

Deed of Variation  
**CILA**

**The Crown in Right of Tasmania**

**and**

**Tasmanian Networks Pty Ltd**

Ref PvR:JP:180165

Doc ID 223360253/v1

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# Deed of Variation

Date

13 March 2015

Parties

**The Crown in Right of Tasmania**

represented by the Department of Police and Emergency Management,  
47 Liverpool Street, Hobart, Tasmania

(the Crown)

**Tasmanian Networks Pty Ltd**

ACN 167 357 299 of 1-7 Maria Street, Lenah Valley, Tasmania

(TN)

Recitals

- A. Pursuant to an agreement between the Crown and Transend commencing on 1 July 2009, the Crown obtained a licence from Transend to install and use some of Transend's radio communications infrastructure at various sites around Tasmania where Transend had interests in the land (CILA).
- B. The parties have previously varied the CILA on a number of occasions, most recently on 16 June 2011.
- C. Pursuant to sections 19 and 20 of the Electricity Reform Act 2012 (Tas) and the notice published in the Tasmanian Government Gazette on 25 June 2014, the CILA was transferred from Transend to TN, whereby TN replaced Transend as the party contracting with the Crown.
- D. The parties have determined to further modify, vary, amend and add to the terms of the CILA according to the terms of this Deed of Variation.
- E. The parties, by execution of this Deed of Variation, confirm and consent to the modification, variation, amendment and addition to the CILA as set out in this Deed of Variation.

This deed witnesses that in consideration of, among other things, the mutual promises contained in this deed the parties agree as follows:

## 1 Definitions and interpretation

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### 1.1 Definitions

Capitalised words that are defined in the Original Document and are not otherwise defined in this deed have the meaning as defined in the Original Document.

In this deed:

<b>Business Day</b>	means a day on which banks are open for business in Hobart, Tasmania excluding a Saturday, Sunday or public holiday in that city;
<b>Government Agency</b>	means any government or governmental, administrative, monetary, fiscal or judicial body, department, commission, authority, tribunal, agency or entity in any part of the world and includes any self-regulatory organisation established under statute or any stock exchange;
<b>Transend</b>	means Transend Networks Pty Ltd.
<b>Variation Date</b>	means 1 February 2015.

### 1.2 Interpretation

In this deed unless a contrary intention is expressed:

- (a) headings and italicised, highlighted or bold type do not affect the interpretation of this deed;
- (b) the singular includes the plural and the plural includes the singular;
- (c) a gender includes all other genders;
- (d) other parts of speech and grammatical forms of a word or phrase defined in this deed have a corresponding meaning;
- (e) a reference to a 'person' includes any individual, firm, company, partnership, joint venture, an unincorporated body or association, trust, corporation or other body corporate and any Government Agency (whether or not having a separate legal personality);
- (f) a reference to any thing (including any right) includes a part of that thing, but nothing in this clause 1.2(f) implies that performance of part of an obligation constitutes performance of the obligation;

- (g) a reference to a clause, party, annexure, exhibit or schedule is a reference to a clause of, and a party, annexure, exhibit and schedule to, this deed and a reference to this deed includes any clause, annexure, exhibit and schedule;
- (h) a reference to a document (excluding this deed) includes all amendments or supplements to, or replacements or novations of, that document;
- (i) a reference to a party to any document includes that party's successors and permitted assigns;
- (j) a reference to time is to Hobart, Tasmania local time;
- (k) a provision of this deed may not be construed adversely to a party solely on the ground that the party was responsible for the preparation of this deed or the preparation or proposal of that provision;
- (l) specifying anything in this deed after the words 'include', 'including', 'for example', 'such as' or any form of those words or similar expression in this deed do not limit what else is included and must be construed as if they are followed by the words 'without limitation', unless there is express wording to the contrary;
- (m) a reference to a day is to the period of time commencing at midnight and ending 24 hours later;
- (n) if a period of time is specified and dates from a day or the day of an act, event or circumstance, that period is to be determined exclusive of that day;
- (o) if an act or event must occur or be performed on or by a specified day and occurs or is performed after 5:00pm on that day, it is taken to have occurred or been done on the next day; and
- (p) a reference to '\$', 'A\$', 'dollars' or 'Dollars' is a reference to the lawful currency of Australia.

### 1.3 Business Day

If anything under this deed is required to be done by or on a day that is not a Business Day that thing must be done by or on the next Business Day.

## 2 Variation

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- 2.1 The parties have agreed to vary the CILA by changing all references to "Transend" to "TN" in the CILA.
- 2.2 The parties have agreed to vary the CILA by replacing the current Annexure C of the CILA with the Annexure C detailed in Schedule 1 to this Deed.
- 2.3 The variations to the CILA take effect from the Variation Date.

## 3 Consent

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The parties, as evidenced by execution of this Deed hereby consent to the variations to the CILA as provided for in clause 2 and Schedule 1 hereof.

## 4 Confirmation

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- 4.1 The parties hereby confirm that in all other respects the provisions of the CILA including any previously made additions or variations where applicable and as varied by this Deed shall and do remain in full force and effect.
- 4.2 Nothing contained in or implied by this deed abrogates, prejudices, diminishes or otherwise adversely affects any rights, remedies, obligations or liabilities of any of the parties arising with respect to any act, matter or thing done or effect or otherwise arising before the execution of this deed.

## 5 Inconsistency

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If any of the provisions in this deed is inconsistent with a provision of the CILA, this deed will prevail to the extent of the inconsistency.

