

# Master Services Agreement

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# Master Services Agreement

<b>THIS AGREEMENT is made on</b>		<b>2015</b>
<b>BETWEEN:</b>	<b>TasmaNet Pty Ltd (ABN 61 111 240 978)</b> of 30-38 Innovation Drive, Dowsing Point, Tasmania 7010  <b>(TasmaNet)</b>	
<b>AND</b>	<b>[insert details]</b>  <b>(Customer):</b>	

<b>SIGNED AS AN AGREEMENT</b>	
Signed by <b>TasmaNet Pty Ltd</b> ) in accordance with section 127 ) of the <i>Corporations Act 2001</i> (Cth) ) Name ) ) ) Director ..... ) ) Name .....	Director .....          Director .....          Name .....
Signed by <b>[insert]</b> ) in accordance with section 127 ) of the <i>Corporations Act 2001</i> (Cth) ) Name ) ) ) Director ..... ) ) Name .....	Director .....          Director .....          Name .....

## RECITALS

- A. TasmaNet provides a range of information technology services, including Managed Services and Cloud Services.
- B. TasmaNet agrees to supply the Services to the Customer and the Customer agrees to accept the Services from TasmaNet on the terms and conditions set out in this Agreement.

## 1. Agreement

- 1.1. The Agreement between the parties consists of:
  - 1.1.1. the Master Terms;
  - 1.1.2. the applicable Services Schedules;
  - 1.1.3. the Service Order Forms signed by the parties.
- 1.2. To the extent of any inconsistency between these documents, the order of priority of interpretation is:
  - 1.2.1. the Service Order Form(s);
  - 1.2.2. the Services Schedule(s); and
  - 1.2.3. the Master Terms.

## 2. The Services

### 2.1. Ordering Services

- 2.1.1. The Customer may order Services by requesting TasmaNet to provide a draft Service Order Form.
- 2.1.2. The parties will complete the Service Order Form to agree the Services, the Charges, the Service Unit Term and any other additional terms and conditions.
- 2.1.3. Following completion of the Service Order Form in clause 2.1.2, TasmaNet will provide the Services to the Customer, in accordance with the applicable Services Schedules and Service Order Forms.
- 2.1.4. During the Term, the parties may agree that additional Services are to be provided to the Customer by TasmaNet by agreeing a new Service Order Form and, once signed by the parties, the terms of this Agreement are taken to be varied to include the additional Service(s) with the appropriate Service Level applicable.
- 2.1.5. Services are based on term shown under "Service Details". The effective date is the date of service commissioning as determined by TasmaNet.

### 2.2. Service Delivery

- 2.2.1. TasmaNet will supply the Services to the Customer at the applicable Service Level (subject to the exclusions specified in the Service Levels Schedule) from the commencement of the applicable Services Unit Term.
- 2.2.2. TasmaNet will use all reasonable endeavours to meet the Customer's requested date for supply of a revised or new Service but TasmaNet do not represent or warrant that TasmaNet will deliver the Service by this date (unless agreed otherwise in the Service Order Form).

- 2.2.3. TasmaNet is not liable for any delay in provision of the Services due to the actions of another party including, but not limited to, delays in obtaining access to any property or premises of the Customer or third parties necessary for the provision of the Services.
- 2.2.4. The Customer must reasonably co-operate with TasmaNet to allow TasmaNet to supply the Services safely and efficiently, which includes but is not limited to assisting TasmaNet to liaise with the Customer's building management so that TasmaNet may obtain access to the Customer's premises and following our reasonable requests to provide TasmaNet's Representatives with safe and prompt access to the Customer's premises and the Customer's representatives, equipment, data and information.
- 2.2.5. TasmaNet will ensure that its Representatives comply with the Customer's reasonable directions, including but not limited to security and work, health and safety matters, while on the Customer's premises.
- 2.2.6. All services are subject to a physical site survey and safety regulations.

### **2.3. Quality of Services**

- 2.3.1. TasmaNet will provide the Service(s) to the Customer:
  - a. in accordance with the Service Levels;
  - b. in accordance with relevant Australian Standards, Australian industry best practice and guidelines, and where none apply, relevant international best practice and guidelines;
  - c. in accordance with applicable law; and
  - d. in accordance with the provisions of this Agreement.
- 2.3.2. TasmaNet represents and warrants that:
  - a. it has the legal authority to enter into this Agreement;
  - b. it has all necessary rights, interests and approvals necessary to lawfully provide the Services;
  - c. it has, and its employees, contractors and agents providing the Services have, the necessary experience, skill, knowledge, qualifications and competence to provide the Services defined in this Agreement including in the Service Order Form(s).
- 2.3.3. The Customer acknowledges that TasmaNet makes no warranty in relation to the performance or characteristics of any website or software supplied by a third party in connection with the Services, but TasmaNet will actively work with the Customer to assist the Customer to resolve any performance issues with any product supplied by a third party.
- 2.3.4. This clause 2.3 survives the termination (for any reason) or expiry of this Agreement.
- 2.3.5. TasmaNet NBN: your service on the NBN offers download speeds up to your selected plan speed, and upload speeds up to your selected plan speed. Actual speeds will be slower and will vary due to several factors including hardware and software configuration, source and type of content downloaded, the number of users and performance of interconnecting infrastructure not managed by TasmaNet. If you have selected a high speed (up to 100/40 Mbps) plan, these speeds may exceed the capabilities of some computers and servers.

## **2.4. Permitted uses of the Services**

- 2.4.1. In using the Services, the Customer must comply with all laws, all directions by a Regulatory Authority and reasonable directions by TasmaNet.
- 2.4.2. The Customer must not use, or attempt to use, the Services:
  - a. to break any law or to infringe another person's rights;
  - b. to expose TasmaNet to liability;
  - c. in any way which damages, interferes with or interrupts the Services, or any telecommunications network, equipment, or facilities, or cabling controlled by TasmaNet or a supplier to supply the Services;
  - d. in any way which may damage any property or injure or kill any person;
  - e. to transmit, publish or communicate material which is defamatory, offensive, abusive, indecent, menacing or unwanted; or
  - f. in any way which contravenes our Acceptable Use Policy.
- 2.4.3. The Customer acknowledges that, where the Service is a network service, TasmaNet may be required by law to intercept communications over the Services and may also monitor the Customer usage of the Services and communications sent over the network service.
- 2.4.4. If TasmaNet reasonably believes the Customer is engaging in activity that is contrary to this clause 2.4, TasmaNet will notify the Customer of such activity and that it may without further notice may direct the Customer to immediately cease such activity. The Customer must immediately comply with any such direction. If the Customer does not, then TasmaNet will take any steps reasonably necessary to ensure compliance with the direction (including suspension of the relevant Service).

## **3. Equipment**

### **3.1. TasmaNet Equipment**

- 3.1.1. To use the Services, the Customer may need to be physically provided with TasmaNet equipment on the Customer's premises. Legal title to such equipment remains solely with TasmaNet, and the Customer holds such equipment as a bailee of TasmaNet for the duration of this Agreement.
- 3.1.2. The Customer must take reasonable care of TasmaNet's equipment while it is in the Customer's physical possession.
- 3.1.3. The Customer is responsible for the repair or replacement costs of TasmaNet's equipment that is lost, stolen or damaged while in the Customer's possession, excepting any fair wear and tear.
- 3.1.4. The Customer must provide access to the Customer's premises and facilities as reasonably necessary to enable TasmaNet to install any equipment on the Customer's premises required for the Services.
- 3.1.5. TasmaNet will advise the Customer in writing of the required space, power supply and environment for all equipment used in connection with the Services and located on the Customer's premises. TasmaNet will uninstall and remove all

of its equipment located on the Customer's premises at the end of the applicable Services.

- 3.1.6. TasmaNet will comply with all of the Customer's directions, policies and procedures relating to work, health and safety and security while TasmaNet is at the Customer's premises.

### **3.2. Customer Equipment**

- 3.2.1. The Customer must ensure that all Customer's equipment it uses in connection with the Services, and the way the Customer uses that equipment, complies with all laws, as well as directions by a relevant Regulatory Authority and reasonable directions by TasmaNet.
- 3.2.2. If the Customer's equipment, or its use, does not comply with clause 3.2.1, TasmaNet may disconnect such equipment from the Services. TasmaNet will endeavor to provide the Customer notice before disconnection, but may do so immediately in an emergency.

