

# Managed Fire Alarm Service - Transition

Please complete and return to MFAS Operations at L1, 30 Pirie Street Adelaide

**Fire Alarm number** your unique number for your site for your alarm refer to your Transition letter for the number

**Company Name** is the legal entity under which the service will be registered. In this Application Form, references to "you", "I" or "us" refer to the Company.

**ACN / ABN** is Australian Company Number or Australian Business Number.

**Trading / Business Name** is not a legal entity but is the name under which your business trades. **Applicant Name** is the person representing the Customer for billing and contract administration.

You must notify Telstra of any changes to your Contact Details.

**Billing – New Account will be issued. Bills will be issued monthly**

**Address where Managed Fire Alarm Service will be connected.**

## CUSTOMER DETAILS (page 1)

Fire Alarm Number \_\_\_\_\_

Company Name \_\_\_\_\_

ACN or ABN \_\_\_\_\_

Registered Address \_\_\_\_\_

Trading / Business Name \_\_\_\_\_

### Contact Details

Contact Name \_\_\_\_\_

Contact Details

Ph (wk): \_\_\_\_\_

Ph (mb): \_\_\_\_\_

Email: \_\_\_\_\_

### Billing Address (if different from registered address)

Contact Name \_\_\_\_\_

Contact Details

Ph (wk): \_\_\_\_\_

Ph (mb): \_\_\_\_\_

Email: \_\_\_\_\_

## SITE DETAILS (page 1 continued)

### Managed Fire Alarm Service Site Address

Address where the Managed Fire Alarm Service will be connected

Building/Site Name : \_\_\_\_\_

Shop/Unit/Floor : \_\_\_\_\_

Street No. and Name: \_\_\_\_\_

Suburb/Town: \_\_\_\_\_

Postcode: \_\_\_\_\_

## Site Contact Details

Name:

Phone No.

Do visitors to the Site require induction?

Yes.

No

## Building Details

Is the building owned or leased?  Leased  Owned

If leased, building owner/agent: Phone No:

Does the building exist or is it under construction?  Existing  Under construction

What type of building is it?  Residential  Commercial

Is the building multi-storey?  Yes  No

## Privacy

Telstra's Privacy Statement sets out Telstra's privacy policy which describes how Telstra and its related companies will manage your and anyone else's personal information and other customer information (such as the purposes and circumstances of its collection, use and disclosure of that information, including for marketing and in relation to transfers to overseas recipients), rights to access and correct that information and how to complain about breaches of the Privacy Act 1988; and Telstra's credit reporting policy, which provides equivalent details regarding how Telstra and its related companies manage credit-related information and about access and correction rights in relation to that information and how to complain about breaches of credit reporting requirements under the Privacy Act 1988.

## YOUR APPLICATION

I apply for the service(s) described in this Application Form and acknowledge that if my application is accepted it will be provided on the terms and conditions set out in this Application Form.

### Privacy

I agree, and will ensure that our Personnel, any of our related bodies corporate and their Personnel, and any individuals who receive services detailed within this Application Form or whose information is disclosed to Telstra in connection with this Application Form are aware, that we may use and disclose information about you and each of them in accordance with Telstra's "Privacy Statement" available at [telstra.com.au/privacy/privacy-statement](http://telstra.com.au/privacy/privacy-statement).

I agree to Telstra and its related companies collecting, using and disclosing personal information as described in the Privacy Statement.

I agree that Telstra may also, subject to the Privacy Act 1988:

- (a) disclose information about me and this application (including information contained in any application for additional services and information about the conduct of my account) to a credit reporting body to obtain credit reporting information about me and to another credit provider or a debt collection agent to collect overdue payments relating to credit owed by me and to notify defaults by me; and
- (b) obtain and use information about my creditworthiness (including consumer credit reporting information or a commercial credit report) from a credit reporting body or other business that reports on creditworthiness or from a credit provider to assess any application for services or to collect any overdue payments.

Personnel means a person's officers, employees, agents, contractors and sub-contractors.

