

# MacroLan (Pty) Ltd

## Precinct Broadband Service Terms

### 1. Specific Terms and Conditions

- 1.1. These Service Terms are entered into subject to the MacroLan Standard Terms, which are incorporated by reference. Unless this document states otherwise, it will be subject to the Standard Terms, including the definitions and rules of interpretation contained in it.
- 1.2. The Customer hereby appoints MacroLan to perform the Services as described in these Service Terms and the Service Order and MacroLan hereby accepts the appointment.

### 2. Definitions

- 2.1. "Access Service" means an electronic communications service provisioned using fibre optic cable, which is provided, maintained and operated by an entity licensed to provide such fibre optic cables.
- 2.2. "Cap" means the quantum of data throughput (bandwidth) allocated to the Customer by MacroLan during a particular billing period.
- 2.3. "CPE" means customer premises equipment, which are routers and similar Equipment provided by MacroLan to the Customer.
- 2.4. "Electronic Communications Network Service Provider" means the entity providing last mile connectivity over fibre optic for the customer on behalf of MacroLan;
- 2.5. "Premises" means the premises to which MacroLan will provide the Access Service to the Customer.

### 3. Description of Service

- 3.1. MacroLan will provision an Access Service as described in the Service Order on a 24 (twenty four) hour per day basis on each and every day for the continued duration of the Service Order.
- 3.2. Customer may during the contract with 30 calendar days' prior written notice make a change to the current Service on the condition that the replacement Service carries the same or greater rand value, and is of equivalent or greater bandwidth and quality. Such a change will not affect the existing contract duration.
- 3.3. The Services will be provided according to the service levels as set out in Schedule 1.

### 4. Last Mile Fibre

- 4.1. MacroLan must procure at its cost that a fibre optic cable is installed to the Premises and maintained by a reputable and licensed Electronic Communications Network Service Provider.

- 4.2. The Customer acknowledges that commencement of provision of the Services will be delayed pending the installation of such fibre optic cable, which will delay will be affected by inter alia wayleave application delays, obtaining landlord consent and the planning and approval of the route build.
- 4.3. While MacroLan will not charge Fees before the commencement of the Service provision, the Customer may not terminate this Agreement pending the completion of the installation of the fibre optic cable.

## **5. Duration**

- 5.1. The Service will commence with effect from the date of activation of the Service by MacroLan and endure for the period as specified in the Service Order (hereinafter referred to as the "Initial Period") whereafter either Party may terminate the Service by giving the other Party two (2) calendar months' written notice to that effect. Any notice of termination given by the Customer during the Initial Period will only become effective upon expiry of the Initial Period.
- 5.2. On the expiry of the Initial Period, if neither Party has given notice, and no new Service Order has been entered into between the Parties, the Service will endure indefinitely thereafter on the same terms and conditions, provided that either Party will be entitled to terminate the service on two (2) calendar months' written notice to the other to that effect.
- 5.3. MacroLan uses an upstream Supplier to provide the Services to the Customer, and can terminate this Agreement immediately if its agreement with that upstream Supplier is terminated.

## **6. Fees**

- 6.1. Customer must pay the Fees as specified in the Service Order.
- 6.2. The Fees will remain fixed for the Initial Period, and thereafter may be increased on one (1) calendar month's prior written notice to the Customer.
- 6.3. If the Agreement terminates during the Initial Period as a result of the Customer's breach:
  - 6.3.1. MacroLan will be entitled to recover from the Customer all damages MacroLan may suffer by reason of such termination, all arrears in fees and other costs, charges, assessments, and reimbursements, including without limitation the access build costs or such percentage of the access build cost as relates to the state of completion of the access build if it has not yet been completed.
  - 6.3.2. In addition, MacroLan may declare to be due and payable immediately, the then present value (calculated with a discount factor of the prime overdraft rate as charged by MacroLan's bankers at the time) of the entire amount of monthly fees which would have become due and payable under this Agreement (had this Agreement not been terminated). Upon the acceleration of such amounts, the Customer agrees to pay the same at once; provided, however, that such payment will not constitute a penalty or forfeiture, but will constitute liquidated damages for the Customer's failure to comply with the terms and provisions of this Agreement (MacroLan and the Customer agreeing that MacroLan's actual damages in such event are impossible to ascertain and that the amount set forth above is a reasonable estimate thereof).