## **4. Service Charges**

### **4.1. Charges**

- 4.1.1. The Customer must pay all Charges incurred in respect of the Services as specified in the Service Order Form.
- 4.1.2. If the Customer does not pay an invoice for a Charge by its due date, and unless the Charge is being disputed in good faith, TasmaNet reserves the right to charge the Customer:
  - a. interest at the rate of 3% above the prevailing interest rate charged by TasmaNet's current bank on overdue payments, from the due date until payment is received;
  - b. All reasonable expenses incurred by TasmaNet (including reasonable solicitor client legal costs and expenses and the fees of our debt recovery agents) in relation to recovering payments due, as substantiated by TasmaNet to the Customer 's reasonable satisfaction;
  - c. An equal amount to recoup any bank or financial institution fees incurred by Tasmanet because the Customer payment (however made) is not honoured.
- 4.1.3. Installation Services: any once off installation fees will be invoiced on receiving a signed order.
- 4.1.4. Software licensing (SPLA) costs are subject to change with market trend.

### **4.2. Invoices & Payment**

- 4.2.1. Invoices will be emailed to the Customer each month. Invoices can be sent by mail on request.
- 4.2.2. The Customer must pay within thirty (14) days of the date of the invoice.

- 4.2.3. Unless otherwise agreed in writing by TasmaNet the Customer must pay the invoice by direct deposit of funds into TasmaNet's nominated bank account.
- 4.2.4. TasmaNet Wireless and NBN services: for any ongoing services, invoices are issued pro-rata for the month in which the services have been provisioned. Monthly invoices are then issued from the first of each month (billing in advance).
- 4.2.5. Cloud Services: invoices are billed monthly in arrears.

### **4.3. How can the Customer dispute an invoice**

- 4.3.1. To dispute an invoice in good faith, the Customer must notify TasmaNet in accordance with clause 12.9 and the dispute resolution procedure in detailed in clause 6 will apply.
- 4.3.2. A Notice must include the detailed reasons for the dispute, and must be issued within sixty (60) days of the invoice date. If the Customer fails to notify TasmaNet by this date, the Customer waives all rights to dispute the invoice.
- 4.3.3. The Customer may withhold only the disputed amounts of the invoice.
- 4.3.4. Where a dispute is determined under clause 6:
  - a. in TasmaNet's favour, the Customer must pay TasmaNet the amount withheld within seven (7) days of such determination; or
  - b. in the Customer's favour and the Customer has already paid the disputed amount, TasmaNet must refund the relevant amount within seven (7) days of such determination.
- 4.3.5. Except for any billing disputes the Customer has with TasmaNet, if the Customer does not pay the Customer invoice on the due date TasmaNet reserve the right to:
  - a. charge additional fees as detailed in clause 4.1; and
  - b. take any additional actions as allowed under this Agreement, including but not limited to suspension or termination of Services.

### **4.4. GST**

- 4.4.1. Unless otherwise expressly noted, all charges for the Services are exclusive of GST. The Customer will pay to TasmaNet at the same time when any part of the Charges for the Services is payable, an amount equal to any GST payable on supply of that Services.
- 4.4.2. TasmaNet must issue a tax invoice to the Customer for any supply on which GST is imposed.

## **5. Rebates**

- 5.1.1. Where TasmaNet fails to achieve the relevant Service Level in any one (1) month, the Customer is entitled to a rebate calculated in accordance with the Schedule 4 Service Levels for that relevant Service, which may be set-off as against any outstanding or future invoices.



- 5.1.2. In order to claim a rebate, the Customer must lodge a written claim detailing the incident the Customer contends gives rise to the claim within forty eight (48) hours of the incident. TasmaNet must respond to the written claim within fourteen (14) days of the claim.
- 5.1.3. The Customer is not entitled to a rebate when:
- a. the Customer has any undisputed overdue payments outstanding with TasmaNet; or
  - b. failure to achieve the Service Levels is caused directly or indirectly by, or arises from or in connection with:
    - a Force Majeure Event;
    - any act or omission by the Customer or the Customer's agents, employees or contractors; or
    - the Customer's equipment; or
- 5.1.4. a suspension of the Services allowed under this Agreement (but excluding any suspension that is due to an event beyond the Customer control).

## **6. Complaints and Disputes**

### **6.1. Notification**

- 6.1.1. If the Customer has any complaints in relation with the Service(s) (including complaints about the Customer invoice) the Customer must contact TasmaNet and notify it of the complaint, in accordance with clause 12.9.
- 6.1.2. Both parties agree to use reasonable endeavours to resolve any such dispute or complaint quickly and efficiently and to the mutual satisfaction of both parties.

### **6.2. Arbitration**

- 6.2.1. If the parties are not able to reach a resolution of the dispute or complaint within a reasonable period of time (in any event being no more than twenty one (21) days after the date of the receipt of the notice of the complaint or dispute), then the dispute is to be tabled at a meeting of the Chief Executive Officers of each party for resolution.
- 6.2.2. If the Chief Executive Officers are unable to resolve the dispute or complaint, the dispute or complaint must be submitted for arbitration in accordance with, and subject to, the Institute of Arbitrators and Mediators of Australia Expedited Commercial Arbitration Rules.
- 6.2.3. The party raising the dispute must propose to the other party the name of the proposed arbitrator. If the parties cannot agree on an arbitrator within fourteen (14) days then the arbitrator will be appointed by the President of the Institute of Arbitrators and Mediators of Australia, Tasmania Chapter.
- 6.2.4. The decision of an arbitrator will be final and conclusive and binding on the parties.
- 6.2.5. The parties must sign all documents and do all things necessary to give effect to the decision of the arbitrator.

- 6.2.6. Each party must bear its own costs of, and incidental to, the arbitration, except where stipulated to the contrary by the arbitrator.

### **6.3.Exceptions**

- 6.3.1. The activation of this clause 6 does not prevent either party:
- a. seeking urgent interlocutory relief; or
  - b. seeking recovery for any claim that either party reasonably considers to be a monetary claim from a court with competent jurisdiction.

### **6.4. Continuing Obligations**

- 6.4.1. The parties agree to continue to perform their obligations under this Agreement, notwithstanding the existence of a dispute or complaint, unless the nature of the dispute renders such performance effectively impossible.

### **6.5. Ombudsman and Department of Fair Trading**

- 6.5.1. If the complaint is not resolved to the Customer's satisfaction, the Customer may refer the complaint to the Telecommunications Industry Ombudsman or the Department of Fair Trading.

## **7. Termination of the Services**

### **7.1.Customer rights to cancel the Service**

- 7.1.1. The Customer may cancel the Customer Services immediately if:
- a. TasmaNet is required to cancel the Services to comply with a direction from a law enforcement agency or a Regulatory Authority;
  - b. any one of the Service(s) is unavailable for a period of more than 7 consecutive days; or
  - c. an Insolvency Event has occurred with respect to TasmaNet, by issuing TasmaNet with a notice under clause 12.9, and the notice will be taken to have effect from the earliest point it is received by TasmaNet in accordance with the methods of receipt described in that provision.
- 7.1.2. If the Customer cancels the Services under clause 7.1.1, there is no penalty or cancellation fee payable.

#### **Customer termination for convenience**

- 7.1.3. The Customer may cancel the Services by giving TasmaNet thirty (30) days' written notice.
- 7.1.4. If the Customer cancels the Services under clause 7.1.3, it must pay a cancellation fee. The cancellation fee will be calculated by multiplying the monthly Charges payable by the Customer under this Agreement by the remaining months (or part) of the Service Unit Term(s) for all Services cancelled.

### **7.2.TasmaNet's rights to cancel the Service**

- 7.2.1. TasmaNet may cancel the Services immediately in the following circumstances:

- a. it is required to cancel the Services to comply with a direction from a law enforcement agency or a Regulatory Authority relating to the Customer;
  - b. the Customer has failed to make a payment by the due date and the Customer fails to make such payment within forty five (45) business days of receipt of a notice requiring the Customer to do so, except where an amount is permitted to be withheld pursuant to a billing or performance dispute;
  - c. an Insolvency Event occurs with respect to the Customer.
- 7.2.2. TasmaNet may cancel the Services by giving the Customer thirty (30) days' written notice if:
- a. the relevant Service Unit Term has ended and TasmaNet is continuing to supply the Services; or
  - b. TasmaNet is unable to supply the Services to the Customer because of a Force Majeure Event which has occurred and is continuing.
- 7.2.3. If TasmaNet cancels the Services, the written notice will contain:
- a. the effective date on which cancellation takes effect (Cancellation Date);
  - b. the reasons for the cancellation;
  - c. details of all charges for the use of the Services up to the Cancellation Date;
  - d. how these charges are calculated;
  - e. when the charges are due;
  - f. details of any applicable refunds or rebates and how these refunds or rebates are calculated;
  - g. details of any damages claim and how it is calculated.