## 6 Counterparts

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- 6.1 This Deed may be executed in any number of counterparts, each signed by one or more parties. Each counterpart when so executed is deemed to be an original and all such counterparts taken together constitute one document.
- 6.2 A party that has executed a counterpart of this deed may exchange that counterpart with another party by faxing or emailing it to the other party.

Signing page

Executed as a deed

Signed for and on behalf of The Crown in  
Right of Tasmania in the presence of:

  
\_\_\_\_\_  
Signature of witness

  
\_\_\_\_\_  
Signature

STEPHEN BIGGS  
Full name of witness (print)

TASMANIA POLICE, 17 LIVERPOOL ST  
Address of witness (print) HOBART TAS 7000

Executed by Tasmanian Networks Pty Ltd  
ACN 167 357 299 in accordance with  
section 127(1) of the Corporations Act 2001  
(Cth) by:

  
\_\_\_\_\_  
Signature of Director

**Daniel T Norton**

Full name (print)

  
\_\_\_\_\_  
Signature of Director/Company Secretary

**Phillippa J Bartlett**

Full name (print)

Schedule 1      Annexure C





## **Item 2 - Circuit Licence Fees (including Ethernet circuits)**

### **Price per annum**

- (a) \$1,035,629.45 per annum for 4W E&M circuits (exclusive of GST)
- (b) \$1,300,159.18 per annum for Layer 2 Ethernet circuits. This pricing will be applied following the commissioning of the 15 Mb/s links by TN and acceptance by the Crown for the Leased Premises. This price will increase by CPI on 30/06/2010

NB: All prices subject to CPI change in accordance with Clause 9.2

## **Item 3: Labour Rates**

These rates relate to the services of TN Communications Services technical staff in circumstances involving fault restoration for [REDACTED] or special service requests from the Crown. (Normal TN network fault restoration is covered by the charges levied in Item 1 & 2 of Annexure C).

Should the Crown wish TN Networks to carry out additional special services work the Crown is to provide a scope and TN Networks will forward a quote for the work and await the Crown's approval prior to commencing work.

## **Item 4: [REDACTED]**

See Annexure A, Item 2

## **Item 5: Service Credits**

### **1. Definitions**

In this Item 5, unless the context otherwise requires:

"SC" means the Monthly Service Credit for the relevant Licensed Circuit.

"MSC" means the Monthly service charge for the relevant Licensed Circuit.

"SCM" means the Service Credit Multiple (maximum value 0.1) calculated as follows:

$$\text{SCM} = ((99.95\% - \text{AA}) \text{ rounded to four decimal places}) \times 20 \text{ (rounded up to the second decimal place)}$$

### **2. Formula**

The Service Credit in relation to each Licensed Circuit shall be calculated in accordance with the following formula:

$$SC = MSC \times SCM$$

### 3. Calculation for Ethernet VPN backbone and spur sections

The calculation of Service Credits for Ethernet backbone and spur connections should be calculated as follows. A table of the defined backbone and spur section is detailed in Table 3.

#### Backbone Sections:

Where the backbone services are at fault, the monthly service credit charge shall include the addition of the following two items:

The monthly service charge for the relevant NSC – NSC link or links

The monthly service charge for relevant aggregation sites. Where only one side of the aggregation site is impacted, the monthly service charge shall be 50% of the monthly service charge for that aggregation site,

#### Spur Sections:

Where spurs connections are at fault, the monthly service charge shall equal the monthly service charge for the relevant spurs.

### 4. Examples

**Table 1 - Monthly Service Credit Summary**

Availability Max	Availability Min	Service Credit
100.00%	99.95%	0.00%
99.94%	99.90%	1.00%
99.89%	99.85%	2.00%
99.84%	99.80%	3.00%
99.79%	99.75%	4.00%
99.74%	99.70%	5.00%
99.69%	99.65%	6.00%
99.64%	99.60%	7.00%
99.59%	99.55%	8.00%
99.54%	99.50%	9.00%
99.49%	0.00%	10.00%

**Table 2 – Seconds per Month**

30 Day Month	259200 seconds
31 Day Month	2678400 seconds
28 Day Month	2419200 seconds

**Table 3 - Outage Example Number 1**

A fault occurred on a Layer 2 Ethernet spur link, between the backbone and the site [REDACTED]

Time reported to the TCS Service Centre: 08:30

Fault closed with PCS at 09:15

No planned outages occurred in this month

Outage Time: 45 minutes

Monthly Service Charge for Site A: \$3,237

**Calculation of Available Time**

Fault time in Hours/ Minutes 45 minutes

Fault time in Hours 0.75

Actual Availability =  $(1 - \text{Fault time}) / 720$  0.998958333

Service Credit Calculation 1 =  $(99.95\% - \text{Actual Availability})$  0.9995 -  
0.998958333 =  
0.0005416667

Service Credit Calculation 2 = Service Credit Calculation 1  
rounded to 4 decimal places 0.0005

Service Credit Multiple =  $(\text{Service Credit Calculation 2} \times 20)$  0.0005 \* 20  
=  
0.01

Rounded up to 2 decimal places 0.01

Service Credit = Monthly Service Charge\*

Service Credit Multiple \$3,237 \* 0.01

Service Credit = \$32.37

**Table 4 - Outage Example Number 2**

A fault occurred on a Layer 2 Ethernet backbone link, between the site [REDACTED] and [REDACTED].

