

# **Standard Form of Agreement**

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TasmaNet Pty Ltd

ABN 61 111 240 978

40-50 INNOVATION DRIVE, DOWSING POINT, TASMANIA 7010

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## Document Modification and Review History

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|         |            |                                        |                |

## 1. About this Agreement

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- 1.1 TasmaNet provides a range of information technology Services, including Managed Services, Broadband Internet and Cloud Services. We agree to supply the Services to you and you agree to accept the Services from us on the terms and conditions set out in this Agreement.
- 1.2 This Agreement consists of:
  - a. any terms stated in the Service Order Form signed by the parties, including:
    - i. the Subscription Term for the Service;
    - ii. the Charges for the Service; and
    - iii. our Acceptable Use Policy.
  - b. the Services Schedule applicable to your Service;
  - c. this Standard Form of Agreement; and
  - d. our Schedule of Charges.
- 1.3 To the extent of any inconsistency between these documents, the order of priority of interpretation is the order of documents listed in clause 1.2 above.

*For example, your Service Order Form may specify a minimum Subscription Term for your Service, or the Service Schedule for your particular Service may specify a cancellation fee applicable to that Service that is calculated differently to the method set out in this Standard Form of Agreement. In each case, the Service Order Form or Service Schedule terms take precedence over this document.*
- 1.4 Our Standard Form of Agreement terms apply to customers who have not signed a Master Services Agreement (MSA) with TasmaNet.
- 1.5 Your use of our Services constitutes your acceptance of these terms.

## 2. The Services

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- 2.1 This Agreement commences on the Commencement Date and continues until terminated in accordance with this Agreement.
- 2.2 We will supply the Service to you at the applicable Service Level (if applicable) (subject to the exclusions specified in the Service Schedule) from the Effective Date of the applicable Subscription Term.
- 2.3 We will use all reasonable endeavours to meet your requested Effective Date for supply of a revised or new Service but we do not represent or warrant that we will deliver the Service by this date (unless agreed otherwise in the Service Order Form).
- 2.4 We are not liable for any delay in provision of the Services due to the actions of another party including delays in obtaining access to any property or premises of yours or third parties necessary for the provision of the Services.

- 2.5 You must reasonably co-operate with us to allow us to supply the Services safely and efficiently, which includes but is not limited to assisting us to liaise with your building management so that we may obtain access to your premises and following our reasonable requests to provide our Personnel with safe and prompt access to your premises and your Personnel, equipment, data and information.
- 2.6 We will ensure that our Personnel comply with your reasonable directions, including security and work, health and safety matters, while on your premises.
- 2.7 Provision of Services may be subject to a physical site survey and safety regulations.

## 3. Quality of Services

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- 3.1 We will provide the Services to you:
  - a. in accordance with the Service Levels (if applicable);
  - b. in accordance with applicable Law; and
  - c. in accordance with the provisions of this Agreement.
- 3.2 We represent and warrant that:
  - a. we have the legal authority to enter into this Agreement;
  - b. we have all necessary rights, interests and approvals necessary to lawfully provide the Services; and
  - c. we have, and our Personnel 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.
- 3.3 You acknowledge that we make 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 we will actively work with you to assist you to resolve any performance issues with any product supplied by a third party.

## 4. Permitted Uses of the Services

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- 4.1 In using the Services, you must comply with all Laws, all directions by a Regulatory Authority and reasonable directions by us.
- 4.2 You must not use, or attempt to use, the Services:
  - a. to break any Law or to infringe another person's rights;
  - b. to expose us 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 us 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.
- 4.3 You acknowledge that we may be required by Law to intercept communications over the Service and may also monitor your usage of the Service and communications sent over the network service.
- 4.4 If we reasonably believe you are engaging in activity that is contrary to this clause 4, we will notify you of such activity and we may without further notice direct you to immediately cease such activity. You must immediately comply with any such direction. If you do not, then we may take any steps reasonably necessary to ensure compliance with the direction (including suspension of the relevant Service).

