3.3 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 3.2, where:

(a) an External Circumstances Event or an Emergency occurs;

(b) your breach or non-compliance with the Service Schedule or this Agreement is so serious as to put the Service at substantial risk of failure or obsolescence;

(c) we reasonably believe that performance of the Service is essential to the safety or well-being of you or anyone else;

(d) we reasonably believe that performance of the Service is necessary to avoid you having to pay, or if any Purchased Equipment associated with a cancelled Service is not returned to us;

(e) we reasonably believe you have breached the Agreement (including the Acceptable Use Policy) or you have suffered an Insolvency Event.

4.2 We will end any suspension as soon as reasonably practicable. If we have suspended Services under clause 3.2(e), we may first require you to remedy any breaches and reconciliation of 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 You 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); or

(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 any other person.

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

(a) by giving you at least 90 days’ prior notice; or

(b) if we suffer an Insolvency Event, by giving you written 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).

5.3 If we are no longer providing you with any Services (for example, because you have cancelled the Services), we may give you an invoice for any unpaid Charges or cancellation charges payable.

5.4 If we cancel a Service at any time, or terminate the Agreement (which cancels all of your Services): you are liable for all Charges incurred by you or any of your End Users.

6 WHAT HAPPENS IF ANY SERVICES ARE CANCELLED OR TERMINATED?

6.1 If any Services are cancelled (including because the Agreement is terminated):

(a) we 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

(b) you are liable for all Charges owing to us for the cancelled Services (including any early cancellation charges and other amounts owing under the Agreement) and must pay all outstanding Charges on the due date following the end of the cancellation period.

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:

(a) 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;

(b) 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 access to any Other Equipment at no cost.

(c) we may charge you any costs we incur in relation to the return or collection of the Equipment or our attempts to do so; and

1. HOW ARE THE CHARGES CALCULATED?

1.1 Unless otherwise specified in a Service Schedule or Order, the Macquarie Rates will apply from the Service Start Date until the effective date of cancellation of the Service (either determined in accordance with clause 5.2 or applicable, the relevant Service Schedule or Order). After which time, the Macquarie Rates will cease to apply and the Charges will be calculated in accordance with clause 3.2.

1.2 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 1.1 and you continue to use the Service), the Charges will be calculated in accordance with the version of the MSPL applicable at the time the Charges are incurred or, for any rates not specified in the MSPL, in accordance with the SOFA unless otherwise set out in a Service Schedule.

2.1 You 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 in allocated, or, in other formats. If we do, you remain liable for all invoiced Charges regardless of how they are allocated.

2.2 We may cancel a Service at any time, or terminate the Agreement (which cancels all of your Services):

(a) by giving you at least 90 days’ prior notice; or

(b) if we suffer an Insolvency Event, by giving you written 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).

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

2.4 You pay all Charges in full within the Payment Period, except:

(a) you may withhold the disputed amount, but only if, before the end of the Payment Period, you:

(i) give us a written notice 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.

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

We will end any suspension as soon as reasonably practicable. If we have suspended Services under clause 3.2(e), we may first require you to remedy any breaches and reconciliation of charges may also apply. Unless we have suspended Services under clause 4.1(a), periodic Charges continue to accrue during the period of suspension.

We can cancel a Service at any time, or terminate the Agreement (which cancels all of your Services): you are liable for all Charges incurred by you or any of your End Users.

You pay all Charges in full within the Payment Period, except:

(a) you may withhold the disputed amount, but only if, before the end of the Payment Period, you:

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(a) you may withhold the disputed amount, but only if, before the end of the Payment Period, you:

(i) give us a written notice 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.
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 for the cost to us of replacing that Equipment with the same or similar Equipment (as our Providers or we determine) including any costs incurred by our Providers or other third parties.

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 an early cancellation charge 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, you shall indemnify, keep harmless and defend us (including our employees and agents) against all actions, proceedings, claims, demands, costs (including reasonable legal and other professional costs), losses, liabilities, fines, penalties or any kind of loss or damage caused by you 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:

(a) 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;

(b) in relation to services, the 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, anticipated savings, pure economic loss, loss of use 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 that such liability would be incurred by the parties in relation to the events giving rise to that Liability.

7.3 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 the amount of the Charges you paid to us in the 12 month period prior to the Liability arising for the Services affected by the circumstances giving rise to the relevant Liability.

7.4 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), which arise in connection with: (a) the use or attempted use (including fraudulent use) of the Services by any person; (b) any Customer Insolvency Event or (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. 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, disclose and/or 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 have disclosed to us if we are required to do so by law or, if we reasonably believe such disclosure is necessary to 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.

8.3 You are responsible for obtaining all authorisations, licenses and consents, and complying with all applicable laws, including 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@macquarietelecom.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 the effective date of cancellation of all Services, includes a statement that you are terminating the Agreement. You must also:

(a) ensure that any effective date of cancellation specified in the notice complies with any minimum notice periods specified in clause 5;

(b) in the case of Cloud and Hosting Services, submit a Provisioning Request, using the prescribed form, via the Self Service Management Tools;

(c) in the case of Cloud and Hosting Services, accept a Provisioning Request,

(d) 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. A party may change its contact details by giving at least 7 days’ notice to the other party. Your notices to us will be treated as received when we send you an email acknowledging receipt. Our notices to you will be treated as received when they are sent to your address or when they are sent by email (as applicable).

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 on the Website and/or any online customer portal to which you have access or by providing you a copy of the policy. The policy, or amendment to the policy, takes effect on the date of notification under this clause.

10. WHAT OTHER TERMS APPLY TO THE SERVICES?

10.1 Any Dictionary will prevail to the extent of that inconsistency.

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 notices, 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 Agreement takes precedence.

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 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 or delay.

10.8 No variation of the Agreement is effective unless set out in a formal agreement varying this Agreement and signed by the 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 30 days’ prior notice of the variation. You can object to the variation, but only if you notify us within 10 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 we cannot reach agreement before the end of the original 30-day notice period, then we may terminate the Agreement by giving you a further 30 days’ notice.

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 in writing and signed by the party giving it.

10.11 All clauses which are either expressly or by implication intended to survive expiration 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 courts of New South Wales.

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.macquarietelecom.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.