## **7. Service Feasibility**

- 7.1. MacroLan cannot guarantee the provision of the requested Service upon the receipt of an order. Provision of the Service is subject to MacroLan confirming that it is technically feasible to do so. The Customer will be formally notified after receipt of an order on whether or not the Service can be provided.
- 7.2. If the requirements of clause 7.1 are not met, the Agreement will terminate, and no liability will attach to MacroLan for any loss suffered by the Customer as a result.

## **8. General requirements**

- 8.1. The following are requirements in order to provide the Services:
  - 8.1.1. 6U of rack space in a secure area to accommodate a fibre splice tray and a router;
  - 8.1.2. No water pipes, sewerage pipes, sprinklers or valves may be in the secure area;
  - 8.1.3. A minimum of two 16 Amp AC power points are required, one of which must be fed, where possible, from an individual circuit breaker which is earth leakage protected.
  - 8.1.4. Unrestricted access for MacroLan staff to the rack.

## **9. Equipment**

- 9.1. Further to the provisions of the MacroLan Standard Terms dealing with Equipment, the Parties expressly agree as follows:
  - 9.1.1. MacroLan will at all times be and remain the owner of the CPE, and nothing in this Agreement will be interpreted so as to confer any rights or interest in the CPE to the Customer other than as the lessee of the CPE.
  - 9.1.2. On termination of this Agreement, the Customer must forthwith return the CPE to MacroLan in the same condition as that in which it was delivered to the Customer, fair wear and tear excepted.
  - 9.1.3. Customer will not have access to the CPE configuration and may not change or attempt to change the CPE configuration.
  - 9.1.4. In the event that there is a breakdown or malfunction of the CPE, MacroLan will at its own cost effect repairs in accordance with the manufacturers specifications.
  - 9.1.5. The Customer will be responsible for any relocation of the CPE, but must give MacroLan reasonable written notice prior to relocating any CPE.

## **10. Bandwidth**

- 10.1. For capped Services, MacroLan will monitor the quantum of data that the Customer uploads and downloads using the Service to determine whether the Customer has reached the Cap.
- 10.2. Additional bandwidth will be invoiced at month-end and debited against the nominated bank account where a debit order agreement exists.

- 10.3. MacroLan reserves the right to refuse to provide additional bandwidth where the Customer does not pay by debit order.
- 10.4. Customers will be hard capped where they reach their fixed Cap or exhaust pre-paid bandwidth as the case may be, which means that they will not have connectivity using the Service until the end of the current billing period.
- 10.5. Where a Customer exceeds its pre-paid bandwidth or fixed Cap, as the case may be:
  - 10.5.1. MacroLan may allow a degree of over usage, at its sole discretion, but this will not constitute a waiver by MacroLan of its right to enforce the Cap.
  - 10.5.2. MacroLan may at its discretion recover the cost of over usage, which may be done by way of a deduction from the Customer's allocated bandwidth in the subsequent billing period.
- 10.6. MacroLan will provide usage data to the Customer via e-mail. The Parties agree that this is a complimentary offering and MacroLan will not be liable for any damages arising from any statement of the Customer's data usage on such website.
- 10.7. **IT IS THE CUSTOMER'S RESPONSIBILITY TO MONITOR BANDWIDTH USAGE, AND TO ENSURE THAT IT DOES NOT EXCEED ITS USAGE CAP DURING A PARTICULAR PERIOD.**

## **11. Service Levels**

- 11.1. MacroLan can only provide and maintain the Service on a "reasonable effort" basis and makes no warranties as regards quality of the Service, including data throughput and availability of the Service, subject to the service levels set out in the Service Level Agreement, if applicable.
- 11.2. MacroLan makes use of upstream providers (including Electronic Communications Network Service Providers) to itself provide the Service, and consequently service levels are subject to the performance of such upstream providers. The Customer further acknowledges and agrees that MacroLan will not be liable for any failure to provide the Services as a result of such service providers failing to provide the services to MacroLan.
- 11.3. The Service provides access to the internet, which is subject to bandwidth constraints, system failures and all manner of other factors that may impact on the Customer's access, for which MacroLan accepts no responsibility.

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