7. WHAT OTHER TERMS APPLY TO THE SERVICES?

- 7.1 You acknowledge and agree that:

- (a) the Services may not be free from fault, interruption or external intrusion;
- (b) 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;

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- (c) it is not a term of this Agreement (express or implied), that the Cloud and Hosting Services or any Customer Content will be secure or private. Notwithstanding any other term of this Agreement, we exclude all Liability to you arising in connection with any security incidents (including any form of hacking or denial of service attacks);
- (d) 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;
- (e) 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);
- (f) for servers where we manage the operating system, you must allow us access to the servers (including by giving us any necessary passwords) so we can maintain the Cloud and Hosting Services; and
- (g) following the completion of the cancellation of the Cloud and Hosting Services, we may delete or otherwise remove Customer Content on Our Equipment.
- 7.2** You must:
- (a) 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;
- (b) 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 unauthorised access or use by third parties) of the Services and of those access methods, including all Charges incurred and any Liabilities suffered by you or anyone else;
- (c) provide us (and any Providers) with any information or assistance we reasonably request, and with authorised and safe access to Customer Equipment or Rented Equipment, so we can perform our obligations under the Agreement; and
- (d) 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.
- 7.3** 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.
- 7.4** We may provide you with access to Self Service Management Tools. If we do:
- (a) 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
- (b) we may charge you for work we undertake to restore or repair Services affected by your use of the Self Service Management Tools.
- 7.5** 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 7.5** 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 unless you have received our approval to do so. Where under the terms of the *Privacy Act* there may be an obligation on you 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.
- 8. HOW WILL MACQUARIE RATES BE APPLIED TO CLOUD AND HOSTING SERVICES?**
- 8.1** For Cloud and Hosting Services, the Macquarie Rates may comprise:
- (a) a fixed monthly component for the Cloud and Hosting Services billed monthly in advance; and
- (b) a variable component to reflect usage of the Cloud and Hosting Services billed monthly in arrears.
- 8.2** For the purposes of **clause 2.2** of the Trading Terms, if no rates for those Hosting Services are specified in the MSPL, the applicable rate will be the Macquarie Rates set out in the Order.
- 8.3** If agreed in writing by the parties, we may invoice you for other fixed one-off or periodic Charges prior to the Service Start Date. Additional Charges may apply if you exceed any agreed usage limits specified in the Order.
- 8.4** In addition to our rights under **clause 2.3** of the Trading Terms, we may after the first anniversary of the commencement date of the applicable Order, vary the Macquarie Rates by notice to you, to reflect:
- (a) the percentage increase (if any) in the Australian Consumer Price Index (All Groups, Weighted Average of Eight Capital Cities) in the previous 12-month period; and
- (b) any increase in electricity charges passed on to us by any electricity retailer as a result of any new (or amended, varied or replaced) mandatory emission trading, carbon reduction, renewable energy or other scheme or relating to the emission of carbon, carbon compounds, or any substance characterised as a greenhouse or related gas.
- The variation will take effect from the start of the first billing period that is at least 30 days after the date of our notice.
- 9. ARE THERE ANY SERVICE LEVEL GUARANTEES?**
- 9.1** Certain Cloud and Hosting Services may be supported by a Service Level Guarantee, which may entitle you to a rebate if we do not achieve the specified 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.
- 9.2** The Service Level Guarantee does not apply, and no rebates are payable:
- (a) during any Planned Outage or for an interruption required in order to respond to, or deal with the consequences of, an Emergency;
- (b) 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.
- 9.3** You acknowledge and agree that:
- (a) 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;
- (b) 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;
- (c) 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;
- (d) 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.
- 10. WHAT ARE THE CONSEQUENCES OF EARLY CANCELLATION OF CLOUD AND HOSTING SERVICES?**
- 10.1** For the purposes of **clause 6.3** of the Trading Terms, the early cancellation charge for a Cloud and Hosting Service is the sum of the following:
- (a) an amount equal to 85% of the Minimum Charges for the Cloud and Hosting Service; plus
- (b) the amount of any waived installation charges or one-off discounts.
- 11. WHAT DO THE CAPITALISED TERMS MEAN?**
- 11.1** 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.