## 5. Equipment

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### 5.1 Our Equipment

- 5.1.1 To use the Services, you may need to be physically provided with our equipment on your premises. Legal title to such equipment remains solely with us, and you hold such equipment as a bailee of us for the duration of this Agreement.
- 5.1.2 You must take reasonable care of our equipment while it is in your physical possession.
- 5.1.3 You are responsible for the repair or replacement costs of our equipment that is lost, stolen or damaged while in your possession, excepting any fair wear and tear.
- 5.1.4 You must provide access to your premises and facilities as reasonably necessary to enable us to install any equipment on your premises required for the Services.
- 5.1.5 We will advise you in writing of the required space, power supply and environment for our equipment used in connection with the Services and located on your premises. We may uninstall and remove all of our equipment located on your premises at the end of the applicable Services.
- 5.1.6 Subject to clause 5.1.7, we will comply with all of your reasonable directions, and reasonable policies and procedures relating to work, health and safety and security while we are at your premises.
- 5.1.7 TasmaNet reserves the right to invoice you per TasmaNet Personnel who is required to undertake any activities in order to comply with clause 5.1.6 where such activities exceed 1 hour in total per premise, at the hourly rate set out in our Schedule of Charges. You agree to promptly pay such invoiced amounts in accordance with this Agreement.

### 5.2 Your Equipment

- 5.2.1 You must ensure that all equipment you use in connection with the Services, and the way you use that equipment, complies with all Laws, as well as directions by a relevant Regulatory Authority and reasonable directions by us.

- 5.2.2 If your equipment, or its use, does not comply with clause 5.2.1, we may disconnect such equipment from the Services. We will endeavour to provide you notice before disconnection but may do so immediately in an emergency.

## 6. Service Charges

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### 6.1 Charges

- 6.1.1 You must pay all Charges incurred in respect of the Services as specified in the Service Order Form.
- 6.1.2 Charges listed on the Service Order Form under 'One Off Costs', such as installation costs, will be invoiced once we accept your Service Order Form. This may be prior to the commencement of the Subscription Term.
- 6.1.3 If you do not pay an invoice for a Charge by its due date, and unless the Charge is being disputed in good faith in accordance with clause 6.3, we reserve the right to charge you:
- interest at the rate of 3% above the prevailing interest rate charged by our current bank on overdue payments, from the due date until payment is received;
  - all reasonable expenses incurred by us (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 us to your reasonable satisfaction; and
  - an equal amount to recoup any bank or financial institution fees incurred by us because your payment (however made) is not honoured.

### 6.2 Invoices & Payment

- 6.2.1 We will usually invoice you monthly for the Services, plus any applicable GST. However, we may issue an interim invoice for the Services at any time.
- 6.2.2 Invoices will be emailed to your default email address. Invoices can be sent by mail on request. We may apply a Charge for invoices issued by mail.
- 6.2.3 You must pay within fourteen (14) days of the date of the invoice.
- 6.2.4 Unless otherwise agreed in writing by us you must pay the invoice by direct deposit of funds into our nominated bank account.

### 6.3 Disputing an Invoice

- 6.3.1 To dispute an invoice in good faith, you must notify us in accordance with clause 13.7 and the dispute resolution procedure detailed in clause 7 will apply.
- 6.3.2 A Notice must include the detailed reasons for the dispute and must be issued within sixty (60) days of the invoice date. If you fail to notify us by this date, you waive all rights to dispute the invoice.
- 6.3.3 You may withhold only the disputed amounts of the invoice.
- 6.3.4 Where a dispute is determined under clause 7:

- a. in our favour, you must pay us the amount withheld within seven (7) days of such determination; or
  - b. in your favour and you have already paid the disputed amount, we must refund the relevant amount within seven (7) days of such determination.
- 6.3.5 Except for any billing disputes you have with us, if you do not pay your invoice on the due date we reserve the right to:
- a. charge additional fees as detailed in clause 6.1.3; and
  - b. take any additional actions as allowed under this Agreement, including suspension or termination of Services.

## 6.4 GST

- 6.4.1 Unless otherwise expressly noted, all Charges for the Services are exclusive of GST. You will pay to us 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 the Services.
- 6.4.2 We will issue a tax invoice to you for any supply on which GST is imposed.

## 6.5 Discounts, credits and rebates

- 6.5.1 Your Service Order Form will state any discounts or special rate for which you may be eligible. If you are eligible for a rebate, such as a promotional rebate, we will inform you in writing of such an entitlement.

