

# Service Schedule 2 – Mobile Services

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

## 1. WHAT TERMS APPLY TO MOBILE SERVICES?

- 1.1 If you order Mobile Services, we may either issue new Numbers to you or transfer your existing Numbers specified in the customer authorisation form from your existing service provider.
- 1.2 During the Minimum Period and until the Numbers are validly transferred to another service provider or cancelled pursuant to this Agreement, we will have the exclusive right to supply:
- (a) all calls (including local, national long distance, international, mobile to mobile, and inbound calls) made using the Numbers;
  - (b) all related mobile data connectivity and transmission services;
  - (c) SIMs; and
  - (d) Logistics Services.
- 1.3 Subject to your right to cancel the Mobile Services under **clause 5** of the Trading Terms, during the Minimum Period you are not entitled to cancel the Mobile Services or to remove any Numbers from the Mobile Services for the purpose of replacing us as your service provider.
- 1.4 You must give us complete and accurate details of the Numbers including any information we are required to provide to the Integrated Public Number Database. If you do not, we will not be responsible for any error or delay in the transfer of a Number, or in the supply of any Mobile Services, or for any Liabilities that you or anyone else suffers or incurs as a result.
- 1.5 The Logistics Services will be available to you at the times and in the manner specified by us from time to time. If we specify timeframes for the dispatch and delivery of Purchased Devices and SIMs, we will endeavour to ensure that those timeframes are met, but will have no liability to you or any person claiming through you if dispatch or delivery occurs outside those timeframes.
- 1.6 We may disconnect a Number if it has been inactive for at least 3 continuous months but will inform you before we do so.
- 1.7 Before using any of our Mobile Services that are accessed using a Device, you may be required to enter into a licence agreement with the relevant provider (or its nominee) on prescribed terms. You must comply, and ensure that each End User complies, with that agreement.
- 1.8 You must not, and must ensure that End Users do not:
- (a) wholesale, resell or otherwise redistribute any Mobile Services (including transit, refile or aggregate domestic or international traffic);
  - (b) use, or attempt to use, any Mobile Services with a device that is not on our nominated Provider's list of approved Devices, or that does not comply with any relevant standards and approvals;
  - (c) place, attempt to place or accept a reverse charge call using the Mobile Services;
  - (d) make or receive calls, or send or receive content, on our nominated Provider's mobile network for any purpose other than for the End User's business or personal use; or
  - (e) use, or attempt to use, any Mobile Services (including any SIM) in connection with a device that switches or reroutes calls to or from our nominated Provider's mobile network (including without limitation any SIM box, GSM gateway or similar device) or a device that initiates an automated machine-to-machine communication without the involvement of an End User.

## 2. WHAT TERMS APPLY TO SIMS?

- 2.1 Risk in the SIM passes to you immediately on delivery, regardless of when you are required to pay us. If a SIM is lost, stolen or damaged after delivery, you must still pay us any associated Charges in full. However, nothing in this Agreement gives you ownership of, or any interest in, a SIM. Title to any SIMs stays with us at all times.
- 2.2 You must:
- (a) keep all SIMs safe and in good condition;
  - (b) return a SIM to us promptly on request; and
  - (c) notify us immediately (in accordance with any procedures we specify) if a SIM is lost or damaged.
- 2.3 If we receive notice that a SIM has been lost or damaged, we will promptly suspend the associated Number. We will end the suspension as soon as reasonably practicable after we have issued you with a replacement SIM.

## 3. WHAT TERMS APPLY TO MOBILE DATA SOLUTIONS?

- 3.1 The following conditions apply to any mobile data connectivity and transmission service or solution that we make available to you (**Mobile Data Solution**):
- (a) you are responsible for providing all Equipment necessary to use the Mobile Data Solution and complying with any third party content providers' terms and conditions; and
  - (b) you use the Mobile Data Solution at your own risk.
- 3.2 You acknowledge that:
- (a) your ability to access, use and download content on the internet or elsewhere will depend on the features and functionality of the Device you're using, and the nature and quality of the content. We do not warrant that an approved Device will be able to access, use or download content to any particular extent or at all; and
  - (b) the Mobile Data Solution may be subject to congestion, delays, or loss or corruption of transmitted data.