Time reported to the TCS Service Centre: 10:00

Fault closed with PCS at 10:30

No planned outages occurred in this month

Outage Time: 30 minutes

Monthly Service Charge for Backbone West: \$10,000

Monthly Service Charge for 50% of [REDACTED]:  
\$2,500

Monthly Service Charge for 50% of [REDACTED]:  
\$2,500

Monthly Service Charge for 50% of [REDACTED]:  
\$2,500

Total Monthly Charge : \$17,500

**Calculation of Available Time**

Fault time in Hours/ Minutes 30 minutes

Fault time in Hours 0.5

Actual Availability =  $(1 - \text{Fault time}) / 720$  0.9993

Service Credit Calculation 1 =  $(99.95\% - \text{Actual Availability})$   $0.9995 - 0.9993 =$   
 $0.0192520775623373$

Service Credit Calculation 2 = Service Credit Calculation 1  
rounded to 4 decimal places 0.02

Service Credit Multiple =  $(\text{Service Credit Calculation 2} \times 20)$   $0.02 \times 20$   
 $=$   
 $0.004$

Rounded up to 2 decimal places 0.01

Service Credit = Monthly Service Charge\*

Service Credit Multiple  $\$17,500 \times 0.01$

Service Credit  $= \$175.00$

## **B. Particulars of Layer 2 Ethernet Service Charges**

Prepayment lump sum    **\$358,113.00 (ex GST)**

Amount to be invoiced to the Crown following the commission of the 15Mb/s links for the Leased Premises.

## **C. Particulars of Leased Premises Charges**

Rental calculated per annum , paid monthly in accordance with Clause 9.

The payment regime under this Agreement will be in accordance with this Appendix C and will follow the methodology set out in this Appendix C Paragraph D "Indicative Payment Regime Summary".

### *Rental formula*

#### **1. [REDACTED] Leased Premises**

- (a) Capital repayment of \$415,000 per annum payable for the first five years of the Lease,

PLUS

- (b) \$610 per square metre per annum, for premises of 158.56 square metres

Total [REDACTED] rental payment for (b) \$96,722 per annum

#### **2. [REDACTED] Leased Premise**

- 4.1 Capital repayment of \$269,000 per annum payable for the first five years of the Lease,

PLUS

- 4.2 Leased Premises rent of \$610 per square metre, x 62.74 square metres, plus

- 4.3 Shared Areas rent, (50% of 46.92 sqm total shared area) x \$610 per square metre, plus

- 4.4 External shared area 34.5 square metres x \$610 per sqm

Total [REDACTED] rental payment for (b). (c) & (d) is \$73,627 per annum

Notes:

Outgoings,

- (a) Included in the Leased Premises Charges are,

- car parking for up to 3 vehicles
  - rates
  - land tax
  - electricity
  - sewerage and water charges
  - office waste collection services (biweekly)
  - security services to the NOCS [REDACTED]
  - ongoing utility costs e.g. generator fuel
  - routine fire system, power supply and air conditioning repair and maintenance.
- (b) Not included in outgoings –other charges arising from the Crown’s use of the Leased Premises, Shared Premises, or additional non-routine services including fire or security incident call out charges, additional waste collection services.
- (c) With regard to the [REDACTED]:
- (i) The Crown is the owner of the bondor hut at the [REDACTED] site, including all equipment fixtures, and fittings inside and located on the bondor hut.
  - (ii) The Crown is the owner of the stone hut at the [REDACTED] site, including all equipment fixtures, and fittings inside and located on the stone hut.
  - (ii) The Crown, as a co-owner, will share costs relating to [REDACTED] site, road and power. TN will continue to charge for tower access with a view to potentially replace the tower. TN will forward the Crown’s share of the Aurora charges from the 1/7/13.
  - (iii) TN will not pass-through Aurora charges for the [REDACTED] Site.
  - (iv) The Crown is the co-owner of the brick hut at the [REDACTED] site, however is the sole owner of all equipment fixtures, and fittings inside and located on the brick hut. No site rental fees are payable under this Agreement for the [REDACTED] site, only those access fees and antenna fees as detailed in Part A, Item 1 of this Annexure C.

Note: The actual Leased Premises area provided is 145.9 square meters, plus Shared Areas of 21.35 square meters, but these figures are not used for rental calculation purposes



## D. Indicative Payment Regime Summary for TMRN Upgraded Service and NSC charges

(this is an estimate only and relies on assumptions of some variables such as completion dates)

### Summary of charges

#### TCS Licensed Area Fees and Circuit Services

(Annex C Item 1) no change in arrangements – invoice issued at end of each month, payable in arrears for period ending last day of month, payable in 30 days. Additional equipment such as racks and antennas mean a small increase in monthly fees

(NB: total amount including Licensed Area fees not yet ascertainable until full equipment requirements known)

#### Rental payment

commences at Handover Date

16 August 2010, First year \$ 96,722 ex GST/ 12 = \$8060.17 per month, then subject to rental review as provided under clause 9.2.