Important information about credit reporting: I acknowledge that I should read important information about credit reporting available on Telstra's website at <http://telstra.com.au/privacy/important-information-about-credit/>. This includes details about the credit reporting bodies that Telstra deals with, the kinds of information that Telstra may give to those bodies about me (such as about certain overdue payments), how they may use and disclose it and those bodies' policies regarding its management. It also includes details about my access, correction and complaint rights regarding credit-related personal information and my rights to prevent its use in certain circumstances, such as if I am a victim of identity fraud. A copy of this information is also available from Telstra on request.

**SIGNED** by me, for and on behalf of the Customer as its authorised representative:

Signature \_\_\_\_\_ Date \_\_\_\_\_

Print Name \_\_\_\_\_ Position \_\_\_\_\_

# Attachment – Terms and Conditions of Managed Fire Alarm Service (to be covered under the Hyperlink)

## 1 SERVICE

- 1.1 The South Australian Metropolitan Fire Service (“**SAMFS**”) and the South Australian Country Fire Service (“**SACFS**”) (together, the “**State**”) operate a service to monitor fire alarms at customer premises (“**State Monitoring Service**”). Customers of the State Monitoring Service require particular equipment at their monitored sites, and access to the IPVPN underlying the State Monitoring Service, to take advantage of the Monitoring Service.
- 1.2 The Managed Fire Alarm Service (**MFAS**) allows you to connect your fire alarm to the State Monitoring Service so that the State can monitor your Sites.
- 1.3 We agree to supply the Service to you, and you agree to acquire it from us, for the Sites nominated in this Application Form, at the prices and on the terms of this Application.
- 1.4 We do not provide, and are not responsible for, the State Monitoring Service.

## 2 SERVICE ELEMENTS AND ELIGIBILITY

- 2.1 MFAS is a managed service comprised of the following elements:
  - (a) rental of Equipment;
  - (b) installation of the Equipment at your Site;
  - (c) maintenance and support of the Equipment; and
  - (d) connectivity to the MFAS network via two mobile telephone networks (or in limited circumstances where we determine mobile reception is not sufficiently strong, one mobile connection and one NBN-based fibre connection),as further described in this Agreement.
- 2.2 To be eligible for the Service on the terms set out in this Agreement, you must:
  - (a) have a FIP installed at the Site before we are able to install the Equipment; and
  - (b) be approved by the State (including having obtained its approval in the form set out in this Application Form).
- 2.3 We may refuse to supply MFAS in our discretion, including if the requirements set out in this Schedule are not met (including satisfaction of the eligibility requirements).
- 2.4 You must comply with:
  - (a) the General section of the Telstra Mobiles section of Our Customer Terms (currently found at <https://www.telstra.com.au/customer-terms/business-government/telstra-mobile/general> or any updated location) in relation to access to our mobile telephone network; and
  - (b) the Services on the NBN section of Our Customer Terms (currently found at <https://www.telstra.com.au/customer-terms/nbn-services-general> or any updated location) (if relevant) in relation to your use of the NBN connection.
- 2.5 To the extent of any inconsistency between the sections of Our Customer Terms referred to in clause 2.4 and the provisions of this Agreement, this Agreement prevails.

## 3 EQUIPMENT

- 3.1 We rent the Equipment to you during the Term. Title in the Equipment remains with us at all times, however risk in the Equipment passes to you on installation of the Equipment at your Site.
- 3.2 The ASE’s standard configuration is Dual-SIM, providing connectivity to MFAS via two mobile networks. We provide connectivity with the dual networks on a managed basis and you have no relationship with the other telecommunications provider. In limited circumstances where we determine mobile reception is not sufficiently

strong, we will reconfigure the ASE to provide connectivity via one mobile connection and one NBN-based fibre connection.

- 3.3 When properly maintained and subject to your compliance with this Agreement, the configuration selected for your Equipment will comply with "AS1670.3 - 2004 Fire detection, warning, control and intercom systems - System design, installation and commissioning – Part 3 - Fire Alarm Monitoring" as that standard is modified to include one or more Wireless Internet Protocol (WIP) communication paths from the Equipment to the State's alarm monitoring centre, via one or more mobile telephone networks, and complies with any updates or replacements to that standard issued during the Term. You cannot use any other supplier to provide the Equipment.
- 3.4 We will provide you with one coded key for the Equipment as part of the service for no additional fee. If you require additional keys, or replacements keys, extra charges apply per key (as set out in section 7).
- 3.5 You can ask us to rent other Equipment related to MFAS from time to time. If we agree to provide it, we will let you know the price at the time.