## 4. WHAT TERMS APPLY TO MOBILE SERVICE LIMITATIONS AND RESTRICTIONS?

- 4.1 You acknowledge that Mobile Services are only available in areas where our nominated Provider's mobile network is present or Roaming is available and that Mobile Services may be unavailable in some areas (including some buildings), or at certain times, due to the limitations of the Device or factors beyond our control, including capacity constraints, electromagnetic interference, adverse weather conditions, equipment failure, your location, or during scheduled or unscheduled maintenance.
- 4.2 You also acknowledge that Roaming relies on the networks of other carriers or service providers, over which we have no control. We cannot guarantee the quality or reliability of Mobile Services when you are Roaming.
- 4.3 Without limiting our suspension rights under **clause 4** of the Trading Terms, we may immediately suspend any Mobile Services and/or disconnect any Number or SIM, without incurring any Liabilities to you or anyone else, if we believe that:
- (a) Customer Equipment is causing interference with, or is jeopardising the operation or quality of, a mobile network; or
  - (b) you have breached our Acceptable Use Policy or **clause 1.8** of this Service Schedule.
- We will end the suspension or reconnect the Number (as applicable) in accordance with **clause 4.2** of the Trading Terms.
- 4.4 No Service Level Guarantees apply to the Mobile Services.
- 4.5 The quality of the Mobile Services is determined by the quality of service provided to us by the Provider(s). Any service levels set out in this Agreement or any product information or other documentation are indicative targets only and any failure to satisfy those service levels does not constitute a breach of this Agreement. We exclude all Liability to you (and anyone claiming through you) for any failure, interruption or delay in Mobile Services or any failure to satisfy any service levels (including any delivery or provisioning timeframes), including as a result of:
- (a) technical problems or limitations in a Provider's network or other facilities;
  - (b) delays in provisioning Mobile Services, or in connecting, disconnecting or reconnecting Numbers or delays in correcting faults;
  - (c) any wrongful suspension or disconnection of a Mobile Service;
  - (d) any actions taken by a Provider in relation to the change or upgrade of its network or any underlying technology;
  - (e) delays in correcting faults; or
  - (f) the failure or incorrect operation of any Equipment or Mobile Service.

## 5. WHAT TERMS APPLY IF A PURCHASED DEVICE DOES NOT FUNCTION?

- 5.1 If a Purchased Device is not functioning when you receive it, or if it ceases to function at any later time, you must inform one of our customer care representatives as soon as possible.
- 5.2 If the Device is not functioning when you receive it, or if it ceases to function within the early life failure period for that Device (as specified by the manufacturer), we will collect the Device and replace it at no cost (other than our handling fee). If the Device ceases to function at any other time while the manufacturer's warranty for that Device is still valid, we will collect the malfunctioning Device, have it repaired or replaced in accordance with the terms of the manufacturer's warranty, and deliver the repaired or replacement Device to you. You must pay our standard Charge for collection and delivery of Devices under this **clause 5.2**.
- 5.3 If the Device ceases to function:
- (a) after the expiry of the manufacturer's warranty period; or
  - (b) in circumstances where the manufacturer's warranty has been invalidated for any reason,
- we will collect the malfunctioning Device and obtain a quote to repair it. If the quoted cost of repair is:
- (c) \$175.00 (excluding GST) or less, we will have the Device repaired and returned to you; or
  - (d) more than \$175.00 (excluding GST), we will request your written approval of the quote. If you approve the quote, we will have the Device repaired and returned to you,
- and in each case you will be Charged for the relevant cost of the repair.
- 5.4 If the malfunctioning Device cannot be repaired, or if you do not approve the quote, we will return the malfunctioning Device to you and you may choose to purchase a replacement Device from us. You must pay our standard Charge for collection and delivery of Devices under this **clause 5.4**, in addition to the cost of any authorised repairs or replacement Device.

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

- 6.1 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 it is not a term of this Agreement (express or implied) that the Mobile Services 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);