21 May 2010, First year \$73,627 /12 = \$6135.58 per month, then subject to rental review as provided under clause 9.2.

(pro-rata for month of commencement, agreed no CPI on capital)

#### Comms upgrades lump sum repayment

Payable @ commencement of service at 16 August 2010 assumed as 21 Sept 2010 - \$358,113

New circuit charges apply from 21 Sept 2010

(Licensed Area fees are not shown, fees previously were \$207,591pa or \$17,299.25 per month)

Comms circuit charges pre 21 Sept 2010 \$1,035,629.45/12 = \$86,302.45 per month

Post 21 Sept 2010 \$1,300,159.18/12 = \$108,346.60 per month

#### Capital repayments for NCSs

	rent	capital	rent	capital	Circuit fees	Licensed Areas fees	Total
May-10	2,177.12	7,954.30			86,302.45	17,299.25	113,733.12
Jun-10	6,135.58	22,416.67			86,302.45	17,299.25	132,153.95
Jul-10	6,331.92	22,416.67			89,064.13	17,852.83	135,665.55
Aug-10	6,331.92	22,416.67	520.01	17,470.97	89,064.13	17,852.83	153,656.53
Sep-10	6,331.92	22,416.67	8,060.17	33,850.00	89,064.13	17,852.83	177,575.72
Oct-10	6,331.92	22,416.67	8,060.17	33,850.00	89,064.13	17,852.83	177,575.72
Nov-10	6,331.92	22,416.67	8,060.17	33,850.00	111,813.69	17,852.83	200,305.28

NB:

- Figures are ex GST.
- Capital to be repaid per annum,  
 - \$406,220k per annum/12 = \$33,850.00  
 - 269K per annum/12 = \$22,416.67
- Handover date was 16 August 2010 (rental payments commenced from 30 August), 21 May 2010
- Circuit fees and rent displayed are post 1/7/10 CPI change and are increased by 3.2% from original quote.  
 a. A lump sum of \$358,113 is payable on commissioning of 15Mb/s links – Annex C, Part B.
- The model would alter in accordance with the Agreement in additional services are requested, such as those proposed for

(\*\*\*NB: as provided under clause 9.2., CPI applies from 1 July on rental, Licensed Areas and circuit charges, based on March quarter result, so quoted rental and licensed circuits charges would alter on that date)

For the purposes of this summary NSC means the relevant data centre

GST charged on all payments in addition to that shown above

For the avoidance of doubt, the parties confirm that all capital amounts required to be paid by the Crown under this Annexure C were fully repaid by the Crown as at 1 April 2013.

**Deed of Variation**  
**Communication Services Agreement**

**The Crown in Right of Tasmania**

and

**Transend Networks Pty Ltd**

**HWL**  
**EBSWORTH**  
LAWYERS

Level 41  
600 Bourke Street  
MELBOURNE VIC 3000  
DX 564 MELBOURNE  
ABN 37 246 549 189  
Tel: (03) 8633 7500  
Fax: 1300 365 323

[www.hwlebsworth.com.au](http://www.hwlebsworth.com.au)  
Ref: PvR:JP:180165

37725151/v1

**Deed Of Variation****Date**

28/1/2010

**Parties**

The Crown in Right of Tasmania represented by the Department of Police and Emergency Management, 47 Liverpool Street, Hobart, Tasmania

(the Crown)

Transend Networks Pty Ltd ABN 57 082 586 892 of 1-7 Maria Street, Lenah Valley, Tasmania

(Transend)

**Background**

- A. Pursuant to an agreement between the Crown and Transend commencing on 1 July 2009, the Crown obtained a licence from Transend to install and use some of Transend's radio communications infrastructure at various sites around Tasmania where Transend has interests in the land (CILA).
- B. The parties have determined to modify, vary, amend and add to the terms of the CILA according to the terms of this Deed of Variation.
- C. The parties, by execution of this Deed of Variation, confirm and consent to the modification, variation, amendment and addition to the CILA as set out in this Deed of Variation.

**This Deed of Variation Witnesses that:****1. VARIATION**

- 1.1 The parties have agreed to vary the CILA in accordance with the variations contained in the CILA attached in Schedule 1 to this Deed.
- 1.2 The parties agree that from the date of this Deed, the CILA attached at Schedule 1 to this Deed shall contain all rights and obligations of the parties.

**2. NUMBERING**

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The parties agree that the numbering and order of the clauses contained in the CILA shall be subject to the insertion of new clauses as provided for in Schedule 1 hereof, and that at all times, the numbering of the CILA, be read in accordance with all variations.

**3. CONSENT**

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The parties, as evidenced by execution of this Deed of Variation hereby consent to the variation of the CILA as provided for in Schedule 1 hereof.

**4. CONFIRMATION**

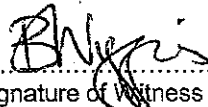
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The parties hereby confirm that in all other respects the provisions of the CILA including any previously made additions or variations where applicable and as varied by this Deed of Variation shall and do remain in full force and effect.

Executed as a Deed

Signed for and on behalf of the Crown in  
Right of Tasmania by )  
)  
)

.....  
in the presence of

  
.....  
Signature of Witness

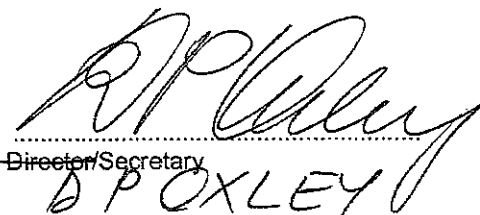
BRIDGET WIGGINS  
.....  
(Print) Name of Witness

  
.....  
MINISTER

Executed by Transend Networks Pty Ltd )  
ABN 57 082 586 892 in accordance with )  
section 127 of the Corporations Act 2001 )  
(Cth):

