

This Acceptable Use Policy (**Policy**) sets out certain additional obligations of the Customer under the Agreement. Any capitalised terms not defined in this Acceptable Use Policy have the meaning given to them in the current version of the Macquarie Services Agreement Trading Terms, a copy of which is available at www.macquarietelecom.com.

1. GENERAL POLICY STATEMENT

- 1.1 The Customer must not (and must ensure that any person using the Services (**User**) does not) use or attempt to use the Services or any Macquarie Telecom Equipment, the Macquarie Telecom Backbone, or the equipment or Network of a Provider, in any manner that violates:
 - (a) any applicable local, state, federal or international law (including, without limitation, the *Spam Act 2003 (Cth)* (**Spam Act**) and the *Copyright Act (1968 (Cth))*); or
 - (b) the rights of any third party (including, without limitation, infringement of copyright, trademark, or other intellectual property right, misappropriation of trade secrets, electronic fraud, invasion of privacy, pornography, obscenity and libel).
- 1.2 The Customer must not (and must ensure that any User does not) in the course of using the Services engage or attempt to engage in any activities that:
 - (a) interfere with or disrupt other Network users, Network services or Network equipment;
 - (b) involve the unauthorised use of any machine or network, denial of service attacks, falsifying header information or user identification information, monitoring or scanning the networks of others; or
 - (c) introduce or allow the introduction of any virus, worm, trojan horse, zombie, keylogger or other malicious code into the Services or any Network.
- 1.3 For the purpose of **clause 1.2**, interference or disruption includes, without limitation, distribution of unsolicited advertising or chain letters, repeated harassment of other Network users, impersonating another such user, falsifying one's network identity for improper or illegal purposes, sending unsolicited bulk emails or calls, continuing to send someone email after being asked to stop, propagation of computer worms and viruses, mail bombing and "flashing" and using a Network to gain unauthorised entry to any other machine accessible via a Network.
- 1.4 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 Macquarie Telecom has instructed the Customer that this **clause 1.4** applies, the Customer must comply with the obligations under the Privacy Act. This includes making any notifications required, in which case the Customer must provide Macquarie Telecom as soon as practicable with all the information relevant to any proposed notifications and request Macquarie Telecom's approval to the content and timing of the notifications. To the extent permitted under the Privacy Act, the Customer must not make a notification unless the Customer has received Macquarie Telecom's approval to do so. Where under the terms of the Privacy Act there may be an obligation on Macquarie Telecom to make any notifications but no obligation on the Customer, the Customer must co-operate with Macquarie Telecom by providing all relevant information and assistance required by Macquarie Telecom immediately upon request.

2. SPAM

- 2.1 In this clause, "**spam**" includes one or more unsolicited commercial electronic messages with an Australian link for purposes of the Spam Act, and derivations of the word "**spam**" have corresponding meanings.
- 2.2 The Customer may not use the Service to:
 - (a) send, allow to be sent, or assist in the sending of spam;
 - (b) use or distribute any software designed to harvest email addresses; or otherwise breach the Spam Act or the Spam Regulations 2004 (Cth).

(c) otherwise breach the Spam Act or the *Spam Regulations 2004 (Cth)*.

- 2.3 Macquarie Telecom may suspend the Services in the following circumstances:

- (a) if the Services are being used to host any device or service that allows email to be sent between third parties not under the Customer's authority and control; or
- (b) if the Customer or any User is in breach of **clause 2.2**, provided however that Macquarie Telecom will first make reasonable attempts to contact the Customer and give the Customer the opportunity to address the problem within a reasonable time period (having regard to the severity of the problems being caused by the open service or breach referred to above).

- 2.4 The Customer must use its reasonable endeavours to secure any device or network within the Customer's control against being used in breach of clause 2.2 by third parties, including where appropriate:

- (a) the installation and maintenance of antivirus software;
- (b) the installation and maintenance of firewall software; and
- (c) the application of operating system and application software patches and updates.

Macquarie Telecom's right to suspend the Customer's account applies regardless of whether the open service is provided or the breach is committed intentionally, through mis-configuration, or by other means not authorised by the Customer including but not limited to through a Trojan horse or virus.

- 2.5 In accordance with its responsibilities under the Spam Act and the Internet Industry Association Spam Code (Spam Code), Macquarie Telecom may:

- (a) restrict the Customer's ability to forward emails;
- (b) limit the Customer's access to the Service to a closed user group relevant to its use of the Service;
- (c) scan Macquarie Telecom allocated IP address ranges to detect open or otherwise misconfigured mail and proxy servers and suspend the Service if the Customer fails to rectify any problem found within a reasonable period following receipt of a notice from Macquarie Telecom; and
- (d) require the Customer to take all necessary actions to comply with, or which assist Macquarie Telecom to comply with, the Spam Act or the Spam Code.

