

This document sets out our Trading Terms that apply to the Services set out in an Order and together with the Service Schedules, Dictionary, Orders, Acceptable Use Policy and other applicable documents such as Service Level Guarantees, constitutes our Agreement. All terms in capital letters have the meaning set out in the Dictionary available on our Website.

## 1. HOW ARE SERVICES ORDERED AND PROVISIONED?

**1.1** If you ask us to provide any Services, or make any changes to Services already provided to you under an existing Order, we may prepare and send you an order. If we do, and both parties sign that order, then subject to our acceptance of the Order, we will provision and provide you the Services subject to the terms of the Agreement. For some Orders, we may also send you a service order confirmation which confirms our acceptance of, and is deemed to form part of, that Order. We may also enable you to make adds, moves and changes to some Services via the Self Service Management Tools.

**1.2** We will provide each Service from the Service Start Date until the end of the applicable Minimum Period (unless the Service is cancelled earlier in accordance with this Agreement). After the Minimum Period, we will continue providing the Service until it is cancelled in accordance with this Agreement.

**1.3** You agree to use all reasonable efforts and undertake all necessary preparatory actions to ensure that supply of Services to you can commence promptly following the signing of an Order, including fulfilling any of your technical, operational, or other prerequisites required for you to receive the Services. To the extent that your delay in fulfilling such prerequisites causes direct costs to be incurred by us that cannot be reasonably mitigated, then we may charge you such costs.

## 2. HOW ARE THE CHARGES CALCULATED?

**2.1** Unless otherwise specified in a Service Schedule or Order, the Macquarie Rates apply to a Service from the Service Start Date until the effective date of cancellation of the Service (either determined in accordance with **clause 5** or, if applicable, the relevant Service Schedule), after which time the Macquarie Rates will cease to apply and the Charges will be calculated in accordance with **clause 2.2**.

**2.2** If no Macquarie Rates apply to a Service (including where there is no Macquarie Rate set out in the Order for that Service or where the Macquarie Rates have ceased to apply under **clause 2.1** and you continue to use the Service), the Charges will be calculated in accordance with the version of the MSPL current at the time the Charges are incurred or, for any rates not specified in the MSPL, in accordance with the SFOA unless otherwise set out in a Service Schedule.

**2.3** We may vary:

- (a) the Macquarie Rates, with at least 30 days' prior notice to you: (i) to reflect any increase or decrease in the charges we pay to a Provider; (ii) to reflect any movement of 5% or more in an exchange rate that we use to convert charges in foreign currencies into Australian dollars; (iii) after the first anniversary of the commencement date of the applicable Order to reflect 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; (iv) in accordance with the terms of a Service Schedule; or (v) on expiry of the Minimum Period;
- (b) the MSPL at any time, and that variation will take effect from the start of the first billing period that is at least 30 days after we publish the updated MSPL unless set out in a Service Schedule; and
- (c) the service charge imposed on credit card payments at any time, with at least 30 days' prior notice to you.

**2.4** You are liable for all Charges incurred by you or any of your End Users.

## 3. HOW DO YOU PAY FOR THE SERVICES?

**3.1** Subject to **clause 3.3**, you must pay all Charges specified in any invoice issued by us. If you make a written request to us, we may agree (subject to any reasonable conditions we specify at the time) to invoice Charges to particular cost centres or entities or in other formats. If we do, you remain liable for all invoiced Charges regardless of how they are allocated.

**3.2** You must pay all Taxes at the same time as the associated Charges. If the law of a jurisdiction outside Australia requires you to deduct or withhold any part of an amount that you owe to us, you must increase your payment to us so that after the required deduction or withholding, we still receive the amount you owe us. Where applicable, we will give you a tax invoice.

**3.3** You must pay the invoiced Charges in full within the Payment Period, except for any amount disputed in accordance with **clause 3.5**. Invoiced Charges may include Charges from previous billing periods. Unless we have agreed in writing to a different payment method, you must pay by cheque, direct deposit into our nominated account, or credit card (subject to any applicable service charge).