### **7.3. What happens when the Service is cancelled?**

- 7.3.1. Where the Services are cancelled:
- a. The Customer will not be able to use the Services after the Cancellation Date;
  - b. Subject to any disputes the Customer has with TasmaNet, the Customer agrees to pay for any Charges for the Customer's use of the Services until the Cancellation Date;
  - c. Any credits on the Customer account will be applied to pay for any undisputed, outstanding Charges at the Cancellation Date;
  - d. TasmaNet will refund to the Customer any money that the Customer has paid in advance for that part of the Services that is being cancelled on a pro-rata basis;
  - e. TasmaNet will uninstall and collect all of its equipment located on the Customer's premises within thirty (30) days and the Customer will provide, or procure the provision of, access to the premises for such removal.

### **7.4. Suspending the Service**

- 7.4.1. TasmaNet may suspend the Services by giving the Customer prior notice where:
- a. any event specified in clause 7.2.1 has occurred;

- b. TasmaNet is temporarily unable to supply the Services to the Customer because of a Force Majeure Event; or
- c. the Customer breaches the Acceptable Use Policy.

7.4.2. TasmaNet may only suspend the Services for a period that is reasonable in the circumstances.

7.4.3. For the avoidance of doubt, suspension of the Services pursuant to this clause 7.4 does not constitute downtime for the purposes of the Service Level Schedule and the calculation of any rebates calculated in accordance with this Agreement.

#### **7.5. Information contained in a written notice to suspend the Service**

7.5.1. If TasmaNet suspends the Services, the written notice given to the Customer will contain all the relevant information including the dates on which the suspension will take effect and the reasonable reasons for the suspension.

#### **7.6. What happens when a Service is suspended?**

7.6.1. When the Services is suspended:

- a. The Customer will not be able to use the Services;
- b. The Customer will be liable to TasmaNet for any Charges for access to or use of the Services during the period of suspension, except where the suspension is as a result of an event that was reasonably out of the Customer control.

## **8. Liability and Indemnity**

### **8.1. Exclusion of implied terms**

8.1.1. Where legislation applies in this Agreement any condition or warranty, and that legislation avoids or prohibits provisions in a contract excluding or modifying the application or exercise of or liability under such condition or warranty, the condition or warranty shall be deemed to be included in this Agreement. However, the liability of TasmaNet for any breach of such condition or warranty shall be limited, at the option of TasmaNet to one or more of the resupply of, or payment of the cost of resupplying, the Services.

### **8.2. Limits to TasmaNet's liability**

8.2.1. To the extent permitted by law, TasmaNet's total liability to the Customer in any 12 month period in respect of any Loss arising out of or in connection with this Agreement will not in any circumstances exceed the value of annual fees for the service.

8.2.2. Without limiting the above liability cap:

- a. TasmaNet is not liable for any indirect, special or consequential loss or damage, loss of profits, loss of production, loss or corruption of data, loss of sales opportunity or business reputation, direct or indirect labour costs and overhead expense; and
- b. TasmaNet's liability for the Customer loss under or in connection with this Agreement or the Services is reduced to the extent that the Customer's acts

or omissions or the Customer's equipment and applications cause or contribute to that loss.

- 8.2.3. The limitations in this clause do not extend to any liability of TasmaNet:
- a. which by law it cannot contract out of;
  - b. which arise out of personal injury or death or property damage; or
  - c. which arise as a result of any fraud, wilful misconduct or gross negligence of TasmaNet or any of its Representatives.

### **8.3. Indemnity**

- 8.3.1. The Customer must indemnify TasmaNet against all Loss arising from or in relation to:
- a. A claim against TasmaNet arising out of the death of or personal injury to its Representatives, to the extent that such Loss is caused by a negligent or intentional act or omission, by the Customer or any of its representatives;
  - b. Any equipment, network or other tangible property of TasmaNet's or any third party, to the extent that such loss is caused by a negligent or intentional act or omission, by the Customer or any of its representatives;
  - c. A claim by a third party against TasmaNet to the extent that the claim relates to any negligent or wilful act or omission of the Customer or any of the Customer representatives in relation to this Agreement.

- 8.3.2. TasmaNet must indemnify the Customer against all Loss arising from or in relation to:
- a. A claim against the Customer arising out of the death of or personal injury to its representatives, to the extent that such Loss is caused by a negligent or intentional act or omission, by TasmaNet or any of its representatives;
  - b. Any of the Customer's equipment, network or other tangible property, to the extent that such loss is caused by a negligent or intentional act or omission, by TasmaNet or any of its Representatives; or
  - c. A claim by a third party against the Customer to the extent that the claim relates to any negligent or wilful act or omission of TasmaNet or any of its Representatives in relation to this Agreement

### **8.4. Survival**

- 8.4.1. This clause 8 survives the expiry or termination (for any reason) of this Agreement.

## **9. Confidentiality**

### **9.1. Customer's obligations**

- 9.1.1. The Customer agrees to keep in confidence and not to use or disclose any of TasmaNet's Confidential Information. The Customer may only disclose Confidential Information :
- a. To the Customer's legal advisers in relation to the Customer's rights under this Agreement;
  - b. To the Customer's Representatives;
  - c. To comply with any law, binding directive of a regulator, court order or listing rules of any stock exchange on which its securities are listed.

9.1.2. The Customer acknowledges that a breach of this confidentiality clause may cause TasmaNet irreparable damage for which monetary damages would not be an adequate remedy. In addition to other remedies that may be available, TasmaNet may seek and obtain injunctive relief against such a breach or threatened or suspected breach. The Customer's obligations with respect to the Confidential Information survive termination of this Agreement. The Customer must return TasmaNet's Confidential Information immediately upon request.

## **9.2. TasmaNet's confidentiality obligations**

9.2.1. TasmaNet agrees to keep in confidence and not to use or disclose any of the Customer Confidential Information. Subject to clause 9.2.2, TasmaNet may only disclose Confidential Information to the extent that the disclosure is necessary to comply with TasmaNet's obligations under this Agreement:

- a. To its legal advisers in relation to its rights under this Agreement;
- b. To its Representatives who are required by contract or by fiduciary duty to keep such information confidential;
- c. To comply with any law, binding directive of a regulator, court order or listing rules of any stock exchange on which its securities are listed;

9.2.2. TasmaNet may not in any circumstances disclose Customer Data to any other party unless that disclosure is required by a Law. Unless prohibited by a Law, TasmaNet must notify the Customer as soon as possible upon receipt of a notice having the force of a Law requiring TasmaNet to disclose Customer Data.

9.2.3. TasmaNet acknowledges that a breach of this clause 9.2 may cause the Customer irreparable damage for which monetary damages would not be an adequate remedy. In addition to other remedies that may be available, the Customer may seek and obtain injunctive relief against such a breach or threatened or suspected breach. TasmaNet's obligations with respect to the Confidential Information survive termination of this Agreement TasmaNet must return the Customer Confidential Information immediately upon request.

9.2.4. Nothing in this clause will prevent TasmaNet from disclosing any information to a party undertaking due diligence enquiries in relation to TasmaNet, provided that party is bound by confidentiality restrictions set out in this clause 9 and TasmaNet has sought prior written approval from the Customer in releasing the Confidential Information.

### **9.3.Survival**

9.3.1. This clause 9 survives the expiry or termination (for any reason) of this Agreement.

## **10. Intellectual Property**

### **10.1. The Customer's intellectual property**

10.1.1. TasmaNet must not use the Customer's Intellectual Property Rights without the Customer's prior written consent.

## **10.2. TasmaNet's intellectual property**

- 10.2.1. The Customer acknowledges that TasmaNet's Intellectual Property Rights remain its sole property and no rights are conferred on the Customer with respect to TasmaNet's Intellectual Property Rights except as specifically expressed in this Agreement.
- 10.2.2. All Intellectual Property Rights created by TasmaNet in delivering the Services to the Customer remain the sole property of TasmaNet.