3. CONTENT PUBLISHING

- 3.1 The Customer must not publish material that is or would be classified by the Classification Board as RC or X rated via websites, email, newsgroups or other publishing mediums accessible via the Services.
- 3.2 The Customer must take appropriate precautions to prevent minors from accessing or receiving any content the Customer has published that may be inappropriate for them. This includes implementing a restricted access system on content that is or would be classified by the Classification Board as R rated.

4. CUSTOMER EQUIPMENT

- 4.1 The Customer is responsible for ensuring in relation to any Customer Equipment that:
 - (a) the Customer Equipment complies with any applicable ACMA code or other applicable specification required for safe and proper use;
 - (b) use of the Customer Equipment will not infringe any law or third party rights (including without limit any intellectual property rights);
 - (c) the Customer Equipment is operated by operators familiar with the Customer Equipment and instruction manuals and in accordance with published specifications and manufacturers' guidelines; and

- (d) the operating environment conforms to the published specifications and requirements of the Customer Equipment, including stable, spike-free electricity supply, air conditioning, service clearances, cable runs, and complies with any relevant occupational health and safety requirements.
- 4.2 Subject to compliance with the Customer's usual security and access arrangements (if applicable and absent any Emergency), the Customer will provide Macquarie Telecom and any of its authorised representatives with full, free and safe access to the Customer Equipment and any Macquarie Telecom Equipment or any property owned by another Provider located at the Customer's Premises or any other location under the direction or control of the Customer, to the extent required to enable Macquarie Telecom or any Provider to provide the Services.
- 5. ACCESS AND USE OF FACILITIES**
- 5.1 If the Customer or any of its personnel, agents or representatives access or use any land, site, facilities, equipment, hardware or software of Macquarie Telecom, those parties must comply with all:
- (a) applicable laws, regulations, codes and standards that apply to such access or use;
 - (b) Macquarie Telecom policies, manuals and procedures that apply to such access or use (as may be amended by Macquarie Telecom from time to time) including all operational, induction, security and work, health and safety policies; and
 - (c) directions of Macquarie Telecom made from time to time in connection with such access or use.
- 6. BREACH OF THIS POLICY**
- 6.1 If the Customer or any User uses the Service in a way that Macquarie Telecom, in its absolute discretion, believes breaches this Policy, Macquarie Telecom may take any action it deems appropriate to respond to such a breach.
- 6.2 Actions that Macquarie Telecom may take pursuant to clause 6.1 include (but are not limited to):
- (a) temporary or permanent removal of content and content publishing capabilities;
 - (b) filtering of Internet transmissions;
 - (c) immediate suspension or termination of all or any part of the Service;
 - (d) if applicable, immediate restriction or denial of access to any land, site, facilities, equipment, hardware or software of Macquarie Telecom;
 - (e) gather information from the Users involved and the complaining party, if any, and examine transmissions and material on its servers and any Network;
 - (f) cooperate with law enforcement authorities in the investigation of suspected criminal violations and the system administrators at Providers or any other service provider.
- 6.3 Macquarie Telecom may by notice to the Customer elect to give the Customer 24 hours (or such longer period specified in the notice) to remedy any breach of this Policy, before taking any action pursuant to clause 6.2.
- 6.4 Macquarie Telecom is not obligated to monitor the Customer's or any User's use of the Services (including any content posted, disseminated or accessed by the Customer or any User), but reserves the right to do so to:
- (a) identify any breach of this Policy;
 - (b) enforce this Policy;
 - (c) protect any other Network users, Network services or Network equipment; and
- 6.5 cooperate with law enforcement authorities in the investigation of suspected criminal violations and the system administrators at Providers or any other service provider. Such cooperation may include Macquarie Telecom providing the username, IP address or other identifying information about a User.
- 6.6 Macquarie Telecom reserves the right to charge the Customer, on a time and materials basis, for any costs (including labor costs) incurred by Macquarie Telecom as a result of or arising from any breach of this Policy by the Customer or any User. The Customer is liable for any charges invoiced in accordance with this clause.
- 7. NBN**
- Notwithstanding anything else in this Agreement:
- 7.1 Where the Services include or may include products or services provided by NBN Co Limited ACN 136 533 741 (**nbn**), the nbn products or services are subject to the following conditions:
- (a) access to and use of nbn 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 7.2**.
- 7.2 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:
- (a) 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
 - (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.
- 7.3 Clause 7.2 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 wilful 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.
- 7.4 We may assign the benefit of this clause 7 to nbn or its nominee without consent or, to the extent that consent is required, you or your End Users hereby give that consent.
- 7.5 This clause 7 survives expiry or termination of this Agreement.
- 7.6 In this clause 7 Related Body Corporate has the meaning given to that term in section 50 of the Corporations Act 2001 (Cth).
- 8. AMENDMENT**
- 8.1 This Policy may be amended by Macquarie Telecom at any time without notice to the Customer. The Customer must comply with the terms of the Policy as amended. The current version of this Policy is as posted at www.macquarietelecom.com.