  
.....  
Director

LEONARD EVANS  
.....  
(Print) Full Name

  
.....  
Director/Secretary  
D P OXLEY  
.....  
(Print) Full Name

# SCHEDULE 1

## Details

<b>Parties</b>	<b>Crown and Transend</b>				
<b>Crown</b>	Name	<b>The Crown in Right of Tasmania ("Crown")</b>			
	Address	47 Liverpool Street Hobart 7000			
	Telephone	(03) 6230 2144			
	Fax	(03) 6230 2143			
	Attention	Ms Emsada Babic, Project Director TMRN Project, Department of Police and Emergency Services			
<b>Transend</b>	Name	<b>Transend</b>	<b>Networks</b>	<b>Pty.</b>	<b>Ltd.</b>
		<b>("Transend")</b>			
	Incorporated in	Tasmania			
	ABN	57 082 586 892			
	Address	1-7 Maria Street, Lenah Valley, Tasmania 7008			
	Telephone	6271 4744			
	Fax	6271 4747			
	Attention	Josh Cunningham, Customer Operations Manager, Transend Communications Services			
<b>Recitals</b>	<b>A</b>	Transend holds interests in land at certain sites around Tasmania that allows for those sites to be made available for the installation and operation of telecommunications infrastructure.			
	<b>B</b>	The Crown operates a Statewide Trunked Mobile Radio Network for mobile radio communications purposes ("TMRN")			
	<b>C</b>	The Crown has installed or wishes to install certain radio communications infrastructure at the Leased Premises and other "Licensed Areas" and also uses, or proposes to use, some of Transend's existing communications infrastructure ("Licensed Circuits") for the purposes of the TMRN.			

- D** The Crown has asked and Transend has agreed to grant it a lease of the Leased Premises and to grant it a licence:
- (a) to construct, install, continue to install, operate, repair, replace, renew, and maintain the radio communications infrastructure and equipment at the Licensed Areas;
  - (b) to use the Licensed Circuits for the purposes of the TMRN; and
  - (c) to enter (including entry by the Crown's employees, contractors and agents) upon the Licensed Areas for the purposes of constructing, installing, maintaining, replacing, repairing, renewing, and operating the TMRN.
  - (d) build infrastructure suitable for use as network switching Centres for the TMRN in [ **Confidential until such time as the TMRN is decommissioned or replaced** ] and [ **Confidential until such time as the TMRN is decommissioned or replaced** ] at Transend's cost. The Crown agrees to lease the Leased Premises from Transend once completed.
- E** Transend has agreed to grant and the Crown has agreed to accept a lease of the Leased Premises and a licence over the Licensed Areas and the Licensed Circuits on the terms of this Agreement.
- F** The Crown has also asked Transend to provide certain performance, maintenance and repair services in relation to the Licensed Circuits.
- G** Transend has agreed to provide the Leased Premises and Licensed Services to the Crown on the terms of this Agreement.

**Date of  
Commencement  
of the  
Agreement** 1 July 2009



# General terms

## 1. Definitions and interpretation

---

### 1.1 Definitions

In this Agreement, unless the context otherwise requires:

**"AA"** means the Actual Availability of the relevant Licensed Circuit during the Month (expressed as a percentage) calculated using the formula described in Item 1 of Annexure B.

**"Access Rights"** has the meaning given to that term in clause 2.1(b).

**"Agent"** means the employees, agents, contractors, visitors and invitees of a Party.

**"Agreement"** means this agreement including all schedules, appendices, annexures and attachments and any variation or replacement of any of it.

**"Authority"** means any government or regulatory department, body, instrumentality, minister, agency or other authority, or any body which is the successor to the administrative responsibilities of such department, body, instrumentality, minister of the Crown, agency or other authority including the *AEMC*, the *AER* and *NEMMCO* (but does not include Transend acting or purporting to act as System Operator).

**"Availability Standard"** means the standard specified in Annexure B, Table 1.

**"Building"** means the building or buildings of which the Leased Premises forms part, including:

- (a) the footprint of land on which the Building is erected;
- (b) land, buildings and structures owned or controlled by Transend in conjunction with the Building, which is or may in the future be erected or altered; and
- (c) Transend's Equipment, and Transend's chattels, plant, property and amenities.

**"Business Day"** means any day except a Saturday, Sunday or public holiday in Hobart.

**"Charges"** are the charges described in Annexure C.

**"Contract Material"** means all material, including documents, information and data stored by any means,

- (a) provided by the Crown; or
- (b) brought, into existence,

for the purposes of performing the Licensed Services, or providing the Leased Premises.

**"CPI"** means the Consumer Price Index for Hobart (all groups) published by the Commonwealth Statistician after the March Quarter result, or any similar index which replaces it.

**"Crown"** means the Crown in Right of Tasmania and includes the Crown's employees, agents and contractors.

**"Crown's Helpdesk Representative"** means the person for the time being holding, occupying or performing the duties of Manager, Police Communications Services or his or her representative (including a contractor) as advised in writing by the Crown.

**"Crown's Representative"** means the person for the time being holding, occupying or performing the duties of the office of

- (a) Project Manager, TMRN Project, Department of Police and Emergency Services, or
- (b) such other person as may be advised in writing from time to time by the Crown.

**"Crown's Facilities"** means all Facilities installed by or belonging to the Crown on the Licensed Areas.

**"Decommissioning"** means to decommission or replace part or all of the TMRN with an alternative form of communications infrastructure or technology.