## **10.3. Warranty**

- 10.3.1. TasmaNet warrants that:
  - a. the supply of the Services to the Customer does not and will not infringe any Intellectual Property Rights of any third party; and
  - b. it is entitled, and will be entitled at all relevant times, to deal with the Intellectual Property Rights as required under this Agreement.

## **10.4. Survival**

- 10.4.1. This clause 10 survives the expiry or termination (for any reason) of this Agreement.

# **11. Insurance**

## **11.1. Insurance policies**

- 11.1.1. TasmaNet must, at its own cost, take out and maintain the following insurances policies with reputable insurers:
  - a. professional indemnity insurance for the term of this Agreement and for a period of six (6) years after the expiry or termination of this Agreement, in the amount of at least \$10,000,000.00 for any one claim
  - b. public liability insurance for the term of this Agreement in the amount of at least \$20,000,000 for any one claim; and
  - c. workers' compensation insurance as required under any laws applicable to TasmaNet.

## **11.2. Further requirements**

- 11.2.1. TasmaNet must, in respect of the above insurance policies:
  - a. provide copies of the certificate of currency with respect to each insurance policy effected in accordance with clause 11.1 to the Customer prior to the commencement of this Agreement, on renewal and otherwise on the Customer's request; and
  - b. promptly and fully comply with all of its obligations under the insurance policies, so as to ensure that they, at all times, remain enforceable.

## **11.3. Failure to comply**

- 11.3.1. If TasmaNet, at any time, fails to comply with its obligations under this clause 11, then the Customer may do everything necessary to comply with such obligations and recover, upon demand, all expenses incurred in doing so from TasmaNet.

#### **11.4. Insurance of subcontractors**

11.4.1. TasmaNet must ensure that any subcontractors engaged to provide any part of the Services are insured to a level commensurate with the insurance obligations of TasmaNet under this clause.

#### **11.5. Survival**

11.5.1. This clause survives the expiry or termination (for any reason) of this Agreement.

## **12. General**

#### **12.1. Customer personal information**

12.1.1. TasmaNet will only collect, use and disclose personal information of the Customer with the written consent of the Customer that is reasonably necessary to provide the Services, and in compliance with the relevant law. The Customer may at any time contact TasmaNet to access and if required correct any stored personal information.

12.1.2. Any complaints about TasmaNet's use of personal information should be addressed to [abuse@tasmanet.com.au](mailto:abuse@tasmanet.com.au).

#### **12.2. Costs**

12.2.1. Each party must pay its own costs in respect of the negotiation, execution and performance of this Agreement.

#### **12.3. Assignment**

12.3.1. A party cannot assign or otherwise transfer any of its rights under this Agreement without the prior written consent of each other party.

#### **12.4. Variation**

1.1.1. This Agreement may only be varied in writing and executed by all relevant parties.

#### **12.5. Waiver and exercise of rights**

12.5.1. A waiver by a party of a provision of a right under this Agreement is binding on the party granting the waiver only if it is given in writing and is signed by the party or an authorised officer of the party granting the waiver.

12.5.2. A waiver is effective only in the specific instance and for the specific purpose for which it is given.

12.5.3. A single or partial exercise of a right by a party does not preclude another exercise or attempted exercise of that right or the exercise of another right.

12.5.4. Failure by a party to exercise or delay in exercising a right does not prevent its exercise or operate as a waiver.

#### **12.6. Severability**



12.6.1. If the whole or any part of a provision of this Agreement is void, unenforceable or illegal it is severed and the remainder of this Agreement otherwise has full force and effect. This clause has no effect if the severance alters the basic nature of this Agreement.

## **12.7. Entire agreement**

12.7.1. This Agreement constitutes the entire agreement between the parties about its subject matter and any previous contracts, understandings, negotiations and representations on that subject matter cease to have any effect.

## **12.8. Governing law**

12.8.1. This Agreement is governed by the laws from time to time in force in Tasmania and appeal courts therefrom.

## **12.9. Notices**

12.9.1. A notice, approval, consent, or waiver to be given under or in connection with this Agreement must be in writing, and signed by the sender and in the absence of evidence to the contrary will be taken to be received:

- a. If left at the address of the addressee, at the time it was left;
- b. If sent by ordinary post, on the third Business Day after posting;
- c. If sent by express post, on the next Business Day;
- d. If sent by facsimile, at the time recorded on a transmission report from the machine from which the facsimile was sent; and
- e. If sent by electronic email, if the sender receives no advice that the message was undeliverable.

## **12.10. Interpretation**

12.10.1. Undefined words and expressions have the same meaning as in the *Telecommunications Act 1997* (Cth) and associated Acts, regulations and determinations.

12.10.2. A reference to a person includes a reference to a person, firm, corporation or other legal entity.

12.10.3. The singular includes the plural and vice versa.

12.10.4. Headings are purely for ease of reference and do not form part of or affect the interpretation of this contract.

12.10.5. Different grammatical forms of the same word have the corresponding meaning.

12.10.6. A reference to a clause is to a clause in this Agreement, unless otherwise stated.

12.10.7. References to each party include references to its successors in title, permitted assigns and novatees.

## **12.11. Personal Property Securities Act**

12.11.1. If a party to this Agreement determines that this Agreement (or any aspect or transaction in connection with it) is or contains a security interest (as that term is defined in the *Personal Property Securities Act 2009* (Cth) (**PPSA**), that party may seek to perfect such security interest and each party agrees to do such things that

the party seeking to perfect the security interest reasonably requires (such as obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) within the time stipulated in the notice for the purposes of enabling TasmaNet to apply for any registration or exercise rights in connection with the security interest. The parties agree that sections 125, 130 and 132(3)(d) and 132(4) of the PPSA are excluded to the extent permitted by Law.

### 13. Security

- 13.1.1. TasmaNet's Services are delivered in accordance with the Security Policy, a copy of which is available on request.
- 13.1.2. As a part of its disaster recovery and business continuity planning, TasmaNet reviews and updates its Security Policy, and any related Security Management Plan on an ongoing basis, so as to best align them with policy changes and reduce the risk of rising threats.
- 13.1.3. In accordance with the requirements stated in these policies and standards, TasmaNet will:
  - a. Undertake annual security audits to ensure our Services are compliant with any relevant law, policy and standards required by the Customer;
  - b. Make available, when requested, necessary resources and provide access to any information or equipment deemed appropriate by a qualified third-party auditor who has been engaged by the Customer;
  - c. Maintain comprehensive timely and accurate documentation in a threat and risk register on the current threat exposure and security control mechanisms in place for each Service we deliver to our Customers;
  - d. Maintain a security incident management system to detect and manage suspected information security incidents that may impact on the Services it delivers.
- 13.1.4. For security incidents affecting or involving multiple suppliers, whether they be the Customer's or TasmaNet's, all parties will agree (on an incident by incident basis) who will be responsible for overall incident management co-ordination. TasmaNet will provide all reasonable cooperation necessary in this regard; and TasmaNet requires that its Customers ensure that the obligations set out in this section apply equally to all suppliers associated with the delivery of any TasmaNet Services.

### 14. Definitions

**Acceptable Use Policy**– means the policy issued by TasmaNet and the latest version is available on TasmaNet's website- <http://www.tasmanet.com.au/>.

**Architecture Services Schedule** - means Schedule 1 of this Agreement.

**Business Day** - means a day banks are open for business in Hobart, Tasmania, but excludes Saturday or Sunday.

**Cloud Services Schedule** – means Schedule 2 of this Agreement.

**Confidential Information** – means information concerning a party that is by its nature confidential or is marked "confidential", and in respect of the Customer, includes but is not limited to, the Customer Data, but does not include:

- a. information already known to the receiving party at the time of disclosure by the other party; or
- b. information in the public domain, other than as a result of disclosure by a party in breach of its obligations of confidentiality under this Agreement;

**Customer Data** - means data owned by the Customer that is held by TasmaNet, regardless of whether or not it is held for the purposes of and in fulfillment of the TasmaNet's obligations in providing the Service(s).

**Force Majeure Event** – means any event or circumstance or combination of events or circumstances which prevents a party from performing its obligations under this Agreement and which is (are) beyond the reasonable control of or could not have been reasonably avoided (by the taking of any precaution which might reasonably be expected to have been taken) by the affected party including:

- a. acts of God, epidemics, cyclones, tidal waves, landslides, lightning, earthquakes, floods or fire;
- b. strikes, lockouts, work bans, boycotts, barricades, picketing or other industrial disturbances;
- c. acts of public enemy, war declared or undeclared, sabotage, blockade, revolution, riots, insurrections, civil disturbances;
- d. any changes in law or government directives that materially adversely impacts the costs of providing the Services.