#### **4 INSTALLATION**

- 4.1 The purpose of installation is to connect the Equipment to your FIP, so that your FIP can connect to the State Monitoring Service.
- 4.2 Before installation, you are responsible for making ready the Site to connect to MFAS, including by providing any installation facilities we recommend. You must obtain all necessary consents (if any) from the owners of, or other parties with an interest in, the Site to enable such work to be carried out.
- 4.3 We will arrange for our relevant personnel to attend any Site induction that you advise us of in the Application Form. We may charge you for the time taken to attend induction at our then-current hourly rates.
- 4.4 We will connect the Equipment to your FIP, provided that the FIP is approved by the State for use with the State Monitoring Service. You acknowledge and agree the State has directed us to replace any 'slave' devices with 'master' ASE devices.
- 4.5 If we determine that an NBN-based connection is required, installation does not include the cost of any cabling necessary to connect from our network boundary at your Site to the ASE. If you ask us to provide this and we agree to do so, additional cost will apply and will advise you of the cost at the time.
- 4.6 If you wish to install the additional cabling yourself, or we do not agree to install cabling for you, the cabling:
- (a) must be installed by a registered cabling contractor; and
  - (b) must be installed to, and continue to meet, the minimum technical requirements determined by the Australian Communications and Media Authority.
- 4.7 You permit us or our subcontractors to enter your Site (and any other reasonably necessary locations) on reasonable notice to inspect, maintain, repair, replace or remove the Equipment (including, without limitation, providing safe and reasonable access, working space and facilities - including heat, light, ventilation, electric current and outlets and local telephone extension), and reasonable access to your network and systems and personnel as required to carry out the inspection, maintenance, repair, replacement or removal. If we require multiple visits to access the Site, then we may charge you for those multiple attempts at our then-current hourly rates.
- 4.8 You must, at your cost, provide us with all reasonable assistance and take all safety precautions reasonably necessary to ensure the safe and proper performance by us of all work at your premises.

#### **5 EQUIPMENT MAINTENANCE**

- 5.1 The following sections do not affect your statutory rights. Please see [www.telstra.com/customerterms](http://www.telstra.com/customerterms) for an important notice regarding your statutory rights.
- 5.2 Subject to clause 5.3, we will repair or replace any Equipment that has defects that you tell us about during the term of this Agreement at our cost, to the extent necessary to maintain operation of the Equipment to allow monitoring of your fire alarm by the State.
- 5.3 We do not repair or replace Equipment with defects caused by:
- (a) acts beyond our control (such as lightning strikes);
  - (b) power surges;

- (c) any alterations, modifications, adjustments, repairs or servicing done by anyone other than us or a third party expressly approved by us in writing;
- (d) vandalism or other deliberate or negligent damage;
- (e) fluid ingress; or
- (f) any failure to follow our reasonable directions,

or fix defects that are not necessary to maintain the operation of the Equipment in a way that allows monitoring of your fire alarm by the State.

- 5.4 If you ask us to fix any defect with the Equipment that is covered by clause 5.3, we will charge you on a fee-for-service basis unless we are required under consumer protection laws to fix the defect at our cost.
- 5.5 You acknowledge that the State may request that MFAS be upgraded to incorporate different equipment to replace the Equipment from time to time, and that we are required to engage with the State to replace ageing Equipment from time to time. Accordingly, we may require that Equipment be replaced from time to time.
- 5.6 If this occurs, additional charges or conditions may apply, but we will give you reasonable notice and discuss any transition with you at the time.
- 5.7 If you experience any difficulties with your Equipment or MFAS, you may contact our service desk at [mfasoperations@team.telstra.com](mailto:mfasoperations@team.telstra.com) 24 hours per day (although if you contact us outside working hours on a Business Day, we treat the contact as being made at 9am on the next Business Day).
- 5.8 We provide the following service assurance targets, but do not guarantee to meet them. We do not provide service credits in relation to these service assurance targets. We will tell you whether you are in a 'metro' or 'country' area on request.