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- (c) you are solely responsible for all Customer Content, even if you do not authorise its creation, storage, access or transmission;
- (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) you are solely responsible for communicating with your end users in relation to the Services. This includes handling their complaints and trouble reports;
- (f) nothing in this Agreement gives you ownership of, or any interest in, 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
- (g) if you purchase any Equipment then: (i) title to the Purchased Equipment does not pass to you until it is paid for 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 in relation to Purchased Equipment but you will have the benefit of any applicable warranty provided by the manufacturer. To the extent permitted by law and set out under **clause 5** of this Service Schedule, we have no additional obligation or Liability to you for any failure of, or malfunction in, the Purchased Equipment.
- 6.2** 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 any 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) promptly provide us (and any Providers) with any information or assistance we reasonably request, and, if applicable, with authorised and safe access to Customer Equipment, so we can perform our obligations under the Agreement, including so we can provision, install, supply, inspect, test, maintain, repair or replace the Services, and collect Equipment relating to any cancelled Service; 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.
- 6.3** 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.
- 6.4** 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.
- 6.5** 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 6.5** 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 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.
- 7. HOW WILL MACQUARIE RATES BE APPLIED TO MOBILE SERVICES?**
- 7.1** The Macquarie Rates are based on your Monthly Committed Spend (as specified in the Order.) Subject to clause 7.2, if your Charges are less than 85% of your Monthly Committed Spend, we will charge you an additional amount equal to the difference of the amount of your Charges and 85% of the Monthly Committed Spend. For clarity, this amount shall be charged in addition to the amount of your actual Charges, for which you will continue to be billed in accordance with the standard calculation and invoicing processes specified in clauses 2 and 3 of the Trading Terms.
- 7.2** If you do not do everything necessary (including, if relevant, completing a customer authorisation form) to enable the activation, connection or transfer to us of all or any of the Numbers within ninety (90) days of the date of that Order (or such longer period agreed in writing), we may in our absolute discretion either:
- (a) charge you the fee of \$30.00 (exclusive of GST) per month (or part thereof) for each Service not activated as a result of that failure, from the end of that period until the earlier of the date on which all of those Numbers are activated or the termination or cancellation of the Order the subject of those Numbers; or
- (b) deem you to have given us a notice of cancellation of the Services not activated, effective immediately, under clause 5.2 of the Trading Terms and clause 6.3 of the Trading Terms will apply.
- 7.3** Other Charges may apply where you do not use our nominated Provider's mobile network (e.g. when Roaming). You acknowledge and agree that the rates specified by the applicable carrier will be the basis for calculating those Charges.
- 7.4** For Mobile Data Solutions, excess usage Charges will apply to data uploaded or downloaded in excess of the relevant Data Allowance. Your Data Allowance expires at the end of each billing month, and cannot be carried over to subsequent months, even if not fully used. A Data Allowance does not include Roaming which is charged separately. For billing purposes, 1 Gigabyte (GB) equals 1000 Megabytes and 1 Megabyte (MB) equals 1000 Kilobytes (KB).
- 7.5** The Macquarie Rates apply to the Mobile Services until the earlier of:
- (a) the effective date of cancellation of any or all the Mobile Services (including any or all Numbers) calculated in accordance with clause 5 of the Trading Terms; or
- (b) the transfer or pre-selection of any or all the Numbers to another service provider in breach of clause 1.3 of this Service Schedule.
- 8. WHAT ARE THE CONSEQUENCES OF EARLY TERMINATION OR CANCELLATION OF MOBILE SERVICES?**
- 8.1** For the purposes of **clause 6.3** of the Trading Terms, the early cancellation charge for a Mobile Service is:
- (a) for each Mobile Service provided under a rate based plan, an amount equal to the number of months remaining in the Minimum Period multiplied by the greater of: (i) the average total Charges invoiced to the Customer for the last three full billing months prior to the effective date of cancellation; or (ii) \$35; or
- (b) for each Mobile Service provided under a subscription based plan that has a monthly Charge, an amount equal to the number of full months remaining in the Minimum Period multiplied by the relevant monthly Charge; and
- (c) for each Purchased Device an amount equal to: (i) the total amount you are required to pay us in respect of that Device (including amounts invoiced but not yet paid); less (ii) the amounts (if any) you had already paid to us.
- 8.2** If you remove any Numbers from the scope of the Mobile Services (for example by arranging their transfer to another service provider) in breach of **clause 1.3** of this Service Schedule, you will be deemed to have given us a notice of cancellation of the associated Mobile Services, effective immediately, under **clause 5.2** of the Trading Terms and **clause 6.3** of the Trading Terms will apply if the Minimum Period has not expired at that time.
- 8.3** Termination of the Agreement or cancellation of Mobile Services (except as a result of your breach or insolvency) will not cause those Services to cease automatically. In those circumstances, in addition to terminating the Agreement or cancelling the Mobile Services, each Number must be either:
- (a) transferred to a new service provider; or
- (b) cancelled at your direction by notifying us in writing, in which case you will cease to have any rights to use that Number .
- You will remain liable for all Charges incurred in relation to those Numbers and related Mobile Services until they are either cancelled or transferred to the gaining service provider under this clause, despite any termination of the Agreement.
- 9. WHAT DO THE CAPITALISED TERMS MEAN?**
- 9.1** In this Service Schedule the terms in capital letters have the meaning set out in the Dictionary available at [www.macquarietelecom.com](http://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.