**GST** – means the tax created by the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* and any other goods and services tax, or any tax applying to this agreement in a similar way and the terms used in the said Act have the same meaning;

**Insolvency Event**– means in relation to a party, any one or more of the following events or circumstances:

- a. being in liquidation or provisional liquidation or under administration;
- b. having a controller (as defined by the *Corporations Act 2001 (Cth)*) or analogous person appointed to it or any of its property;
- c. being taken under section 459F(1) of the *Corporations Act 2001 (Cth)* to have failed to comply with a statutory demand;
- d. being unable to pay its debts as and when they fall due or being otherwise insolvent;
- e. becoming an insolvent under administration, as defined in section 9 of the *Corporations Act 2001 (Cth)*;
- f. entering into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors;
- g. any analogous event or circumstance under the laws of any jurisdiction; or
- h. taking any step or being the subject of any action that is reasonably likely to result in any of the above occurring,
- i. unless such event or circumstance occurs as part of a solvent reconstruction, amalgamation, compromise, arrangement, merger or consolidation approved by the other party (which approval is not to be unreasonably withheld or delayed);

**Intellectual Property Rights** – means copyright, moral right, trade mark, design, patent, semiconductor or circuit layout rights, trade, business or company names, or other proprietary rights, or any rights to registration of such rights existing in Australia, whether created before on or after the date of this Agreement, and including any similar right granted to a party under licence, where that licence permits dealing with the subject rights as contemplated under this Agreement.

**Law** means any applicable statute, regulation, by-law, ordinance or subordinate legislation in force from time to time in Australia, whether made by a State, Territory, the Commonwealth, or a local government, and includes the common law and rules of equity as applicable from time to time.

**Loss** - means loss, cost or damage or any cost or expense suffered or incurred, however caused whether based in tort, contract or otherwise.

**Managed & Hosted Services Schedules** - means Schedule 3 of this Agreement.

**Master Terms** – means clauses 1-14 of this Agreement.

**Regulatory Authority** – means the Australian Communications and Media Authority (or any replacement agency or authority) and any other governmental body having regulatory oversight in connection with the Services.

**Representatives** – means the person(s) for the time being occupying the position as notified in writing by TasmaNet from time to time.

**Security Management Plan** means TasmaNet's management plan governing how TasmaNet's manages security, as developed under the Security Policy.

**Security Policy** - means TasmaNet's *Services & Information Security Policy & Standards*, a security policy compliant with Australian Standard ISO/IEC 27000-2009, with the latest version is available at <http://www.tasmanet.com.au>

**Service Charges** means all charges incurred in respect of the Service(s) under this Agreement calculated in accordance with the pricing specifications set out in the Service Order Form.

**Service Level(s)** – means the level of service that TasmaNet provides to the Customer specified in Service Levels Schedule 4 and the Service Order Form.

**Service Levels Schedule** - means Schedule 4 of this Agreement.

**Service Order Form**– means the form signed by TasmaNet and the Customer for any particular Service.

**Service Unit Rate (SUR)** - the rate for a Charge for TasmaNet to provide a Service to the Customer, as may be specified in the Service Order Form.

**Service Unit Term (SUT)** means the applicable term for a Service as specified in the Service Order Form for that Service.

**Services** – means the list of computer and net based functions provided by TasmaNet to the Customer as specified in Service Order Form.

**Services Schedules** - means the Architecture Services Schedules, Cloud Services Schedule and the Managed & Hosted Services Schedule.

**Term** means the period commencing on the signing of this Agreement and ending on the cancellation of all Services provided hereunder.



## Schedule 1- Architecture Services

This Schedule applies when the parties have agreed a Service Order Form in respect of any Architecture Services.

### 1. Definitions

**Architecture Services** means Enterprise Architecture Services or Solution Architecture Services

**Deliverables** means the deliverables to be provided by TasmaNet as specified in the Service Order Form.

**Enterprise Architecture Services** means services involving the development of a blueprint of the Customer's organisation from a technology perspective, defining the hardware, operating systems, programming, and networking solutions for the organisation as a whole.

**Solutions Architecture Services** means the design of specific information systems or applications to describe a particular solution and the work required to deliver it.

### 2. Architecture Services

- 2.1. The Service Order Form sets out the details of the Architecture Services and any Deliverables to be provided by TasmaNet.
- 2.2. The Service Order Form will also set out the details of any materials and inputs to be provided by the Customer. These materials and inputs must be provided by the Customer by the dates specified in the Service Order Form or, where no dates are specified, upon reasonable request.
- 2.3. TasmaNet will perform the Architecture Services and deliver the Deliverables to the Customer.
- 2.4. TasmaNet aims to meet the scheduled timeframes and delivery dates set out in the Service Order Form but cannot guarantee to do so. The time estimates in the Service Order Form are based on TasmaNet's previous experience, assumptions as to the nature of the internal environment, the availability of our Representatives at the time the Service Order Form was agreed and the timeliness of the Customer's inputs and materials. As a result, any indications given by TasmaNet with respect to the delivery dates are estimates only and may vary.

### 3. Change management

- 3.1. Either party may request changes to the scope of the Architecture Services or the Deliverables.
- 3.2. If the parties agree on the proposed changes then TasmaNet will provide the Customer with a document setting out the impact of the changes on the scope of the Architecture Services (including price, Deliverables and resources).

### 4. Acceptance of Deliverables

- 4.1. The Service Order Form may set out that acceptance testing is required for a Deliverable. If so, the following process will apply for that Deliverable:

- 4.1.1. there will be an acceptance test period of five (5) Business Days from the date TasmaNet delivers the Deliverable to the Customer;
  - 4.1.2. the Customer may carry out acceptance testing during the acceptance test period to make sure that the Deliverable is consistent with the requirements set out in the Service Order Form;
  - 4.1.3. if the Deliverable is consistent with the requirements in the Service Order Form, the Customer must issue TasmaNet with an acceptance notice before the end of the acceptance test period; and
  - 4.1.4. if the Deliverable is not consistent with the requirements in the Service Order Form (a Defect), the Customer must provide TasmaNet with a written defect notice before the end of the acceptance period which provides TasmaNet enough information to enable it to identify the defects and repair that Deliverable. TasmaNet will then re-submit to Deliverable to the Customer and the accepting testing will begin again. To avoid doubt, a minor or cosmetic difference, as defined by the Customer, to the requirements which does not have any substantive effect on the Deliverable will not be regarded as a Defect for the purposes of this clause.
  - 4.1.5. if TasmaNet does not consider a matter raised by the Customer constitutes a Defect, it will notify the Customer. The parties will use all reasonable efforts to resolve a dispute about whether there is a Defect as soon as reasonably practicable, including by escalation to more senior management, under Clause 6 of this Agreement.
- 4.2. Acceptance of a Deliverable occurs on the earliest of:
- 4.2.1. the date the Customer issues a notice of acceptance to TasmaNet;
  - 4.2.2. expiry of the acceptance test period (unless a valid Defect notice has been issued); or
  - 4.2.3. the Customer uses the Deliverable in any way other than for testing purposes.
- 4.3. Acceptance of a Deliverable does not affect any rights the Customer may otherwise have under any law or elsewhere in this Agreement to have defects in a Deliverable corrected.

## **5. No Warranty**

- 5.1. TasmaNet aims to, but cannot guarantee, that each Deliverable will be free from defects or errors.
- 5.2. TasmaNet does not accept responsibility or liability for defects in a Deliverable which result from the Customer's inputs and/or materials or which are caused by misuse of or intentional damage to the Deliverable (other than by TasmaNet).

## **6. Steering Committee**

- 6.1. If it is stated on the Service Order Form that a Steering Committee is to be established, the parties must agree and establish such a committee and a process for the conduct of its business by the date stated in the Service Order Form.
- 6.2. The Steering Committee must consist of each party's nominated project managers or officers. All members of the Steering Committee must be authorised and properly qualified, informed and instructed to enable the Steering Committee to properly assess progress under this Schedule.

6.3. Unless agreed otherwise, the members of the Steering Committee or their authorised delegates must meet weekly at the Customer's offices at an agreed time.

