

**DATA TRIAL  
SPECIAL TERMS  
PRIMUS TELECOMMUNICATIONS PTY LTD (ABN 69 071 191 396)**

(15 October 2012)

1. SCOPE OF DOCUMENT

- 1.1 These terms are the additional terms agreed between you and us within the meaning of clause 4.2 of the Core Terms in respect of the Data Trial ("**Special Terms**").
- 1.2 These Special Terms form part of your Contract and apply in addition to, and not in lieu of, the Core Terms, the applicable Service Schedule and Plan.
- 1.3 In the event of any inconsistency between the Special Terms and any other clause of your Contract, these terms prevail to the extent of any inconsistency, but not otherwise.

2. DEFINITIONS & INTERPRETATION

**Definitions**

- 2.1 In these Special Terms:

**Data Trial** has the meaning given to that term in clause 3.1 of these Special Terms.

**Data Trial Services** means the data Services set out in your Application in respect of the Data Trial.

**Loss** means any liability, cost expense, loss or damage, including any:

- (a) consequential, indirect, punitive, special or incidental losses or damages; and
- (b) loss of profits, loss of revenue, loss of income, losses from loss of business, losses from loss of production, loss of goodwill, loss of reputation, losses from loss of data, loss of anticipated savings, losses of loss of management time, loss of opportunity, loss of entitlement to special damages or losses from loss or impairment of a credit rating.

**Personal Information** as in the Privacy Act 1988.

**Related Body Corporate** as in the *Corporations Act 2001* (Cth).

**Trial Term** means the term for which we intend to conduct the Data Trial, subject to the terms set out in your Contract.

- 2.2 For the avoidance of doubt, capitalised terms in these Data Trial that are not defined in clause 2.1 of these Special Terms have the meaning given to those terms in the Core Terms or otherwise in your Contract.

**Interpretation**

- 2.3 To avoid doubt, the rules of interpretation in respect of the Contract apply to these Special Terms.

### 3. BACKGROUND TO DATA TRIAL

3.1 We intend to supply, and you intend to receive, the Data Trial Service in order to:

3.1.1 assist you to evaluate and test the Data Trial Service (or Services which are similar to the Data Trial Service or Services from which the Data Trial Service is derived) for performance, reliance, fitness for purpose and the like before you commit to acquire such Services for a Minimum Term; and/or

3.1.2 enable you and us to gain experience and identify any issues and concerns in connection with supplying and acquiring the Data Trial Service (or Services which are similar to the Data Trial Service or Services from which the Data Trial Service is derived),

(“**Data Trial**”).

### 4. TERM OF THE DATA TRIAL

4.1 The Data Trial will commence on the date that we confirm to you that we are able to provide you with the Data Trial Services.

4.2 The Data Trial is expected to conclude upon the expiry of the Trial Term, at which point, the supply of the Data Trial Services will be terminated (“**Termination Date**”).

4.3 You agree that given the limited nature of the trial, we may vary the Termination Date on fourteen (14) days’ notice of such variation.

4.4 A minimum or fixed term does not apply to the Data Trial and you may terminate your participation in the Data Trial at any time on at least thirty (30) days notice to us.

### 5. DESCRIPTION OF DATA TRIAL

5.1 The Data Trial Services are not a substitute for any existing Services that you may acquire from us or any Carriage Service Provider or Carrier.

5.2 Your participation in the Data Trial is not a guarantee or representation by us that we will provide you with services similar to the Data Trial Services at any time.