**3.4** If you don't pay all of the invoiced Charges (other than any amounts disputed in accordance with **clause 3.5**) within the Payment Period, then without affecting our rights under **clause 5**, we may do either or both of the following:

- (a) charge you interest on the unpaid amount, from the due date until it is paid in full, at an annual rate equal to the Reserve Bank of Australia's official cash rate plus 3% (percent); and
- (b) on 5 days' notice, suspend any or all of the Services until you pay us the unpaid amounts in full, together with any interest accrued under **clause 3.4(a)**.

**3.5** If you believe, in good faith, that you're not liable for some of the invoiced Charges, you may withhold the disputed amount, but only if:

- (a) before the end of the Payment Period, you pay the remaining undisputed amount of the invoice in full; and
- (b) you give us a written notice within 30 days from the end of the Payment Period specifying the disputed amount, how you calculated it and explaining why you believe you're not liable for that amount, in which case, we will investigate the dispute and, where necessary, raise it

with any relevant Provider. We will notify you of the outcome of our investigation and unless there is fraud or obvious error, our decision (or the Provider's, if applicable) regarding the dispute is final. If we notify you that the disputed amount (or any part of it) is payable, then you must pay that amount within 14 days after receiving our notice. Any Charges not disputed by you within six months of the date of the invoice are deemed to be correct.

**3.6** We may set-off any amounts we owe you under the Agreement (including rebates) against any amounts you owe us.

## 4. WHEN CAN THE SERVICES BE SUSPENDED?

**4.1** We may immediately suspend any Services, without affecting our rights under **clause 5**, where:

- (a) an External Circumstances Event or an Emergency occurs;
- (b) a Planned Outage occurs or we believe it is necessary to schedule an Outage at short notice to allow the unscheduled repair or maintenance of any part of a network or Equipment;
- (c) we are required to do so in order to comply with the law, or a direction or request of a Regulator;
- (d) we have provided you with notice in accordance with **clause 3.4(b)**;
- (e) we reasonably believe you have breached the Agreement (including the Acceptable Use Policy) or you have suffered an Insolvency Event; or
- (f) we are entitled to suspend any services we provide to you under any other agreement.

**4.2** We will end any suspension as soon as reasonably practicable. If we have suspended Services under **clause 4.1(e)**, we may first require you to remedy any breach and reasonable reactivation Charges may also apply. Unless we have suspended Services under **clause 4.1(a)**, periodic Charges continue to accrue during the period of suspension.

## 5. HOW CAN THE AGREEMENT BE TERMINATED OR SERVICES CANCELLED?

**5.1** We may cancel any of your Services, or terminate the Agreement (which cancels all of your Services), immediately by notice to you:

- (a) if you breach the Agreement (including by failing to pay any Charges by the relevant due date). If your breach is capable of remedy, we will give you 14 days to remedy it before we cancel or terminate;
- (b) if you suffer an Insolvency Event;
- (c) if our right or ability to provide the Services is revoked, terminated, restricted or otherwise adversely affected by any action of a Regulator, any change in the law or by any lawful action of a Provider. In these circumstances, we will give you at least 30 days' prior notice;
- (d) if we accept your prior repudiation of the Agreement (i.e. you indicate to us that you're not ready or willing to perform your obligations); or
- (e) for any other reason, in which case we will give you at least 90 days' prior notice.

The effective date of any cancellation or termination under this clause will be the date we specify in our notice (which may be the date of the notice itself).

**5.2** You can cancel a Service at any time, or terminate the Agreement (which cancels all of your Services):

- (a) by giving us at least 90 days' prior notice (and if applicable a Provisioning Request) that complies with **clause 9**. If you do, and the effective date of cancellation (determined in accordance with this **clause 5.2**) is before the end of the Minimum Period, you must pay any applicable early cancellation charge owing under **clause 6.3**; or
- (b) if we suffer an Insolvency Event, by giving us written notice.

The effective date of cancellation under: (i) **clause 5.2(a)** will be the date that is 90 days after the date we receive your notice or, if your notice specifies a later date of cancellation, that later date; or (ii) **clause 5.2(b)** will be the date of your notice or such later date specified by you. The Service Schedules may specify other circumstances in which you will be deemed to have given us notice of cancellation of a Service.