## 7. Complaints

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- 7.1 Complaints will be managed according to the process described in our Complaint Handling Policy, the latest version of which is available on our website [www.tasmanet.com.au/legal](http://www.tasmanet.com.au/legal).
- 7.2 If your complaint is not resolved to your satisfaction, you may refer the complaint to the Telecommunications Industry Ombudsman or the Department of Fair Trading.

## 8. Termination of the Services

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### 8.1 Your rights to cancel the Services

- 8.1.1 You may cancel your Services immediately if:
- a. we are required to cancel the Services to comply with a direction from a law enforcement agency or a Regulatory Authority;
  - b. any one of the Services is unavailable for a period of more than seven (7) consecutive days; or
  - c. an Insolvency Event has occurred with respect to us,
- by issuing us with a notice under clause 13.7, and the notice will be taken to have effect from the earliest point it is received by us in accordance with the methods of receipt described in that provision.

- 8.1.2 If you cancel the Services under clause 8.1.1, there is no penalty or cancellation fee payable.

## **Customer termination for convenience**

- 8.1.3 You may cancel the Services by giving us thirty (30) days' prior written notice.
- 8.1.4 If you cancel the Services under clause 8.1.3, you must pay a cancellation fee. The cancellation fee will be calculated by multiplying the monthly Charges payable by you under this Agreement by the remaining months (or part) of the Subscription Term(s) for the Services cancelled.

## **8.2 Our rights to cancel the Service**

- 8.2.1 We may cancel the Services immediately in the following circumstances:
- a. we are required to cancel the Services to comply with a direction from a law enforcement agency or a Regulatory Authority relating to you;
  - b. you have failed to make a payment by the due date and you fail to make such payment within twenty-one (21) Business Days of receipt of a notice requiring you to do so, except where an amount is permitted to be withheld pursuant to a billing or performance dispute; or
  - c. an Insolvency Event occurs with respect to you.
- 8.2.2 We may cancel the Services by giving you thirty (30) days' written notice if:
- a. the relevant Subscription Term has ended and we do not wish to continue to supply the Services; or
  - b. we are unable to supply the Services to you because of a Force Majeure Event which has occurred and is continuing.

## **8.3 What happens when the Service is cancelled?**

- 8.3.1 Where the Services are cancelled:
- a. you will not be able to use the Services after the Cancellation Date;
  - b. subject to any disputes you have with us, you agree to pay for any Charges for your use of the Services until the Cancellation Date;
  - c. any credits on your account will be applied to pay for any undisputed, outstanding Charges at the Cancellation Date;
  - d. we will refund to you any money that you have paid in advance for that part of the Services that is being cancelled on a pro-rata basis; and
  - e. we will uninstall and collect all of our equipment located on your premises within thirty (30) days and you will provide, or procure the provision of, access to the premises for such removal.

## **8.4 Suspending the Service**

- 8.4.1 We may suspend the Services by giving you prior notice where:
- a. any event specified in clause 8.2.1 has occurred;



- b. we are temporarily unable to supply the Services to you because of a Force Majeure Event; or
  - c. you breach the Acceptable Use Policy.
- 8.4.2 We may only suspend the Services for a period that is reasonable in the circumstances.
- 8.4.3 For the avoidance of doubt, suspension of the Services pursuant to this clause 8.4 does not constitute downtime for the purposes of the Service Schedule and the calculation of any rebates calculated in accordance with this Agreement.

## 8.5 What happens when a Service is suspended?

- 8.5.1 When the Services is suspended:
- a. you will not be able to use the Services; and
  - b. you will be liable to us 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 your control.

## 9. Liability and Indemnity

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### 9.1 Exclusion of implied terms

- 9.1.1 Where legislation implies any condition or warranty into this Agreement, and that condition or warranty may not be excluded, our liability for any breach of such condition or warranty shall be limited, to the extent permitted by Law, at our option to one or more of the resupply of, or payment of the cost of resupplying, the Services.

### 9.2 Limits to our liability

- 9.2.1 To the extent permitted by Law, our total liability to you 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 3 months' fees for the Services.
- 9.2.2 Without limiting the above liability cap:
- a. we are 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. our liability for your loss under or in connection with this Agreement or the Services is reduced to the extent that your acts or omissions or your equipment and applications cause or contribute to that loss.
- 9.2.3 The limitations in this clause 9.2 do not extend to any liability of ours:
- a. which by Law we cannot contract out of;
  - b. which arises out of personal injury or death or property damage; or

- c. which arises as a result of any fraud or wilful misconduct of ours or any of our Personnel.