**"Defects"** means any defect, fault or omission in the Works due to faulty materials or workmanship, but excluding normal wear and tear.

**"Defect Liability Period"** means the period commencing on the Handover Dates and ending 12 months later.

**"Emergency"** means a situation where,

- (a) radio signal interference may result in the Licensed Circuits, or the communications services of another user of the Land, being placed at material risk;
- (b) there is an imminent threat to life or property;
- (c) urgent action is necessary to ensure the continuing operation or reliability of Transend's transmission system, Transend's Facilities, the TMRN or the Crown's Facilities; or
- (d) an emergency, as described in the Manual, occurs or is imminent.

**"EPP"** means an excused performance problem which includes:

- (a) Force Majeure or the failure of third party support services required for the Licensed Services or Leased Premises provided:
  - (i) the third party is not under the control of Transend, or a subcontractor of Transend; or
  - (ii) the performance problem in question was not caused or induced by the acts or omissions of Transend (except where acting in accordance with a lawful direction of an Authority);

- (b) delays or outages to the extent that they were caused or contributed to by the acts or omissions of the Crown or the Crown's Agents;
- (c) the implementation of an agreed outage or Planned Outage;

**"Facilities"** means all buildings, facilities, tower, plant and equipment, structures and works.

**"Fault"** means a defect, error or malfunction of the Licensed Circuits that has an adverse impact on the operation of the TMRN, as determined by the Crown's Helpdesk Representative, acting reasonably, or that Transend otherwise becomes aware of.

**"Force Majeure"** means any event or occurrence or combination of events and/or occurrences which is not within the reasonable control of the Party affected by it and which restricts prevents or delays its performance of any obligation under this Agreement including:

- (a) a war, whether declared or not, hostilities, blockade, revolution, insurrection, riot, public disorder, requisition, confiscation or nationalisation;
- (b) terrorism;
- (c) any industrial or labour dispute which the Party affected can demonstrate:
  - (i) does not only involve the employees or contractors of the Party affected; and
  - (ii) was not caused, contributed to or induced by the acts or omissions of the Party affected;
- (d) radioactive or chemical contamination;
- (e) landslide, fire, flood, earthquake, river drought, storm, lightning, severe and abnormal weather conditions, electro-magnetic radiation, epidemic and quarantine; and
- (f) an act or omission of a person (including an Authority) who is not:
  - (i) under the control of the notifying party; or
  - (ii) a sub-contractor to the notifying party,

and provided the act or omission was not caused, contributed to or induced by the acts or omissions of the Party affected.

**"Handover Dates"** means the dates specified in Item 14 of the Schedule

**"Insolvency Event"** means, in relation to a Party, that the Party has:

- (a) an application presented against it (that is not discharged or withdrawn within 10 Business Days of its presentation), an order made, a resolution passed or a meeting summoned or convened for the purpose of considering a resolution for its winding up;

- (b) any execution or other process of any court or authority issued against or levied upon any of its assets and that execution or process is not discharged or withdrawn within 60 Business Days of the date of issue;
- (c) ceased to pay its debts or suspended payment generally or would cease or threaten to cease to carry on its business or become insolvent or be presumed by a court to be insolvent within the meaning of the *Corporations Act 2001* (Cwlth);
- (d) an administrator, trustee, liquidator, provisional liquidator, receiver, receiver and manager, or controller appointed to it or to all or any part of its assets or undertaking;
- (e) entered into or resolved to enter into an arrangement, composition or compromise with, or assignment for the benefit of its creditors generally or any class of creditors or proceedings are commenced to sanction such an arrangement, composition or compromise other than for the purposes of a bona fide scheme of solvent reconstruction or amalgamation; or
- (f) a meeting of its directors, unitholders or creditors convened, summoned or held for the purpose of considering or agreeing to any resolution for its winding up or administration.

**"Intellectual Property"** means all copyright, patents, registered and unregistered trademarks, registered designs, trade secrets and know-how and all other intellectual property rights resulting from intellectual activity.

**"Labour Rates"** means Transend's standard labour rates, as described in an email dated 24th June 2009 from Josh Cunningham to Ms. Emsada Babic, for the services described in Item 3 of Annexure "C".

**"Land"** means the land more particularly described in Annexure "D".

**"Latent Defects"**, with reference to the Leased Premises or the Building, means any defects which:

- (a) are attributable to defective:
  - (i) preparation or remediation of the land on which the Building is erected;
  - (ii) supervision of the construction or any installation;
  - (iii) design;
  - (iv) workmanship; or
  - (v) materials;
- (b) occurred when the Building was erected or was substantially extended or altered;
- (c) are not reasonably apparent to a competent professional consultant on a proper and detailed inspection of the Leased Premises, the Building and the Land; and
- (d) were not expressly disclosed by Transend to the Crown before entry into this Agreement.

**"Laws"** means all laws, and mandatory industry codes and standards applicable to the provision of the Licensed Services, Leased Premises, the use of the Licensed Areas, the Transend Facilities and the Crown Facilities.

**"Lease"** means the lease (or leases) to be granted to the Crown by this Agreement and includes the relevant Schedules and Annexures to this Agreement.

**"Leased Premises"** means the premises described in Item 4 Annexure D and includes:

- (a) Transend's Equipment; and
- (b) any chattels provided by Transend for the Crown within the Leased Premises at any time during the term of the Lease (that is not the property of the Crown);
- (c) but excludes the Premises Connections.