6.4. At least 1 Business Day prior to a Steering Committee meeting, TasmaNet's project manager must submit to the Customer's project manager a report of progress including:

- 6.4.1. details (including dates) of Deliverables commenced, completed or accepted;
- 6.4.2. details of any delays or issues arising from the project, including any known reasons for the delay or issue arising, and plans for the management of such delays and issues;
- 6.4.3. a review of any minutes and actions from the last meeting and any issues log;
- 6.4.4. any new change requests or contract variations (if applicable); and
- 6.4.5. details of the progress of any draft change requests or contract variations (if applicable).

## **7. Intellectual Property Rights**

7.1. TasmaNet retains all Intellectual Property Rights in and to its material which is incorporated into the Deliverables and any material it develops for the Customer in carrying out the Architecture Services.

7.2. Unless otherwise set out in the Service Order Form, TasmaNet grants to the Customer a perpetual, non-exclusive, non-sub-licensable and non-transferable license in Australia to use, adapt and reproduce solely for its internal business purposes the TasmaNet material which is incorporated into a Deliverable and any material TasmaNet develops for the Customer in carrying out the Architecture Services.

7.3. Unless otherwise agreed in the Service order Form, the Architecture Services and any Deliverables are provided for the Customer's benefit only, and the Customer must not use them for a third party's benefit or allow a third party to use them.

## **8. Charges**

8.1. All Charges for the Architecture Services are as set out in the Service Order Form.

8.2. The Charges must be paid in the amounts and at the times set out in the Service Order Form.

8.3. The Customer must also reimburse TasmaNet for out-of-pocket expenses reasonably and actually incurred by it in performing the Architecture Services, provided that TasmaNet:

- 8.3.1. first obtains approval for each expense from the Customer; and
- 8.3.2. produces a valid invoice or receipt when claiming the expense.

8.4. Where the Service Order Form sets out a price for a Deliverable which is not calculated on a time and materials basis, that price is subject to the Customer providing its inputs and materials as required and to the assumptions and dependencies set out in the Service Order Form remaining valid and being fulfilled. Where the quoted price will be impacted as a result of any change to the factors, the Charge may be varied as a result of an agreed change through the change management procedure in clause 3 of this Schedule.

## **9. Confidential Information**

9.1. Each party will treat as Confidential Information all information provided by the other relating to the provision of the Architecture Services including:



- 9.1.1. the Service Order Form; and
- 9.1.2. technical, operational, billing, pricing and commercial information in relation to the supply of the Architecture Services.

## Schedule 2 – Cloud Services

This Schedule applies when the parties have agreed a Services Order Form for Cloud Services. TasmaNet's Cloud Services consist of:

Cloud Service	TasmaNet Inclusions	TasmaNet Responsibility
Foundation	Management of applicable TasmaNet hardware	Availability
Premium	As for Foundation, plus Cloud Software Licences, software patching, monitoring and maintenance	Availability and Maintenance
Premium +	As for Premium, plus service support, integration	Availability, Support and Maintenance

Where the parties have agreed a Cloud Services Form, they must also agree an Architecture Services Form. TasmaNet is not required to deliver any Cloud Services until the Architecture Services have been delivered (unless TasmaNet waives such requirement).

### 1. Definitions

**Cloud Services** means Services provided as Foundation, Premium and or Premium +

**Cloud Software** means the software to be provided as part of PaaS or SaaS, as specified in the Service Order Form.

**Cloud Software Terms** means the end user licence agreements for the relevant Cloud Software, as provided by TasmaNet to the Customer in conjunction with the Service Order Form

**Customer Data** means data or information that is submitted by the Customer into the Cloud Service to be stored or processed and made accessible from the Cloud Service in any form, regardless of the format, location or medium.

**Cutover Date** means the date when TasmaNet advises the Customer that the Customer can commence loading Customer Data into the Cloud Service following the completion of the Transition In Services.

**Deliverables** means the deliverables to be provided by TasmaNet as specified in the Service Order Form.

**Environment** means the entire set of technology components required for the provision of the Cloud Service.

**Permitted User** means such specified persons that the Customer has permitted to use the Cloud Services, including individual end users

**Support Services** means any services specified in the Service Order Form that are additional to or bundled with the Cloud Service and may include, but are not limited to, implementation, user training and ongoing system administration, monitoring and performance management, backup and recovery services.

**Third Party Application** means an application supplied, licensed from or owned by a third party which is used by the Customer

**Transition In Services** means any activities specified in the Service Order Form that are to be undertaken by TasmaNet prior to the Cutover Date that may include data migration, business continuity plans, testing of the Cloud Service (including user acceptance testing), handover arrangements and planning to enable the Customer's operations and Customer Data to be moved to the Cloud Services.

## 2. Service Unit Term

2.1. The Cloud Services are provided for the Service Unit Term as specified in the Service Order Form.

2.2. The Cloud Services may be terminated or suspended in accordance with the Master Terms.

## 3. Cloud Services

3.1. TasmaNet will provide the Cloud Services as specified in the Service Order Form

3.2. In providing the Cloud Services, TasmaNet aims to meet the applicable Service Levels, except to the extent a Service Level Exclusion applies. The Customer acknowledges that the Service Levels are targets only and failure to meet the Service Levels is not a breach of this Agreement (but nothing in this clause limits any right of the Customer to claim any rebate under the Service Level Schedule).

3.3. Any Transition in Services shall be provided by TasmaNet in accordance with the Service Order Form.

3.4. The Customer must pay the Charges for the Cloud Services as set out in the Service Order Form.

## 4. Cloud Software

4.1. Where the Cloud Services include Cloud Software, the Customer acknowledges that the Cloud Software is not owned by TasmaNet and its use by the customer is subject to the Cloud Software Terms.

4.2. TasmaNet is not liable for, and does not warrant or support, the Cloud Software or any other third party products or services, whether or not they are designated by TasmaNet as "certified" or otherwise, except as specified in Service Order Form.

## 5. Acceptance of Deliverables

5.1. The Service Order Form may set out that acceptance testing is required for a Deliverable. If so, the following process will apply for that Deliverable:

5.1.1. there will be an acceptance test period of 5 Business Days from the date TasmaNet delivers the Deliverable to the Customer;

5.1.2. the Customer may carry out acceptance testing during the acceptance test period to make sure that the Deliverable is consistent with the requirements set out in the Service Order Form;

- 5.1.3. if the Deliverable is consistent with the requirements in the Service Order Form, the Customer must issue TasmaNet with an acceptance notice before the end of the acceptance test period; and
- 5.1.4. if the Deliverable is not consistent with the requirements in the Service Order Form (a Defect), the Customer must provide TasmaNet with a written defect notice before the end of the acceptance period which provides TasmaNet enough information to enable it to identify the defects and repair that Deliverable. TasmaNet will then re-submit to Deliverable to the Customer and the accepting testing will begin again. To avoid doubt, a minor or cosmetic difference at the discretion of the Customer to the requirements which does not have any substantive effect on the Deliverable will not be regarded as a Defect for the purposes of this clause.
- 5.1.5. if TasmaNet does not consider a matter raised by the Customer constitutes a Defect, it will notify the Customer. The parties will use all reasonable efforts to resolve a dispute about whether there is a Defect as soon as reasonably practicable, including by escalation to more senior management under Clause 6 of the Master Terms

5.2. Acceptance of a Deliverable occurs on the earliest of:

- 5.2.1. the date the Customer issues a notice of acceptance to TasmaNet;
- 5.2.2. expiry of the acceptance test period (unless a valid Defect notice has been issued); or
- 5.2.3. the Customer uses the Deliverable in any way other than for testing purposes.

5.3. Acceptance of a Deliverable does not affect any rights the Customer may otherwise have under any law or elsewhere in this Agreement to have defects in a Deliverable corrected.

## **6. Customer Use and Access to Cloud Services**

6.1. The Customer agrees that the access rights of any specified Permitted User (for example on a named or password enabled basis) cannot be shared or used by more than one individual, unless the right is reassigned in its entirety to another individual authorised user in which case the first user shall no longer have any right to access the Cloud Service.

6.2. The Customer acknowledges and agrees that the Cloud Services may be provided on a shared service basis to the Customer and other clients of TasmaNet from a common code base and/or common Environment and TasmaNet may from time to time:

- 6.2.1. change add or delete the functions, features, performance, or other characteristics of the Cloud Service, and if such change, addition or deletion is made, the specifications of the Cloud Service shall be amended accordingly; and
  - 6.2.2. correct errors or upgrade the Cloud Service,
- provided that the functionality or availability of the Cloud Service used by the Customer shall not decrease during the Service Unit Term.