## 9.3 Indemnity

9.3.1 You must indemnify us against all Loss arising from or in relation to:

- a. a claim against us arising out of the death of or personal injury to our Personnel, to the extent that such Loss is caused by a negligent or wilful act or omission, by you or any of your Personnel;
- b. any equipment, network or other tangible property of ours or any third party, to the extent that such loss is caused by a negligent or wilful act or omission, by you or any of your Personnel;
- c. a claim by a third party against us to the extent that the claim relates to any negligent or wilful act or omission of yours or any of your Personnel in relation to this Agreement.

9.3.2 We must indemnify you against all Loss arising from or in relation to:

- a. a claim against you arising out of the death of or personal injury to your Personnel, to the extent that such Loss is caused by a negligent or wilful act or omission, by us or any of our Personnel;
- b. any of your equipment, network or other tangible property, to the extent that such loss is caused by a negligent or wilful act or omission, by us or any of our Personnel; or
- c. a claim by a third party against you to the extent that the claim relates to any negligent or wilful act or omission of ours or any of our Personnel in relation to this Agreement.

## 9.4 Survival

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

# 10. Confidentiality and Privacy

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## 10.1 Confidentiality

10.1.1 Each party agrees to keep in confidence and not to use or disclose any Confidential Information of the other party.

10.1.2 Subject to clauses 10.1.3 and 10.1.5, neither party will use or disclose the other party's Confidential Information for any purpose, other than to the extent necessary to perform its obligations or exercise its rights under this Agreement (including that TasmaNet may disclose your Confidential Information to its Personnel).

10.1.3 The obligations of confidentiality in this clause 10.1 do not apply to:

- a. the extent disclosure is required by Law or the listing rules of a stock exchange, a direction by government authority or a Regulatory Authority;

- b. disclosure to a party's legal or other professional advisers in relation to this Agreement; or
- c. in the case of TasmaNet:
  - i. disclosure to its third party suppliers in connection with the provision of the Services; or
  - ii. disclosure of this Agreement in whole or in part to a Regulatory Authority.

10.1.4 Each party acknowledges that a breach of this confidentiality clause 10.1 may cause irreparable damage to the other party for which monetary damages would not be an adequate remedy. In addition to other remedies that may be available, either party may seek and obtain injunctive relief against such a breach or threatened or suspected breach by the other party. Each party's obligations under this clause 10.1 survive the expiry or termination (for any reason) of this Agreement. Each party must return the Confidential Information of the other party immediately upon request by the other party.

10.1.5 Nothing in this clause 10.1 will prevent us from disclosing any information to a party undertaking due diligence enquiries in relation to us, provided that party is bound by confidentiality restrictions similar to those set out in this clause 10.1.

## 10.2 Privacy and Personal Information

10.2.1 TasmaNet may collect, use and disclose Personal Information provided by or in respect of you for purposes relating to the supply of a Service under this Agreement, or for purposes that would reasonably be expected as part of the Service. TasmaNet agrees to handle Personal Information obtained in respect of you in accordance with our Privacy Policy and the Privacy Laws.

10.2.2 TasmaNet must not disclose Personal Information provided by you to any person other than its Personnel, its third party suppliers in connection with the provision of the Services or as otherwise permitted by the Privacy Laws or other Laws.

10.2.3 You must comply (and must ensure that your Personnel comply) with all applicable provisions of the Privacy Laws, including giving any notifications and obtaining any consents required under the Privacy Laws for:

- a. you to transmit, disclose or make available the Personal Information to TasmaNet under this Agreement; and
- b. TasmaNet to process, store and disclose (including to Personnel and its suppliers engaged in connection with the supply of the Services to you) the Personal Information as required under this Agreement.

## 10.3 Survival

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

## 11. Intellectual Property

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### 11.1 Your intellectual property

11.1.1 We must not use your Intellectual Property Rights without your prior written consent.

### 11.2 Our intellectual property

11.2.1 You acknowledge that our Intellectual Property Rights remain our sole property and no rights are conferred on you with respect to our Intellectual Property Rights except as specifically expressed in this Agreement.