### 6. LIMITATIONS OF THE DATA TRIAL

6.1 We will supply the Data Trial Service to you in a trial environment on a limited trial basis only.

6.2 You acknowledge and agree that:

- 6.2.1 given the nature and limitations of the Data Trial Service, you must acquire, and continue to acquire for at least the duration of the Data Trial, a consumer or business grade reliable data service
  - 6.2.2 the Data Trial has not been designed to and does not support the acquisition of Services by you on any basis other than on a limited trial basis;
  - 6.2.3 the Data Trial Services:
    - 6.2.3.1 will be supplied on a best efforts basis;
    - 6.2.3.2 may not be available, fault free, continuous or operate as intended; and
    - 6.2.3.3 may be subject to interruptions from time to time;
  - 6.2.4 the Data Trial Service is not intended to support business operations, emergency calling, critical medical or other similar services;
  - 6.2.5 the Data Trial Service is not a Standard Telephone Service for the purposes of the *Telecommunications (Consumer Protections and Service Standards) Act 1999* (Cth) and is not intended to support voice telephony;
  - 6.2.6 you will not use or attempt to use the Data Trial Service to support voice telephony; and
  - 6.2.7 given the limited trial basis of the Data Trial, the supply of the Data Trial Services may be immediately interrupted, suspended or terminated for any reason without notice.
- 6.3 The Data Trial Service is not suitable to conduct any business, for telling or warning people about serious risks, important matters, time critical matters or asking emergency service organisations to come to someone's aid. You are responsible for making alternative arrangements for such communications.

## 7. TRIAL EQUIPMENT

- 7.1 In order to provide the Data Trial Service to you, we may need to install equipment on your premises or provide you with certain devices ("**Trial Equipment**").
- 7.2 The Trial Equipment is Our Equipment within the meaning of your Contract.
- 7.3 You must ensure that:
  - 7.3.1 the Trial Equipment is only used in conjunction with the Data Trial Service;
  - 7.3.2 all things necessary or desirable are done to keep the Trial Equipment secure from unauthorised access;
  - 7.3.3 the Trial Equipment is maintained in good repair and working condition;

- 7.3.4 we are promptly notified of any damage to or malfunction of the Trial Equipment;
  - 7.3.5 all instructions or directions relating to the Trial Equipment are complied with;
  - 7.3.6 the Trial Equipment is not interfered with, damaged, lost or is failed to be returned to its owner;
  - 7.3.7 identification marks on the Trial Equipment are not tampered with, removed or obscured;
  - 7.3.8 the Trial Equipment is not altered, repaired, serviced, removed or moved without our express prior written consent to do so; and
  - 7.3.9 no act is done which may affect the legal title in the Trial Equipment.
- 7.4 Without limiting the indemnities set out in any other clause of your Contract, you must indemnify us and our Related Bodies Corporate from and against any loss, damage, expense or liability we may suffer or incur in connection with a breach by you of clause 7.3.

## 8. FURTHER OBLIGATIONS

- 8.1 Without limiting any of your other obligations set out in your Contract, you must:
- 8.1.1 comply with any reasonable instructions, directions or policies issued in relation to the Data Trial; and
  - 8.1.2 provide all reasonable assistance to us and cooperate with us in good faith in connection with the Data Trial (including doing all such things as may be reasonable required to assist us to evaluate the results of the Data Trial).

## 9. CONFIDENTIALITY

- 9.1 You must:
- 9.1.1 keep the terms of your Contract confidential. This obligation of confidentiality continues after the Data Trial;
  - 9.1.2 keep confidential that you are involved in and have or will participate in the Data Trial or receive Data Trial Services or take custody of or use the Trial Equipment; and
  - 9.1.3 keep confidential all information and documents provided to you before, during and after the Data Trial in connection with the Data Trial Services or your Contract generally.

## 10. CHARGING AND BILLING

10.1 We will not require you to pay any ordinary Usage Charges or Fixed Charges to us and we will not provide you with a bill requested such Charges.

10.2 To avoid doubt, clause 10.1 does not limit, reduce or exclude your liability to us for any other liability arising under your Contract (for example, for breach or under an indemnity).

## 11. FAIR USE POLICY

11.1 We may from time to time publish a 'Fair Use Policy' or 'Acceptable Use Policy' (or document of a similar description) which sets out what we consider to be a fair and reasonable use of the Data Trial Service. Without limiting the matters to which we may have regard, we will have regard to the following:

11.1.1 that the Data Trial Services are supplied as part of a trial for evaluation and testing purposes; and

11.1.2 that no ordinary Usage Charges or Fixed Charges apply, subject to clause 10.2.