**5.3** If we change any Service Level Guarantee, policy, service description or manual or introduce a new guarantee, policy, description or manual that causes with respect to a Service a materially adverse effect to you, you may cancel the affected Service by giving us at least 90 days' prior notice of cancellation provided that:

- (a) your cancellation notice includes comprehensive details of the materially adverse effect that such change or introduction has caused; and
- (b) we have not within 30 days of receiving your notice remedied the change or introduction to remove the material adverse effect and notified you of the remediation.

If not remedied under **clause 5.3(b)**, the effective date of cancellation under **clause 5.3** will be the date that is 90 days after the date we receive your notice or, if your notice specifies a later date of cancellation, that later date.

**5.4** (a) If you are notifying us regarding the cancellation of any Services then your notice must identify each Service you want to cancel and, its effective date of cancellation. If you are cancelling all the Services, your notice must state this expressly. You must also ensure that any effective date of cancellation specified in the notice complies with any minimum notice periods specified in this **clause 5**.

(b) After receiving a notice of cancellation from you, we will provide you with a cancellation order. This will confirm the effective cancellation date for each service to be cancelled and will include an estimate of any applicable early cancellation fees.

(c) If you wish to delay the effective cancellation date for a Service, you must give us at least 30 days' written notice and nominate a new effective cancellation date. If you do not give us this notice and continue to use a Service after the original effective cancellation date for that Service, we may charge you MSPL in accordance with **clause 2.2**.

**5.5** If we are no longer providing you with any Services (for example, because they have all been cancelled), the Agreement is terminated.