**"Leasehold Permitted Use"** means the use described in Item 11 of the Schedule.

**"Licensed Areas"** means the areas described and shown on the table and plans attached as Annexure D Items 1, 2 and 3.

**"Licensed Circuits"** means the point to point data communications circuits detailed in Annexure A.

**"Licensed Services"** means the maintenance and repair of the Licensed Circuits and the provision of an appropriate helpdesk in the manner specified in the Agreement.

**"Liquidated Damages"** means the amount payable by Transend to the Crown for failure to meet the Handover Date.

**"Month"** means a full calendar month.

**"Monthly Circuit Charges"** means the monthly charge attributable to a Licensed Circuit in accordance with Transend's standard TMRN schedule of circuit fees as reasonably amended from time to time.

**"MTTR"** means the arithmetic average time taken to repair all Faults (excluding Systemic Faults) during the measurement period being each Month.

**"Operating Licence"** has the meaning given to that term in clause 2.1(a).

**"Party"** in respect of the Agreement means the Crown or Transend.

**"Parties"** in respect of the Agreement means the Crown and Transend.

**"Performance Report"** means the report described in clause 8.1.

**"Performance Standards"** are the standards described in Annexure B.

**"Permitted Use"** means to operate the Crown's Facilities on the Licensed Area for the purposes of the TMRN.

**"Practical Completion"** means the date provided in a certificate of practical completion by the Superintendent when the Superintendent determines,

- (a) the Works are completed except for matters:

- (i) which do not prevent the Works from being reasonably capable of being used for their stated purpose; and
  - (ii) which the Superintendent determines the works contractor has reasonable grounds for not promptly rectifying; and
  - (iii) the rectification of which will not prejudice the convenient use of the works;
- (b) those tests which are required by the construction contract to be carried out and passed before the Works reach practical completion have been carried out and passed; and
- (c) documents and other information required under the construction contract which in the Superintendent's opinion, are essential for the use, operation and maintenance of the Works have been supplied.

**"Premises Connections"** means the equipment, such as pipes, wires, ducting, cable tunnels and other equipment, by which the Premises Utilities are provided to the Leased Premises by Transend for the Crown's use.

**"Premises Utilities"** means electricity, gas, water, sewerage, telephone, telecommunication, and any other utility services provided or available to the Leased Premises.

**"Review Date"** means the dates specified in Item 4 of the Schedule.

**"Service Credit"** means the amounts describe in Item 5 of Annexure C.

**"Shared Areas"** means the areas provided for the use of both Transend and the Crown as identified in yellow on Annexure D Item 4 (b) Table 2.

**"Site"** means any location where assets or infrastructure comprising the Licensed Circuits is located.

**"Spare"** means the spare parts and components required to maintain the Licensed Circuits that are to be supplied by Transend.

**"Standard"** means Standard ANSI/TIA 942 - Telecommunications Infrastructure Standard for Data Centres applicable to a Tier 2 level., but does not include the exceptions described in Annexure B Item 6 (i).

**"Structural Repairs"** means repairs to the structure of the Building, such as the foundations, floors, walls and load bearing columns.

**"Subsequent Term"** has the meaning set out in Item 3 of the Schedule.

**"Superintendent"** means the person described in Item 13 of the Schedule who is to act in the role of an impartial superintendent as if the Works are works being carried out under the Australian Standards construction contract AS4000-1997.

**"Systemic Fault"** is a Fault that is not reasonably capable of rectification by Transend.

**"Term"** means the term of the Agreement set out in clause 10.1 and any Subsequent Term or lawful holding over period.

**"TMRN"** means the equipment and infrastructure associated with the Trunked Mobile Radio Network, operated by the Crown, including physical technology (including base stations, transmitters, receivers, communication system bearers or media, circuits, switching centres, control centres, access to spares and all documentation and drawings) and all associated systems, features and facilities but excluding any equipment and infrastructure owned by Transend and/or others except the Crown.

**"TMRN Digital Upgrade"** means the upgrade of the TMRN being carried out by Ericsson and expected to be finalized on or about 12 March 2012.

**"Transend's Equipment"** means all equipment owned by Transend which are located at or are securely affixed to the Leased Premises including those listed at Item 15 of the Schedule.

**"Transend's Facilities"** means all Facilities belonging to Transend on the Land.

**"Transend's Procedure Manual" or "Manual"** means the totality of the rules issued from time to time by Transend to regulate each Party's use of the Licensed Areas and the Licensed Circuits. The Manual may include any relevant matters between the Parties such as:

- (a) excessive or unusual use;
- (b) the method of reporting Faults;
- (c) the method of rectifying Faults;
- (d) the installation, modification and removal of equipment;
- (e) the rights and obligations of the Parties in the case of an Emergency;
- (f) the granting by Transend of other licences to use the Licensed Circuits and Licensed Areas;
- (g) the future development by Transend of the Licensed Circuits and the Licensed Areas; and
- (h) the variation of any requirements.

An up to-date copy of the Manual will be made available to the Crown free of charge. A further copy will be made available upon the Crown's request free of charge.

**"UPS"** means the equipment relating to the uninterruptible power supply to the Leased Premises for network operations purposes.