6.3. TasmaNet does not guarantee any change, addition, deletion, error correction, patch or new version will be compatible with any application, other software or interface that connects to or interfaces with the Cloud Service that has been made by or on behalf of the Customer unless that change, addition, deletion, error correction, patch or new version has been made by, or recommended by, TasmaNet. .

6.4. The Customer is solely responsible for all Customer Data and it, and its specified Permitted Users, are solely responsible for entering Customer Data into the Cloud Services, maintaining Customer

Data (including backing up and restoring Customer Data) and ensuring that it is accurate and not false, misleading or deceptive nor is it likely to mislead or deceive.

6.5. The Customer will use its best endeavours to prevent viruses or other harmful or malicious code in the Customer Data and that the Customer Data does not infringe any third party's rights.

6.6. The Customer must not:

- 6.6.1. remove, alter or obscure any disclaimer or notice, or any restricted right legend, trademark, copyright or other ownership right legend appearing in the Cloud Service on a screen or any print out from the Cloud Service;
- 6.6.2. copy, adapt, translate, publish, communicate to the public, or create any adaptation, translation, or derivative of the Cloud Service or any user documentation, unless expressly permitted by law;
- 6.6.3. reverse engineer, reverse compile, decompile or disassemble the object code of any part of the Cloud Service or otherwise attempt to derive the source code of the Cloud Service, except to the extent permitted by law; or
- 6.6.4. use or permit the use of the Cloud Service for any purpose that may cause damage or injury to any person or property or breach any law.

## **7. Information ownership**

7.1. TasmaNet does not own or have any interest in or rights to the Customer Data wherever it may be located other than as set out in this Agreement.

7.2. The Customer grants to TasmaNet or to any third party associated with TasmaNet, a non-exclusive, non-transferable licence over the Customer Data for the sole purpose of TasmaNet performing its obligations under this Agreement and enabling the Customer's use of the Cloud Service including handling Customer Data in accordance with the Customer's instructions.

## **8. Termination**

8.1. On termination of the Cloud Services for any reason:

- 8.1.1. all licences granted in this Schedule immediately terminate;
- 8.1.2. other than in respect of Confidential Information which is Customer Data, each party must destroy or return and make no further use of any Confidential Information (and all copies of them) of the other party
- 8.1.3. at the Customer's request made within 30 days of termination, TasmaNet must provide the Customer with access to a copy of all Customer Data in the format specified in the Order Documents or if no format is specified, in the standard format as usually provided by TasmaNet, and then subsequently delete all Customer Data held.

## **9. Foundation Services**

9.1. Additional terms and conditions may be set out in the Service Order Form in relation to Foundation Services.

9.2. Unless otherwise specified in the Service Order Form, the Customer is solely responsible for:

- 9.2.1. configuring, installing, maintaining and obtaining licences to any software, applications or other materials that may be installed, located, hosted or otherwise stored on Foundation Services;
- 9.2.2. ensuring that all content and data stored on or otherwise retained on the Infrastructure as a Service are backed-up and that copies of back-up media are stored securely;
- 9.2.3. restoring data or content from back-up media;
- 9.2.4. implementing and maintaining security measures to protect the data, software, applications or other materials that are installed, located, hosted or otherwise stored in Foundation Services;
- 9.2.5. obtaining all third party consents that are necessary to enable the Customer to store the relevant data and content in Foundation Services; and
- 9.2.6. all use of Foundation Services by any person.

9.3. The Customer must:

- 9.3.1. ensure that all licences obtained by it in relation to software, applications or other materials that are hosted on the Infrastructure as a Service extend to permit TasmaNet (and its sub-contractors) to run, execute or otherwise use each such item for the purposes of providing the Infrastructure as a Service; and
- 9.3.2. comply with the terms of all licences referred to in clause 9.2.1 and 9.3.1.

## **10. Premium Services**

- 10.1. Additional terms and conditions may be set out in the Service Order Form in relation to Premium Services.

## **11. Premium + Services**

- 11.1. Additional terms and conditions may be set out in the Service Order Form in relation to SaaS.

## Schedule 3 – Telco Services

This Schedule applies when the parties have agreed a Services Order Form for Managed & Hosted Services.

### 1. Definitions

**Internet Services** means the provision of access to world wide networks, as specified in the Service Order Form.

**Telco Services** means Data Centre Hosting, Internet Services and Managed Network Services,

**Managed Private Network Services** means the provision of a private network, the connection of multiple local area networks using a private wide area network, as specified in the Service Order Form.

**Data Centre Hosting** means the provision of space in a data centre for the keeping of ICT equipment, some facilities may have additional terms, and these are to be set out in the Service Order form

**Transition In Services** means any activities specified in the Service Order Form that are to be undertaken by TasmaNet prior to commencement of the Managed Services that may include, audit of the Customer's IT environment, deployment of management software and commissioning of a secured management link and any transitional support services required to enable the Managed Services to commence.

### 2. Service Unit Term

2.1. The Telco Services are provided for the Service Unit Term as specified in the Service Order Form.

2.2. The Telco Services may be terminated or suspended in accordance with the Master Terms.

### 3. Additional Terms

3.1. Additional terms and conditions may be set out in the Service Order Form in relation to Telco Services.

## Schedule 4 – Service Levels

### 1. Definitions

**High Availability** means an availability level of 3 or above.

**Resolution Time** is measured from the second that the Service becomes unavailable according to our reporting and automatic notification systems, to the time those systems report the resumption of the Service, provided that:

- (a) where an individual Service Outage occurs outside of a Support Hours Window, the measurement of time for the restoration of that Service Outage commences when the next subsequent Support Hours Window opens (e.g. if a Customer has subscribed for a "Corporate" Support Level and a Service Outage occurs at 1am, the measurement of the Resolution Time does not commence until 8am, when the next Support Hours Window opens); and
- (b) the measurement of time for the restoration of a Service Outage is only to occur within a Support Hours Window (e.g., if a Customer has subscribed for a "Corporate" Support Level and a Service Outage is notified at 5pm, the measurement of time for resolving the Service Outage commences at 5pm, stops at 6pm and recommences at 8am the next following day when Support is provided).

**Services Downtime** means the aggregate of the time recorded against each individual Service for planned and unplanned Services Outages that occur during supported hours.

**Services Outages** means when a Service is not available for any reason, excluding and subject to clause 5.1.3 of the Master Terms.

**Services Resolution Time** means the maximum time permitted for TasmaNet to resolve each incident that affects an individual Service. as set out in the table in clause 2 of this Schedule for the relevant availability level, and subject to the measurement of time in accordance with the definition of Resolution Time

**Support Hours Window** is the daily time period that TasmaNet provides support for service outages for the relevant Support Level.

**Support Level** means the relevant level of Support as set out in the table in clause 3 of this Schedule.

**Service Quality** means the reliability of the delivered service to enable the customer to utilize the service for its intended use.

1.1.



## 2. Service Options

### 2.1 Availability Level Options

TasmaNet measures Services availability as the aggregate of time recorded against each Service for planned and unplanned outages, scheduled and urgent maintenance events that occur at any time, calculated over the SUT, where the Services are unavailable to the Customer.