- 5.6 Termination of the Agreement does not affect the accrued rights or remedies of a party, including rights or remedies arising as a result of the termination.
- 6. WHAT HAPPENS IF ANY SERVICES ARE CANCELLED OR TERMINATED?**
- 6.1 If any Services are cancelled (including because the Agreement is terminated):
- you may cease providing each cancelled Service on its effective date of cancellation, subject to our election to continue to provide the Service to enable the Service to be transferred to another service provider (if applicable); and
  - you are liable for all Charges owing to us for the cancelled Services (including any applicable third-party charges that we may incur, early cancellation charges, and other amounts owing under the Agreement) and must pay all outstanding Charges on the due date of the relevant invoices.
- 6.2 If we provide you with any of Our Equipment as part of a cancelled Service, or if any Purchased Equipment associated with a cancelled Service is not fully paid for by the effective date of cancellation:
- you must return Our Equipment to us within 5 Business Days after the effective date of cancellation, unless we notify you that we will collect it;
  - if we elect to collect Our Equipment, we (or our Personnel) may do so on reasonable notice during your normal business hours and you must provide us with any assistance we reasonably request;
  - we may charge you any reasonable costs we incur in relation to the return or collection of the Equipment or our attempts to do so; and
  - if you fail to return (or allow us to collect) Our Equipment within 5 Business Days after the effective date of cancellation, you will be liable to pay us the cost to us of replacing that Equipment with the same or similar Equipment (as our Providers or we determine) including any costs imposed on us by our Providers or other third parties.
- 6.3 If a Service is cancelled (including because the Agreement is terminated), and the effective date of cancellation of the Service is before the end of the applicable Minimum Period (including before the Service Start Date), then unless the Service was cancelled under **clauses 5.1(c), 5.1(e) or 5.2(b)**, you must pay any applicable third-party charges that we may incur, and any early cancellation charges calculated in accordance with the applicable Service Schedules and/or Order.
- 7. HOW WILL LIABILITY UNDER THE AGREEMENT BE DETERMINED?**
- 7.1 To the extent permitted by law, we exclude all, representations, terms, conditions, warranties or guarantees (including as to acceptable quality, fitness for purpose, satisfaction of your requirements or timeliness) that are not expressly set out in this Agreement and you agree that you have not relied on any such matters. If any such term is implied or imposed in relation to the Agreement and cannot be excluded, then to the extent permitted by law, our liability for a breach of such term is limited to one or more of the following at our option:
- in relation to goods, the replacement of the goods or the supply of equivalent goods, the repair of the goods, the payment of the cost of replacing the goods or of acquiring equivalent goods, or the payment of the cost of having the goods repaired; or
  - in relation to services, the re-supply of the services or the payment of the cost of resupplying the services.
- 7.2 To the extent permitted by law, we exclude all Liability to you (and anyone claiming through you) for 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 any indirect, consequential, special, punitive or exemplary loss or damage, even if it was reasonably foreseeable, arose naturally, or was contemplated by the parties in relation to the events giving rise to that Liability.
- 7.3 Subject to **clause 7.5**, but without limiting **clause 7.1 and 7.2**, to the extent permitted by law, the total aggregate amount of our Liability arising under or in connection with this Agreement is limited to in respect to:
- any single incident of Liability the amount of the Charges you paid to us in the 12-month period; or
  - all incidents of Liability in total arising in any 12-month period the amount of the Charges you paid to us in the 24-month period;
- prior to the Liability arising for the Services affected by the circumstances giving rise to the relevant Liability.
- 7.4 Subject to **clause 7.5**, you indemnify us and our Personnel against any Liabilities we may suffer or incur (including in connection with a Provider or other third-party claim brought or threatened against us), which arise in connection with: (a) the use or attempted use (including fraudulent use) of the Services by any person; (b) any Customer Content and/or Customer Equipment; (c) any loss or damage caused by the acts or omissions of your Personnel; (d) your breach of the Agreement; (e) any loss of, or damage to, Our Equipment under your possession or control.
- 7.5 A party's Liability under the Agreement (including under an indemnity) will be reduced proportionately to the extent that the Liability was caused by the other party or its Personnel, or by a related body corporate of that other party.
- 8. HOW WILL CONFIDENTIAL AND PERSONAL INFORMATION BE USED?**
- 8.1 You acknowledge that in order to provide the Services, we may need to collect, use and disclose personal information about individuals (including your Personnel). Our privacy policy, which is available on the Website, provides information regarding how we collect, use and disclose personal information.
- 8.2 You must not disclose our confidential information (which includes the contents of the Agreement and any pricing, product or service related information we give you) to any third party. We will not disclose any information that you tell us is confidential to third parties except in connection with our provision of the Services or as otherwise specified in this **clause 8**.
- 8.3 You are responsible for obtaining all authorisations, licenses and consents, and issuing all relevant notifications, required under applicable laws in relation to any information or content you use or provide us (including any personal information) and any intellectual property rights subsisting in that information or content. You consent to us collecting, using and disclosing information provided by you, or on your behalf, to our Providers, contractors and agents to the extent necessary to provide the Services. You also authorise us to undertake credit checks and to use or disclose such credit information for the purpose of providing the Services. This **clause 8** does not prevent a party from disclosing information with the other party's prior written consent or to the extent required by law or the rules of any stock exchange.
- 9. HOW DO THE PARTIES NOTIFY EACH OTHER?**