Region	Response target	Restoration target
<b>Metro</b>	<b>2 hours – telephone</b>	<b>Next Business Day</b>
<b>Country</b>	<b>2 hours - telephone</b>	<b>Next Business Day + 1</b>

## 6 ADDS/MOVES/CHANGES

- 6.1 You may request a change of lessee for an existing MFAS by obtaining the State's authorisation and completing the Change of Lessee Form section of the Application Form, and submitting it to us.

## 7 PRICE, INVOICING & PAYMENT

- 7.1 As at the date of the Agreement, the fees for MFAS as set out in the table below. All prices are listed exclusive of GST.
- 7.2 Once per year, we may increase the fees in accordance with the change in the Consumer Price Index – All Groups – Average 8 Capital Cities, as compared against the same point in the previous year. We will provide you with notice of any change in advance.
- 7.3 We will invoice you for MFAS monthly, and you must pay the invoiced amount within 14 days of the invoice date.
- 7.4 If you do not pay any invoiced amount by the due date, we may apply the late payment charge set out in the table below. Late fees apply for each month that you are in arrears (but stop accruing past the date we terminate MFAS, if ever).

<b>MFAS END USER FEES</b>		
Item	Once off	Monthly Fee
<b>MFAS Establishment Fee</b>	\$ 350.00 (excl GST) – <i>Waived</i>	<b>Not Applicable</b>
<b>MFAS Establishment Fee – additional Supplier land line</b>	\$261.00 (excl GST) – <i>Waived</i>	<b>Not Applicable</b>
<b>Additional/replacement Coded Key</b>	\$50.00 (Excl GST) per key	<b>Not applicable</b>

<b>MFAS monthly fee</b>	<b>Not applicable</b>	\$105.83 (Ex GST)
<b>MFAS other equipment</b>	<b>POA</b>	<b>POA</b>
<b>MFAS – fee for additional Supplier land line - access, admin &amp; support</b>	Not applicable	\$59.00 (Ex GST)
<b>MFAS ASE rental, admin &amp; support - Late payment fee</b>	<b>Not applicable</b>	50% of the original outstanding amount for each full calendar month after the due date

#### Transisiton Rebates for SACFS customers Only

- 7.5 If you are a customer of SACFS for the State Monitoring Service, and you have a PSTN-based connection to the State Monitoring Service at the date you sign this Application Form, you will be entitled to the following rebates off the monthly charges for MFAS, for up to the first 3 years of the service. Rebates are only paid as an offset against your monthly fees. The balance is not paid out on termination and cannot be offset against other amounts you owe us.

<b>Item</b>	<b>Monthly rebate</b>	<b>Available</b>
SACFS year 1 Rebate	\$49.37 (Ex GST)	1 July 2016 – 30 June 2017
SACFS year 2 Rebate	\$32.92 (Ex GST)	1 July 2017 – 30 June 2018
SACFS year 3 Rebate	\$16.46 (Ex GST)	1 July 2018 – 30 June 2019

#### Disputes

- 7.6 If you genuinely dispute an invoice you need not pay the disputed amount until the dispute is resolved, however you must pay all undisputed amounts by the due date.
- 7.7 You may only make a claim on the basis that the charges on an invoice for Services are incorrect within 12 months of the invoice due date.

#### Early termination charge

- 7.8 Even though the Service is provided on a month-to-month basis, you must rent the ASE for a minimum term of 2 years from the date of installation at your Site (**Minimum Term**). This applies even if you have cancelled your Service during the Minimum Term.
- 7.9 Subject to clauses 7.10 and 7.11, if:
- (a) you vacate the Site premises where the Equipment is installed during the Minimum Term; or
  - (b) you terminate your MFAS during the Minimum Term,
- then we may charge you an early termination charge in respect of the Equipment.
- 7.10 If you vacate the Site during the Minimum Term and another customer occupies the same Site within 30 days of the date you vacated the Site, we will consider the Equipment to be continuously rented and we will not charge you an early termination charge.
- 7.11 If you vacate the Site during the Minimum Term, and the Equipment is not required on that Site following your departure, we will, where possible, attempt to re-locate the Equipment to another Site for another customer. If we do manage to re-locate the Equipment to another Site for another customer, within 30 days from the date you departed the Site, we will consider the Equipment to be continuously rented and will not charge you an early termination charge.