## 12. FEEDBACK AND TRIAL EVALUATION

12.1 On request by us, you agree to provide us with any information that is in your possession or control that is related to:

12.1.1 Our System or a Third Party System used in connection with the Data Trial;

12.1.2 any observations, findings or results that are observed, made or achieved in connection with the Data Trial or any Data Trial Services supplied;

12.1.3 your experiences, issues, complaints and feedback relating to the Data Trial or any Data Trial Services supplied in connection with the Data Trial; and

12.1.4 any matter which might reasonably be used by us or a relevant Other Supplier to evaluate the performance and capabilities of Our System, a Third Party System and the like,

("Trial Information").

12.2 You consent to us using and disclosing to a relevant Other Supplier (and consent to such relevant Other Supplier using and disclosing to its suppliers) the Trial Information, your Personal Information and similar information for any purpose in connection with the Data Trial, including:

- 12.2.1 in connection with the exercise of your rights and the performance of your obligations under your Contract;
- 12.2.2 in connection with the operation, maintenance, reconfiguration, development and enhancement of Our System and a Third Party System;
- 12.2.3 in connection with the development, marketing and enhancement of our products, processes and procedures;
- 12.2.4 to exercise rights and/or perform obligations in connection with the Data Trial; and
- 12.2.5 to comply with all applicable laws.

12.3 You agree to:

- 12.3.1 attend a debrief and interview and complete a questionnaire at the end of the Data Trial upon our request;
- 12.3.2 provide us with a testimonial about your experience with the Data Trial Services;
- 12.3.3 attend period review meetings arranged by us in connection with the Data Trial upon our request; and
- 12.3.4 comply with any other reasonable direction given by us for the purposes of promoting the Data Trial, the Data Trial Services and Primus (and its Related Bodies Corporate).

12.4 In performing your obligations in clause 12.3, you must:

- 12.4.1 ensure that any statements made in relation to us, our products and services, the Data Trial or the Data Trial Services are consistent with any briefing provided by us;
- 12.4.2 only make comments based on your genuine experience; and
- 12.4.3 not make any comments that are inappropriate, or might damage our goodwill or reputation.

### 13. TERMINATION AND SUSPENSION

- 13.1 Due to the limited trial basis on which the Data Trial Services will be supplied we may interrupt, suspend or terminate your Data Trial Service with immediate effect and without notice.
- 13.2 We will endeavour to provide you with as much notice as is practicable and reasonable before suspending or terminating your Data Trial Service.

13.3 Your participation in the Data Trial is not subject to a minimum term and you may terminate your Data Trial Services at any time on thirty (30) days notice to us (even during a period of suspension).

#### 14. POST TERMINATION

14.1 Upon the termination of your Data Trial Services, you must provide us with all assistance reasonably require to remove the Trial Equipment from the relevant Site.

#### 15. FAULT REPORTING AND COMPLAINTS

15.1 You must report all known or suspected faults in connection with the Data Trial Services promptly to us in order for us to evaluate the Data Trial and the Data Trial Services.

15.2 Notwithstanding clause 15.1 of these Special Terms, due to the limited trial basis on which the Data Trial Services are supplied, we aim (but do not guarantee) to respond to incidents and faults with your Data Trial Services in a timely manner.

#### 16. LIMITATION OF LIABILITY

16.1 The Data Trial Service is provided to you for the primary purpose of testing and evaluation. The Data Trial Service is not suitable or fit for the following usages (amongst others):

16.1.1 the conduct of a business of any size or scale; or

16.1.2 voice telephony; or

16.1.3 to replace, or in lieu of, a reliable consumer or business grade data service; or

16.1.4 any purpose that requires fault free, reliable or continuous operation; or

16.1.5 emergency calling or critical medical or similar services; or

16.1.6 for any other important or critical matters.

16.2 You agree that it is not reasonably foreseeable by us that you will use the Data Trial Service for or in connection with the matters set out in clause 16.1. Accordingly, and without limiting any other limitation of liability in our favour set out in your Contract, we do not accept liability to you for any Losses which were not reasonably foreseeable by us.