- 9.1 We will send notices to you using your contact details on the relevant Order. All notices to us must be sent by email to [notices@macquarietechnologygroup.com](mailto:notices@macquarietechnologygroup.com) other than cancellation notices which must be sent to [cancellations@macquarietechnologygroup.com](mailto:cancellations@macquarietechnologygroup.com). If you are notifying us regarding the cancellation of any Services then your notice must identify each Service you want to cancel, its effective date of cancellation and, if you are cancelling all the Services, include a statement that you are terminating the Agreement. You must also:
- ensure that any effective date of cancellation specified in the notice complies with any minimum notice periods specified in **clause 5**;
  - in the case of any Voice Services, Mobile Services or Data Services, submit a Provisioning Request, using the prescribed form, via the Self Service Management Tools;
  - in the case of Cloud and Hosting Services, accept a Provisioning Request that we prepare; and
  - nominate one of your Personnel who can liaise with us regarding the cancellation.
- 9.2 All notices under the Agreement must be in writing and comply with this **clause 9**. A party may change its contact details by giving at least 7 days' notice to the other party. Notices sent by post will be treated as received 3 Business Days from and after the date they are posted within Australia or when they are sent by email: (a) if sent on a Business Day treated as received on the day they are sent, or (b) if not sent on a Business Day treated as received on the next Business Day.
- 9.3 We may notify you of any amended or new policies (including the Acceptable Use Policy, privacy policy and other operational manuals), by publishing the policy or manual on the Website and/or any online customer portal to which you have access or by providing you a copy of the policy or manual. The policy or manual, or amendment to it, takes effect on the date of notification under this clause.
- 10. WHAT OTHER TERMS APPLY TO THE SERVICES?**
- 10.1 Other terms are set out in other documents that form part of the Agreement.
- 10.2 We will determine how the Services are provided, including by selecting Providers. You authorise us to take any actions necessary to provide the applicable Services, including exchanging any necessary information with Providers and signing and submitting on your behalf any necessary authority forms or other details required to provide the Services.
- 10.3 Any Expected Ready for Service Date notified by us is a target only. We will use reasonable efforts to meet that target, but if we do not, we will not be responsible for any delays or Liabilities that you or anyone else may suffer or incur as a result. If you request delivery or installation outside standard business hours additional Charges will apply.
- 10.4 Notwithstanding this Agreement, neither party is liable for any delay or failure in the performance of its obligations under the Agreement (excluding an obligation to pay money) to the extent that the delay or failure is attributable to an External Circumstances Event. The parties will work together to minimise the impact of any External Circumstances Event on the Services.
- 10.5 You must ensure that all of your Personnel, related bodies corporate and End Users comply with the terms of this Agreement (including the Acceptable Use Policy) and you are responsible and liable for all acts and omissions of those parties in connection with this Agreement. You must ensure that your Personnel and Customer Equipment do not cause any damage to our land, premises (including the Intellicentres), facilities or Our Equipment.
- 10.6 The Agreement is the entire agreement between you and us in relation to the Services and supersedes any previous agreements, arrangements or representations. If there is any inconsistency between the components of the Agreement, the one mentioned earlier in the definition of Agreement in the Dictionary will prevail to the extent of that inconsistency.
- 10.7 You acknowledge that we may assign or novate any or all of our rights and obligations under the Agreement to any other party (including to any of our affiliates) without your consent. You irrevocably appoint us as your lawful attorney to execute all documents and do all acts necessary or desirable to give effect to an assignment or novation under this clause. You may only assign or deal with your rights or obligations under the Agreement with our prior written consent, which we will not unreasonably withhold.
- 10.8 No variation of this Agreement is effective unless set out and agreed in writing by both parties.
- 10.9 If we consider it necessary to vary the Agreement as a result of any action of a Provider or Regulator, we may do so by giving you at least 30 days' prior notice of the variation. You can object to the variation, but only if you notify us within 20 days after the date of our variation notice. In that case, the parties will negotiate in good faith and try to agree on an acceptable variation, but if the parties cannot reach agreement before the end of the original 30-day notice period, then either party may terminate the Agreement by giving the other a further 90 days' notice. Where you exercise such right to terminate you: (a) are liable for all Charges owing to us up to the date of termination, and any applicable third-party charges that we may incur or other amounts owing under the Agreement; and (b) must pay all outstanding Charges on the due date of the relevant invoices.
- 10.10 If a part of the Agreement is held to be void, voidable or unenforceable, or an invalid part is severed, the remainder of the Agreement is not affected. No waiver of a right or remedy under the Agreement is effective unless set out in writing.

- 10.11** All clauses which are either expressly or by implication intended to survive expiry or termination will continue to apply after termination including **clauses 7 and 8**.
- 10.12** The laws of New South Wales govern the Agreement and both parties irrevocably submit to the exclusive jurisdiction of the New South Wales courts.
- 11. WHAT DO THE CAPITALISED TERMS IN THIS AGREEMENT MEAN?**
- 11.1** The terms in capital letters in this Agreement have the meaning set out in the Dictionary at [www.macquarietechnologygroup.com](http://www.macquarietechnologygroup.com). In the Agreement, all references to "dollars" or "\$" are references to Australian dollars and headings are not part of, and do not affect the interpretation of the Agreement. Unless otherwise indicated, any reference in these Trading Terms to a "clause" is a reference to a clause in this document. Otherwise, the usual rules of contractual interpretation apply unless the context requires otherwise.