Level	Uptime (%)	Downtime	
		per annum	per 30 days
1	98.9%	96 Hours	8 Hours
2	99.5%	48 Hours	4 Hours
3	99.85%	13.2 Hours	66 Minutes
4	99.95%	4.4 Hours	22 Minutes
5	99.98%	1.8 Hours	9 Minutes

Uptime is calculated as a percentage using the following formula:

$Uptime = (Total\ Time - Cumulative\ Downtime) / Total\ Time$ , expressed as a percentage

Where:

<b>Uptime:</b>	Actual service availability (calculated as a percentage)
<b>Cumulative Downtime:</b>	The total amount of time of service downtime (measured in minutes)
<b>Total Time:</b>	Total time for the service since the start of the SUT (measured in minutes)

### 2.2 Resolution Time Options

Level	Response Time	Resolution Time
1	4 Hours	24 Hours
2	3 Hours	12 Hours
3	2 Hours	8 Hours
4	30 minutes	2 Hours
5	15 minutes	1 Hour

## 2.3 Support Options

	Basic	Small Business	Corporate	Enterprise	Enterprise +
<b>All Services</b>					
Services Support Hrs	Best Effort	M – F 8am to 6pm	M-F 8am to 6pm	7 days 8am to 6pm	24x7x365
General Service Desk Hrs (IMACDR*)	M – F 8am to 6pm				
*Installs, Moves, Changes, Deletes, Restores					
Prearranged Service Desk Hrs – 7 days' notice required		M – F 6am to Midnight	M – F 6am to Midnight	M – F 6am to Midnight	24 X 7 X 365*
*Excluding Christmas, and New Year's Day					
Once off Request fee for prearranged Services (7+ days notification):		\$950.00 + \$180 p/h	\$450.00 + \$180 p/h	\$350.00 + \$180 p/h	\$250.00 + \$180 p/h
Once off Request fee for prearranged Services (less than 7 days notification):		\$1150.00 + \$180 p/h	\$650.00 + \$180 p/h	\$550.00 + \$180 p/h	\$350.00 + \$180 p/h
Start Work Service Desk Request	Best Effort	Best Effort	2 Business Days	2 Business Days	1 Business Days
Availability:	Level 1	Level 2	Up to Level 4	Up to Level 5	Up to Level 5
NOC Monitored	no	no	Included	Included	Included
Dedicated Account Manager	no	yes	yes	yes	Yes
<b>Network Services</b>					
PRTG Portal	no	no	Included	Included	Included
Assessment & Planning	no	no	Included	Included	Included
Implementation Support	no	no	Included	Included	Included
<b>Data Centre Services</b>					
Included Access Cards (Extra \$50 per card)		2			6
General Access Hours		M – F 8am to 5pm			M – F 8am to 5pm
Pre-Arranged Access hours		M – F 6am to Midnight			24X7X365*
*Excluding Christmas, and New Year's Day					
Emergency Access outside General hours		\$450.00			\$250.00
Access to Build room*		\$350.00 per day			\$150.00 per day
*maximum of 5 days					

## 3. Service Rebates

Service Rebates apply to Services where the agreed Services delivery time or, availability does not meet the agreed standard.

Service Rebates for failure to meet the Service standards are:

Rebate for affected Service(s) – Period 1	Rebate for affected Services – Period 2	Rebate for affected Services – Period 3
Where the Service Downtime standard is exceeded during a	Where the Service Downtime standard is exceeded during a	Where the Service Downtime standard is exceeded during a

monthly billing period, a Service Rebate paid at 10% of the monthly Service charge per hour or part thereof beyond the Service Downtime standard.

second monthly billing period, on the same individual Service, a Service Rebate paid at 30% of the monthly Service charge per hour or part thereof beyond the Service Downtime standard.

third monthly billing period, on the same individual Service, then a Service Rebate of one month's Service charge will apply.

**Notes:**

- Period 1 - the first monthly billing cycle in which Service Downtime standard is exceeded.
- Period 2 - the month billing cycle following Period 1.
- Period 3 - the month billing cycle following Period 2.

The maximum Services Rebate paid within one month is capped at 100% of the Charge per month per affected individual Services.

Additionally, where the Services availability standard has not been met on the same individual Services for two or more consecutive measurement periods, TasmaNet will provide one of the following options:

- A change in service type, where it is available, (using alternative technologies). The alternative service would be provided as equivalent as that of the existing service, or
- Subject to feasibility, the provision of a redundant service.

These options will be provided, at no incremental cost to the Customer, until such time as either the Services is able to meet service availability standards or the contract ends.

## 4. Service Notifications

Service Outage notifications relate to the arrangements for TasmaNet or its suppliers to plan, conduct and manage:

- Routine and urgent maintenance events / Service Outages and to provide advance advice to the Customer; and
- Unplanned Service Outages (like faults, for example) and provision of subsequent advice to the Customer.

The notification of routine and urgent maintenance events will include advice of the planned events, the type of work to be undertaken, the individual Services to be affected, the extent of any maintenance period, the completion of events and the reporting of successfulness of the service outage.

The standards applicable to the provision of advice the Customer about planned service outages are not dependent on what Service Level is selected with regards to the Services. The standards:

- Routine maintenance – at least 2 weeks' notice.
- Urgent maintenance of up to ½ hour duration – at least 4 hours' notice.
- Urgent maintenance of ½ hour to 4 hour duration – at least 24 hours' notice.
- Urgent maintenance of over 4 hour duration – at least 80 hours' notice.

## 5. Service Escalation

Service Escalation means the occasional need for the TasmaNet or the Customer to pro-actively escalate an issue where a delivery or support metric has been exceeded or is likely to be exceeded. Service Escalation requires:

- TasmaNet will escalate outstanding service requests or issues to your nominated contact person within your organisation in accordance with the applicable service escalation matrix shown below.
- TasmaNet will provide half (0.5) hourly reports to the Customer's nominated contact officer for any escalated fault (unless otherwise agreed with the Customer).

### 5.1. TasmaNet Incident Management Escalation Matrix

<b>Escalation Level</b>	<b>Resolution Time exceeded or likely to be exceeded by:</b>	<b>Incident to be escalated to:</b>
<b>1</b>	An amount less than 24 hours	The Customer's IT Manager <i>and</i> TasmaNet's Service Manager for the service being delivered
<b>2</b>	24 hours	The Customer Corporate Services Manager <i>and</i> TasmaNet's Technical Service Manager
<b>3</b>	48 hours or more	The Customer CEO, Agency Secretary or General Manager and the relevant contract managers <i>and</i> TasmaNet's General Manager

When the initial delivery of a service is going to be affected, the following escalation table applies.

### 5.2. Service Delivery Escalation Matrix

<b>Escalation Level</b>	<b>Due Date exceeded or likely to be exceeded by:</b>	<b>Incident to be escalated to:</b>
<b>1</b>	An amount less than 30% beyond the expected delivery time	The Customer's IT Manager <i>and</i> TasmaNet's Service Manager for the service being delivered
<b>2</b>	An amount greater than 30% beyond the expected delivery time	The Customer Corporate Services Manager <i>and</i> TasmaNet's Technical Service Manager
<b>3</b>	Situation where the completion date is unknown.	The Customer CEO, Agency Secretary or General Manager and the relevant contract managers <i>and</i> TasmaNet's General Manager

### 5.3.

## Schedule 5 – Customer Responsibilities

This Schedule applies in respect of all Services as described in Schedules 2 and 3 and ordered by the Customer pursuant to a Services Order Form.

### 7. Customer Responsibilities that are excluded from TasmaNet's Service Level

#### 7.1 Foundation, Premium and Premium + Services

TasmaNet recommends that Customers looking for High Availability have access to multiple IaaS environments with appropriate replication to the Customer's needs.

Customers are responsible for every facet of the operation of the resources provided in the IaaS environment, including:

- configuration of all operating systems and the operational environment;
- operational activity;
- data;
- backup; and
- all aspects of security.

The Customer and its personnel must:

- comply with all reasonable directions from TasmaNet in relation to the use of any servers using IaaS;
- only use resources in the IaaS environment in accordance with all applicable laws; and
- do all things necessary to prevent unauthorized access and use of resources provided in the IaaS environment.

The Customer must not use the IaaS resources:

- for any purpose or activity which is illegal or to promote any such activity;
- to issue, distribute or publish any Data which is obscene, defamatory, threatening or abusive;
- to disrupt or interfere with TasmaNet's business, or Other Users, or their software, hardware or computers, including by the circulation of computer viruses;
- to access without authorisation any other computer accessible via the Virtual Server;
- to store illegal material such as pornography or sex-related products or attempt to sell that material; or
- for any other purpose in TasmaNet's reasonable opinion that would be inappropriate or likely to damage the reputation of TasmaNet or other users.

The Customer must take reasonable steps to ensure that its software, hardware, or network configurations are not used to cause any attack or security breach on TasmaNet's or any other user's software, hardware or network configurations.

#### 7.2 Backup as a Service (BaaS)

When using BaaS:

- Customers must ensure that the contracted backup procedures are in line with their business requirements;
- Customers are responsible for testing that backups are successful;
- Any configuration or setup of backups by TasmaNet is the responsibility of the Customer to check.

#### 7.4 Firewall Services

TasmaNet does not make any recommendation on how the Customer's firewall should be configured. TasmaNet will take direction from the Customer on the requirements of the firewall and manage the firewall accordingly.

#### 7.5 Load Balancing Services

TasmaNet does not make any recommendation on how a Customer's Load Balancer should be configured. TasmaNet will take direction from the Customer on the requirements of the Load Balancer and manage the Load Balancer accordingly.