11.2.2 All Intellectual Property Rights created by us in delivering the Services to you remain the sole property of ours.

### 11.3 Warranty

11.3.1 We warrant that:

- a. the supply of the Services to you does not and will not infringe any Intellectual Property Rights of any third party; and
- b. we are entitled, and will be entitled at all relevant times, to deal with the Intellectual Property Rights as required under this Agreement.

### 11.4 Survival

11.4.1 This clause 11 survives the expiry or termination (for any reason) of this Agreement.

## 12. Variation

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### 12.1 Changing our Agreement

12.1.1 During the term of our Agreement, we may need to change the terms of our Agreement due to circumstances beyond our control, including changes in Law, urgent changes required for security reasons, changes by one of our suppliers of the terms on which they supply services to us or to the functionality or nature of a Service or its underlying technology. We are therefore not always able to provide you with ongoing supply of a Service on the same terms and conditions that existed when we first commenced providing that Service to you.

12.1.2 In addition to changes which we are required to make due to circumstances beyond our control, we may elect to make changes for our own purposes during the term of our Agreement. Any changes we elect to make will take effect for that Service in accordance with clauses 12.2 and 12.3 below.

12.1.3 You acknowledge and agree that in accordance with clauses 12.1.1 and 12.1.2, from time to time the nature of the Services and the terms on which we supply those Services to you may change and that if we elect to change those terms we will give you notice in accordance with clauses 12.2 and 12.3 below.

### 12.2 Your rights if we change the Agreement

- 12.2.1 Subject to the exceptions permitted by clause 12.3, we will give you notice of any changes we propose to make to our Agreement, including the terms of this Agreement, at least 30 days prior to the date on which those changes are to take effect.
- 12.2.2 Subject to the exceptions permitted by clause 12.3, if the changes we propose to make will cause detriment to you, for example, the changes will result in a material increase in the Charges or unreasonably change the characteristics or functionality of the Service we initially supplied to you, then you may immediately cancel the affected Service without incurring any early termination fee or penalty. You may do so by giving us advice in writing to that effect within 14 days of receiving notice from us of the changes (referred to in clause 12.2.1).
- 12.2.3 You acknowledge and agree that if you do not give notice to us within the 14 day period referred to in clause 12.2.2, you are deemed to have accepted our changes from the date those changes are to take effect and that our Agreement, as amended by those changes, will govern the relationship between you and us from that date.

## 12.3 Exceptions

- 12.3.1 You acknowledge and agree that our obligation to give you 30 days' notice of our proposed changes and to afford you a right to terminate our Agreement in accordance with clause 12.2 will not apply in relation to:
- a. urgent changes we are required to make by Law, for security reasons or technical reasons necessary to protect the integrity of our network;
  - b. the introduction of a new fee or an increase in an existing Charge due to an additional tax or levy imposed by Law;
  - c. the introduction of a new fee or an increase in existing administrative fees for ancillary services such as credit card transactions fees and direct debit charges (provided we have offered you a reasonable alternative at the same or lesser cost to the original fee);
  - d. increases in Charges due to increases imposed on us by other suppliers for the following types of Services and Charges:
    - i. international carriage services (including for voice, data and international roaming and SMS services) the current rates for which are available on our website;
    - ii. content and premium services (including 1900 prefix services) which we resell to you from a third party, including where we collect fees from you on behalf of that third party;
    - iii. line rental Charges (however while we may give you a shorter notice period you still have the right to cancel within 14 days of the date of that notice without incurring an early termination fee or penalty if it is a material increase); and
    - iv. software licensing Charges.

Where practicable to do so, we will give you reasonable notice of the changes referred to in this clause 12.3 in accordance with the notice provisions of clause 13.7.

## 13. General

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### 13.1 Costs

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

### 13.2 Assignment

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

### 13.3 Waiver and exercise of rights

13.3.1 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.

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

13.3.3 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.

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

### 13.4 Severability

13.4.1 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.

### 13.5 Entire agreement

13.5.1 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.

### 13.6 Governing law

13.6.1 This Agreement is governed by the laws from time to time in force in Tasmania and the parties submit to the exclusive jurisdiction of the courts of Tasmania and the appeal courts therefrom.