## 8 OUR COMMITMENT TO YOU

- 8.1 We will:
- (a) provide MFAS with due care and skill, but do not guarantee that it will be secure, continuous or fault free;
  - (b) ensure that Equipment or other goods supplied in connection with MFAS are reasonably fit for the purpose for which they are supplied; and

- (c) ensure that all work we perform in connection with MFAS is carried out by competent and suitably qualified personnel.

## 9 YOUR COMMITMENT TO US

9.1 You:

- (a) must ensure that the MFAS is used as a “fire line” only. That is, as a telecommunications line used to send automatic fire alarm monitoring signals from your premises to the State Monitoring Service. You must not use or allow any third party to use, MFAS for any other purpose;
- (b) must provide us with all reasonable assistance and take all safety precautions reasonably necessary to ensure the safe and proper performance by us of all work at your Site or other premises;
- (c) must ensure that all equipment connected to the Services by you, or on your behalf, is technically compatible with MFAS and that your Site and the equipment complies with and is used in accordance with all reasonable procedures notified by us and any applicable legislation;
- (d) must not alter, tamper, reverse engineer, repair or attempt to repair MFAS or the Equipment or cause, or allow, a third party to do any of these acts;
- (e) except for the Equipment, and subject to these terms (including regarding the standard of cabling required) are solely responsible for selecting, supplying and maintaining your own facilities and equipment;
- (f) are solely responsible for the content and security of any data or information which you send or receive using the Services;
- (g) are solely responsible for any use of MFAS, or any equipment connected to the Services on your Premises, by you or any third party whether authorised or not; and
- (h) must not resell, resupply or share MFAS to or with any third party without our consent.

## 10 STATE MONITORING SERVICE

10.1 As part of MFAS, the State Monitoring Service utilises is an IP WAN based community IPVPN, for access to and use by a particular “community of interest”. It provides separation between community members.

10.2 For your MFAS to be and remain connected to the Monitoring Service, you must separately acquire suitable alarm signalling equipment as specified by the State, and at all times comply with any additional:

- (a) terms imposed by the State relating to that connection from time to time; and
- (b) authentication details and procedures that the State requires from time to time.

10.3 You must not disclose any IP address you become aware of through using your MFAS or accessing the State Monitoring Service (other than for the sole purpose of using your MFAS in accordance with these terms).

10.4 The State may require you to agree to additional terms and conditions in relation to accessing the State Monitoring Service. It is your responsibility to check with the State whether any additional charges or terms apply, and then to comply with them.

10.5 You acknowledge that we are not responsible for, and accept no liability in respect of, any additional requirements of the State in order for you to access the State Monitoring Service. In particular, we are not responsible for any authentication procedures or details required to access the State Monitoring Service, or for monitoring your access to the State Monitoring Service.

## 11 TAXES

11.1 Subject to clause 11.3, you must pay all Taxes in connection with the Services.

11.2 Where GST is imposed on a taxable supply made in connection with this Agreement and the recipient of that supply receives a tax invoice for that supply, the recipient must pay the GST to the supplier (without deduction or set-off) by the tax invoice due date.

11.3 If one party is required to indemnify or reimburse another party (**Payee**) for any cost, loss or expense, the indemnity or reimbursement payable does not include any amount for which the Payee (or an entity grouped with the payee for GST purposes) is entitled to an input tax credit, but will be increased in accordance with clause 11.2 if the amount payable is consideration for a taxable supply.



## 12 TERM, SUSPENSION AND TERMINATION OF SERVICES

### Term

- 12.1 We will provide you with MFAS for the Term. The 'Term' starts on the date we start supplying MFAS to you and ends on the earlier of the date:
- (a) you or we cancel MFAS in accordance with these terms and conditions; or
  - (b) we are no longer engaged to provide services to the State relating to the State Monitoring Service.
- 12.2 We may suspend or terminate the service to an End User on the following basis:
- (a) as directed by the State;
  - (b) for non-payment of the monthly fee for a period of two or more consecutive calendar months; and
  - (c) repeated damage to any component of the Equipment.
- 12.3 We acknowledge the public safety purpose behind MFAS and so will not unreasonably suspend or terminate MFAS. We may consult with the State before suspending or terminating MFAS.
- 12.4 In addition to our termination and suspension rights we may cancel your Managed Fire Alarm Service, or refuse to commence supplying your Managed Fire Alarm Service, if the State requests us to do so.
- 12.5 We may limit, suspend or cancel the provision of a Service at any time without notice to you:
- (a) in the event of an emergency or in order to provide resources to emergency and other essential services;
  - (b) if the supply or use of a Service is, or is likely to become, unlawful;
  - (c) if the ACCC issues, or we reasonably anticipate that the ACCC may issue a competition notice in relation to MFAS; or
  - (d) if, in our reasonable opinion, the provision of a Service is liable to cause death, personal injury or damage to property.

