3.3 We are not responsible for monitoring, throttling or otherwise controlling your use of the Internet Services. You are solely responsible for:
(a) all consequences of your use of the Internet Services, including any service interruptions or failures to your access, 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) associated Liabilities you or anyone else may incur.

3.4 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.

3.5 WHAT TERMS APPLY TO MANAGED CPE SERVICES?
3.5.1 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).

3.5.2 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.

3.6 Additional Charges may apply if our Personnel need to attend any Premises to supplement the relevant Equipment the subject of the Managed CPE Services. (Including an upgrade of any internal operating system software).

3.7 We are not responsible or Liable for any failure of the Equipment, or any failure by us to provide Managed CPE Services, where that failure or malfunction is 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 Level Guarantee.

You acknowledge that the Rented Equipment may not be new at the time we supply it to you.

4.2 If you provide us 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 if you will then have 30 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 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 new 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 4.4(b)(i) or 4.4(b)(ii), we will charge you for any replacement Rented Equipment.

(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 The data described 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 requcredited 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;

(c) we will not be able to provide you with any reports that rely on data collected through 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 interfaces (including system software version specifications); and (ii) the quality of service (QoS) configuration together, the Required QoS Configuration;

(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 and Equipment based security services as part of the Data Services (Data Security Services). 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. 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 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 the 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).
8. WHAT OTHER TERMS APPLY TO DATA SERVICES?

8.1 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;

(c) it is not a term of this Agreement (express or implied) that the Data Services will be secure or private. Notwithstanding any other terms 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 all Customer Content, even if you do not authorise or consent to its creation, storage, access or transmission;

(e) 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;

(f) you are solely responsible for communicating with your End Users in relation to the Services. This includes handling their complaints and trouble reports;

(g) 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

(h) if you purchase any Equipment then: (i) title to the Purchased Equipment does not pass to you until you have paid for it 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 to any 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:

(a) comply with the Acceptable Use Policy and all applicable laws, and also maintain and control 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 misuse of access methods (including any unauthorized 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;

(c) provide us (and our Providers) with any information or assistance we reasonably request, and with authorised and safe access to Premises or Customer Equipment or Rental Equipment (including obtaining consent from landlords or building managers), 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.  

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:

(a) you are solely responsible for the consequences (including all associated Liabilities) of your or your End Users’ 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 or your End Users’ 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 unless you have received our approval to do so. Where 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) a fixed monthly component for the Data Services billed monthly in advance;

(b) a variable component to reflect usage of the Data Services (particular data transfer) billed monthly in arrears; and

(c) 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 Agreement. Additional Charges may also apply to reflect usage of the Data Services (particularly data transfer) 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:

(a) during any Planned Outage or for an interruption required in order to respond to, or deal with the consequences of, an Emergency; or

(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 Circumstance Event; (iv) any action taken by us or our Regulator 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:

(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 are not liable 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:

(a) an amount equal to 55% of the Minimum Charges for the Service; plus

(b) the amount of any waived installation charges or any one-off discounts; plus

(c) the amount of any waived installation charges or any one-off discounts; plus

(d) any amount owing to us under clause 6.2 of the Trading Terms; plus

(e) the amount of any waived installation charges or any one-off discounts; plus

(f) if you requested the installation of any infrastructure required for the nbn network to pass to you immediately on delivery, we (and our Providers) may charge you for work we undertake to restore or repair Services affected by your request, and with authorised and safe access to Premises or Customer Equipment or Rental Equipment (including obtaining consent from landlords or building managers), so we can perform our obligations under the Agreement; and

12. NBN

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:

(a) access to and use of run of services is subject to all terms and conditions specified by NBN from time to time; and

(b) 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 under the consumer guarantee provisions in Parts 3-2 and 5-4 of the Australian Consumer Law, we or your End Users must not bring any claim (including any action, suit or proceeding of any nature) to which this Agreement relates against NBN, its related bodies corporate or any of their respective Personnel in connection with:

(a) the supply (or any delay, failure or defect in relation to the supply) of any services or services that we agree to provide under this Agreement; or

(b) 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:

(a) 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

(b) the death or personal injury of any person to the extent caused or contributed to by:

(i) negligent or willful acts or omissions of NBN, its Related Bodies Corporate or any of their respective Personnel or third party suppliers; or

(ii) any equipment or network owned, operated or controlled by NBN.

12.4 You 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 30 of the Corporations Act 2001 (Cth).

13. WHAT DO THE CAPITALISED TERMS MEAN?

13.1 In this Service Schedule the terms in capital letters have the meaning set out in the Dictionary available at www.macquarietelecom.com. Unless otherwise indicated, any reference in this Service Schedule to a “clause” is a reference to a clause of this Service Schedule.