### 13.7 Notices

13.7.1 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; and
- d. if sent by electronic email, if the sender receives no advice that the message was undeliverable.

## 13.8 Interpretation

- 13.8.1 Where words and expressions used in this Agreement are not defined in clause 15 but are otherwise defined in the Telecommunications Act, then such words and expressions will have the meanings given in the Telecommunications Act.
- 13.8.2 A reference to a person includes a reference to a person, firm, corporation or other legal entity.
- 13.8.3 The singular includes the plural and vice versa.
- 13.8.4 Headings are purely for ease of reference and do not form part of or affect the interpretation of this contract.
- 13.8.5 Different grammatical forms of the same word have the corresponding meaning.
- 13.8.6 A reference to a clause is to a clause in this Agreement, unless otherwise stated.
- 13.8.7 References to each party include references to its successors in title, permitted assigns and novatees.
- 13.8.8 Any phrase introduced by the words 'including', 'include', 'in particular', 'for example' or any similar expression must be construed as illustrative only and must not be construed as limiting the generality of any preceding words.

## 13.9 Personal Property Securities Act

- 13.9.1 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 us 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.

## 14. Security

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- 14.1 Our Services are delivered in accordance with the Security Policy, a copy of which is available on request.

- 14.2 As a part of our disaster recovery and business continuity planning, we review and update our 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.
- 14.3 In accordance with the requirements stated in these policies and standards, we will:
- a. undertake annual security audits to ensure our Services are compliant with any relevant Law, policy and standards required by you;
  - 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 you;
  - 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 we deliver.
- 14.4 For security incidents affecting or involving multiple suppliers, whether they be yours or ours, all parties will agree (on an incident by incident basis) who will be responsible for overall incident management co-ordination. We will provide all reasonable cooperation necessary in this regard; and we require that our Customers ensure that the obligations set out in this section apply equally to all suppliers associated with the delivery of any of our Services.

## 15. Definitions

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**Acceptable Use Policy** means the policy issued by us, the latest version of which is available on our website [www.tasmanet.com.au/legal](http://www.tasmanet.com.au/legal).

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

**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.

**Commencement Date** means the date on which we accept (at our sole discretion) your Service Order Form.

**Complaint Handling Policy** means the policy issued by us, the latest version of which is available on our website [www.tasmanet.com.au/legal](http://www.tasmanet.com.au/legal).

**Confidential Information** means information concerning a party that is by its nature confidential or is marked "confidential", and in respect of you, includes but is not limited to, your 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** means a party that contracts with us for a Service, or who otherwise acquires a Service, or who seeks to do either of these.

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

**Effective Date** means the commencement date of the Subscription Term and is the date a Service is commissioned as determined by us.

**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.

**Personal Information** has the meaning given in the *Privacy Act 1988* (Cth).

**Personnel** of a party, means that party's employees, contractors, service providers and/or agents.

**Privacy Laws** means the *Privacy Act 1988* (Cth) and any applicable state or territory law protecting Personal Information.

**Privacy Policy** means the policy issued by us, the latest version of which is available on our website [www.tasmanet.com.au/legal/privacy](http://www.tasmanet.com.au/legal/privacy).

**Regulatory Authority** means the Australian Competition and Consumer Commission, 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.

**Security Management Plan** means our management plan governing how we manage security, as developed under the Security Policy.

**Security Policy** means our Services & Information Security Policy & Standards, a security policy compliant with ISO/IEC 27001-2013, a copy of which is available on request.

**Service Level(s)** means the level of service that we provide to you specified in the Services Schedules that form part of this Agreement and the Service Order Form.

**Service Order Form** means the form signed by us and you for any particular Service.

**Services** means the list of computer and net based functions provided by us to you as specified in a Service Order Form.

**Services Schedules** means the Schedules that form part of this Agreement detailing terms and conditions specific to particular Services.

**Subscription Rate** means the rate for a Charge for us to provide a Service to you, as may be specified in the Service Order Form.

**Subscription Term** means the applicable term for a Service as specified in the Service Order Form for that Service.

**Telecommunications Act** means the *Telecommunications Act 1997* (Cth) and associated Acts, regulations and determinations, each as amended from time to time.