### Mutual termination rights

- 12.6 If a party commits a material breach and does not remedy the breach within 30 days of receiving a notice to do so, or suffers an Insolvency Event, then the other party may terminate the Service.

### Your termination rights

- 12.7 You may cancel your MFAS at any time by giving us at least 30 days prior written notice (but an early termination charge may apply under clauses 7.8 and 7.9 if you cancel within the Minimum Period). However, before we will process your cancellation, the approval of SAMFS or SACFS (as relevant) and your local council (if relevant) must be provided in the form set out in the 'SAMFS Authorisation' section of this Application Form.

### Consequences of suspension, expiry or termination

- 12.8 Where MFAS is suspended or terminated you must pay an establishment fee to re-connect the service.
- 12.9 If you cancel MFAS, or fail to comply with the terms and conditions applicable to MFAS, or if we are entitled to suspend, limit or cancel MFAS, you must:
- (a) comply with any applicable statutory requirements or regulations relating to the installation and maintenance of monitored fire alarms; and
  - (b) immediately notify any persons (including, without limitation, any tenants, co-tenants, landlords or neighbours of the site or any fire brigades or fire alarm service providers) who may be affected by the suspension, limitation or cancellation of MFAS.
- 12.10 In addition, following termination or expiry, for any reason:

- (a) you must pay us all outstanding invoices by the due date and within 30 days of request for payment, all other amounts outstanding as at the date of, or arising as a result of, expiry, termination or cancellation (including any Early Termination Charges);
  - (b) we may enter the Site and remove any Equipment belonging to us which is connected with that Service. If we are unable to gain access to the Site we may recover the value of the Equipment from you as a debt due to us; and
  - (c) all rights a party has accrued before expiry, termination or cancellation continue.
- 12.11 If this Agreement expires or terminates for any reason, clauses 9 (Your commitment to us), 12 (Term, Suspension and Termination), 13 (Confidentiality and Privacy), 14 (Limitation of liability) and 15 (Third Party IP claims) continue in full force and effect.

### **13 CONFIDENTIALITY AND PRIVACY**

13.1 Each party must treat as confidential information:

- (a) the provisions of this Agreement; and
- (b) all information provided by the other party under this Agreement, including our technical, operational, billing, pricing and commercial information in relation to the supply of Services.

13.2 A party must not disclose the other party's confidential information to any person except:

- (a) to its employees, lawyers, accountants and our sub-contractors on a 'need to know' basis provided those persons first agree to observe the confidentiality of the information;
- (b) with the other party's prior written consent;
- (c) if required by law, any regulatory authority or stock exchange; or
- (d) if it is in the public domain.

13.3 You agree and will ensure that your Personnel, your related bodies corporate and their Personnel, and any individuals, who receive services or whose information is disclosed to us, in connection with this agreement, are aware that we may use and disclose information about you and each of them in accordance with our Privacy Statement (as amended by us from time to time), which is available <http://www.telstra.com.au/privacy/privacy-statement/index.htm> or by calling us on 1800 039 059.

13.4 Without limiting clause 13.3, you agree that Telstra may also, subject to the Privacy Act 1988:

- (a) disclose information about you and this application (including information contained in any application for additional services and information about the conduct of your account) to a credit reporting body to obtain credit reporting information about you and to another credit provider or a debt collection agent to collect overdue payments relating to credit owed by you and to notify defaults by you; and
- (b) obtain and use information about your creditworthiness (including consumer credit reporting information or a commercial credit report) from a credit reporting body or other business that reports on creditworthiness or from a credit provider to assess any application for services or to collect any overdue payments.

13.5 You acknowledge that you should read important information about credit reporting available on our website at <http://telstra.com.au/privacy/important-information-about-credit/>. This includes details about the credit reporting bodies that we deal with, the kinds of information that we may give to those bodies about you (such as about certain overdue payments), how they may use and disclose it and those bodies' policies regarding its management. It also includes details about your access, correction and complaint rights regarding credit-related personal information and your rights to prevent its use in certain circumstances, such as if you are a victim of identity fraud. A copy of this information is also available from Telstra on request

### **14 LIMITATION OF LIABILITY**

14.1 We accept liability arising from our breach of contract or negligence:

- (a) for any personal injury or death to you, your employees, agents and contractors in relation to the supply of the Services; and
- (b) unless clause 14.2 applies, for any other cost or expense you reasonably incur that is a direct result of, and flows naturally from, such breach or negligence (including any direct damage to your real or

tangible property resulting from the supply of the Services, but excluding loss of profits, revenue, business opportunities, likely savings and data), but we limit our liability for all such claims in aggregate to the total amount payable to us under this Agreement during the first year of this Agreement.

- 14.2 Other than for the liability we accept under clause 14.1, we exclude all other warranties, rights, remedies and liability to you or a third party for breach of contract, negligence or breach of any other law. For any liability which cannot lawfully be excluded, but can be limited, our liability is limited to our choice of re-supplying or paying the cost of re-supplying services and repairing, replacing or paying the cost of repairing or replacing goods.
- 14.3 Notwithstanding anything else in this clause 14, our liability will be reduced to the extent the loss or damage is caused by you, your employees, agents or contractors.
- 14.4 You expressly acknowledge and agree that we do not provide, and accept no responsibility or liability for, the Monitoring Service. The Monitoring Service is provided by the State.

## 15 THIRD PARTY IP CLAIMS

- 15.1 We indemnify you against any direct loss, damage, liability, costs or expenses incurred by you as a result of a claim by a third party against you that MFAS or any material provided by us under this Agreement infringes the Intellectual Property Rights of the third party, subject to you allowing us to direct any defence and settlement of the claim. This indemnity does not apply to the extent the claim arises out of any modification of any materials provided by us, relates to services or materials provided by a third party in conjunction MFAS, or is caused or contributed to by you.
- 15.2 Where any person makes a claim for Intellectual Property Right infringement in connection with the provision of MFAS by us, we may modify, limit, suspend or cancel the provision of MFAS, if required, in response to the claim.

## 16 DISPUTE RESOLUTION

- 16.1 The parties agree to use best endeavours to resolve in good faith any dispute concerning this Agreement. Each party must follow the procedures in this clause 16 before starting arbitration or court proceedings (except for urgent injunctive or declaratory relief).
- 16.2 If a dispute arises between the parties that cannot be resolved promptly between our contact person and your contact person, either party may notify the other party of a formal dispute. Each party must nominate a senior executive to meet within 7 days of the notice (or another agreed period) to try and resolve the dispute.
- 16.3 If the dispute remains unresolved, the parties must try to resolve it by mediation administered by the Australian Commercial Disputes Centre according to its Mediation Guidelines.

## 17 GENERAL

- 17.1 **Entire Agreement:** This Agreement constitutes the entire agreement between the parties about the Services, and despite any provision of an existing or previous agreement to the contrary (including master services agreements that purport to cover all after-acquired services), this agreement supersedes any previous agreement or representation relating to the Services.
- 17.2 **Governing Law:** This Agreement is governed by the laws of South Australia. Each party submits to the non exclusive jurisdiction of the courts of South Australia and the courts of appeal from them.
- 17.3 **Notices:** All notices and consents must be in writing and sent to the addresses or fax numbers for notices specified on the front page of the Agreement Terms, or to your officer or as otherwise agreed. Notices must not be sent by email.
- 17.4 Notices sent:
- (a) by hand are taken to be received when delivered;
  - (b) by post to an address in Australia are taken to be received by the third Business Day after posting;
  - (c) by post to an address outside Australia are taken to be received by the seventh Business Day after posting; or
  - (d) by fax are taken to be received when the sender's fax machine issues a successful transmission report.

- 17.5 **Variations:** This Agreement may only be varied by written agreement between the parties (except as expressly set out otherwise).
- 17.6 **Severability:** If any clause or part of any clause is held by a court to be invalid or unenforceable, that clause or part of a clause is to be regarded as having been deleted from this Agreement and this Agreement otherwise remains in full force and effect.
- 17.7 **Waiver:** A right created by this Agreement may only be waived in writing by the party giving the waiver, and the failure to exercise or any delay in exercising a right or remedy provided by this Agreement or by law does not waive the right or remedy. A waiver of a breach of this Agreement does not waive any other breach.
- 17.8 **Warranties:** Each party warrants to the other that entering into and performing its obligations under this Agreement does not breach any of its contractual obligations to any other person. You warrant that you have not relied on any representations or warranties by us other than those in this Agreement.
- 17.9 **Assignment:** A party must not assign its rights or novate its obligations under this Agreement without the other party's prior written consent, which must not be unreasonably withheld.
- 17.10 **Agency:** You may appoint a third party to act on your behalf in relation to this Agreement with our prior written consent, which will not be unreasonably withheld. We may withdraw our consent on reasonable grounds relating to the conduct of the third party.
- 17.11 **Force Majeure:** If a party is unable to perform or is delayed in performing an obligation under this Agreement (other than an obligation to pay money) because of an event beyond that party's reasonable control (Force Majeure Event), that obligation is suspended but only so far and for so long as it is affected by the Force Majeure Event. If a Force Majeure Event occurs, the non-performing party must:
- (a) promptly give the other party notice of the event and an estimate of the non-performance and delay;
  - (b) take all reasonable steps to overcome the effects of the event (but this does not require the settlement of industrial disputes or other claims on unreasonable terms); and
  - (c) resume compliance as soon as practicable after the event no longer affects either party.
- 17.12 **Interpretation:** In this Agreement:
- (a) a reference to this Agreement includes all its parts including the Application Form and this Attachment, and includes any amendment to or replacement of them;
  - (b) a reference to a statute, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
  - (c) terms used that are defined in the A New Tax System (Goods and Services Tax) Act 1999 (Cth) have the meaning given in that Act, unless the context makes it clear that a different meaning is intended;
  - (d) a reference to a party includes a reference to the party's executors, administrators, successors and assigns;
  - (e) the singular includes the plural, and vice versa; and
  - (f) "includes", "including", "for example", "such as" and similar terms are not words of limitation.
- 17.13 **Definitions:** In this Agreement, unless otherwise stated:
- (a) **Act** means the Telecommunications Act 1997 (Cth).
  - (b) **Application Form** means the form to which this Attachment is attached.
  - (c) **ASE** means the alarm signalling device we provide you as part of the Service, as approved by the State.
  - (d) **Business Day** means any day other than a Saturday, Sunday or recognised public holiday in South Australia.
  - (e) **Early Termination Charge** means the early termination charge(s) for a Service (if any) set out or referred to in the Service Schedule or the relevant section of Our Customer Terms for that Service.
  - (f) **Equipment** means the ASE and any accessories we provide with it to enable it to function as intended to support the Service.

- (g) **Facility** means facility as defined in the Act and includes any line, equipment, tower, mast, antenna, tunnel, hole, pit or pole used in connection with a Service.
- (h) **FIP** means fire indicator panel.
- (i) **Insolvency Event** occurs in relation to a party if an administrator, receiver, liquidator or provisional liquidator is appointed to that party, or that party resolve to enter into any settlement, moratorium or similar arrangement for the benefit of its creditors, or it is unable to pay its debts when they are due.
- (j) **Intellectual Property Rights** means all current and future registered rights in respect of copyright, designs, circuit layouts, trademarks, trade secrets, domain names, database rights, know-how and confidential information and any other intellectual property rights as defined by Article 2 of the World Intellectual Property Organisation Convention of July 1967, excluding patents.
- (k) **IPVPN** means internet protocol virtual private network.
- (l) **Minimum Term** has the meaning given in clause 7.8.
- (m) **Personnel** means a person's officers, employees, agents, contractors and sub-contractors.
- (n) **SIM** means subscriber identity module, a type of data storage used for mobile and other devices.
- (o) **Site** means the site identified as such in the 'Site Details' section of the Application Form.
- (p) **Taxes** means a tax, levy, duty, charge, deduction or withholding, however described, imposed by law or a government agency, together with any related interest, penalty or fine, including in respect of GST, but excluding income tax.