**"Works"** means the work required to complete the data centres described in Annexure D Item 4 to this Agreement.

## 1.2 Interpretation

In this Agreement, unless the context otherwise requires:

- (a) a reference to this Agreement includes its schedules, appendices, annexures and attachments, and any variation or replacement of any of it;
- (b) a reference to a statute, ordinance, code or other legislative instrument includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (c) the singular includes the plural and conversely;
- (d) a reference to a gender includes reference to each other gender;
- (e) a reference to a person includes:
  - (i) an individual, a firm, a body corporate, an unincorporated association or a statutory or responsible authority or other authority, as constituted from time to time; and
  - (ii) the person's executors, administrators, successors and permitted assigns;
- (f) an agreement, representation or warranty by, or for, two or more persons binds, or is for their benefit, together and separately;
- (g) a covenant forbidding a person from doing something, also forbids that person from authorising or allowing another person to do it;
- (h) a reference to anything (including an amount) is a reference to all or any part of it, and a reference to a group of persons is a reference to any one or more of them;
- (i) a reference to a clause, paragraph, schedule, annexure or appendix, is a reference to a clause, paragraph, schedule, annexure or appendix in or to it;
- (j) a reference to "writing" includes a reference to printing, typing, lithography, photography and other methods of representing or reproducing words, figures, diagrams and symbols in a tangible and visible form;
- (k) a reference to a day is to be interpreted as the period of time starting at midnight and ending twenty-four (24) hours later;
- (l) a reference to a month or a year means a calendar month or a calendar year respectively;
- (m) words or phrases derived from a defined word have a corresponding meaning to the defined word;
- (n) a term of inclusion is not to be interpreted to be a term of limitation;
- (o) all references to monetary sums are to Australian currency;
- (p) a reference to the payment of money within a specified time, means the full crediting and clearance of any cheque or electronic transfer into the payee's account within that time;
- (q) it operates under Tasmanian time;



- (r) if the day on or by which an act, matter or thing is to be done under it is not a Business Day, then that act, matter or thing must be done no later than the next Business Day;
- (s) an uncertainty or ambiguity in the meaning of a provision is not to be interpreted against a party only because that party prepared the provision; and
- (t) headings are included for convenience only, do not form part of it, and are not to be used in its interpretation.

## **2. Licences, Leases and access**

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### **2.1 Licence to use the Licensed Areas and the Licensed Circuits**

Transend grants to the Crown for the Term:

- (a) a licence to use, install, construct, operate (or continue to operate), repair, replace, renew and maintain the Crown's Facilities and related equipment on the Licensed Areas (the "Operating Licence");
- (b) the right to enter (including entry by the Crown's employees, contractors and agents) the Land to get to and from the Licensed Areas. Transend must provide the Crown with keys to all compounds, towers and buildings (the "Access Rights"); and
- (c) the right to use the Licensed Circuits for the purposes of the TMRN.

### **2.2 Maintenance of access tracks and roads**

Subject to clause 2.3, Transend will properly maintain all access tracks and roads to the Licensed Areas in their present condition as at the date of commencement of this Agreement. Transend will carry out any repair work in a timely and workmanlike manner, as soon as practicable after Transend becomes aware that repair or maintenance work is required.

### **2.3 Costs of maintenance work for access tracks and roads**

Transend is responsible for all costs associated with the maintenance and repair of all access tracks and roads excepting only that the Crown will be responsible for all costs arising from the Crown's use and which are not attributable to fair wear and tear.

### **2.4 Rights and entitlements granted for the Leased Premises**

Transend grants to the Crown for the Term:

- (a) exclusive possession and quiet enjoyment of the Leased Premises excluding the Shared Areas;
- (b) use and enjoyment of Transend's Equipment and the chattels listed in Item 15 of the Schedule;
- (c) a non-exclusive licence to use the Shared Areas and Premises Connections.
- (d) an access licence to the Leased Premises subject to Transend's reasonable substation access requirements.

## 2.5 Approval of Local Council

- (a) Transend warrants that prior to the grant of the rights set out in subclause 2.4 that it has made investigations and satisfied itself regarding all construction obligations, building and planning approvals, rights and restrictions in order to perform the Works to the Leased Premises.
- (b) Transend will lodge applications for building and planning approvals and do all that can reasonably be done to gain approvals sufficient to complete the Leased Premises to the Specifications.
- (c) It is a condition precedent to the grant of the rights set out in subclause 2.4, and payments under subclause 2.6, that;
  - (i) the [ **Confidential until such time as the TMRN is decommissioned or replaced** ] Leased Premises have received final local government planning and building approval on terms satisfactory to the Crown by 28 February 2010.
  - (ii) If the Crown declines to accept a planning or building condition and elects not to commence the Lease, then the Crown must pay to Transend any costs related to the Works and incurred up to the date of the notice, and make such payment within 30 days of receiving an invoice from Transend.
- (d) Transend is not liable for a failure to meet the Specifications where such a failure arises from a planning or building approval condition that has been accepted by the Crown.

## 2.6 Delay

- (a) If Transend fails to complete the Works at a Leased Premises site by the relevant Handover Date, during the first month of delay from the relevant Handover Date it will pay to the Crown as a result of such failure by way of Liquidated Damages \$1,000 per Business Day for the relevant data centre site up to a maximum of \$20,000.
- (b) If Transend fails to complete the Works within the first month following the relevant Handover Date, then, for the [ **Confidential until such time as the TMRN is decommissioned or replaced** ] data centre, from the commencement of the second month of delay from the relevant Handover Date Transend will pay to the Crown as a result of such failure by way of Liquidated Damages one percent per week of the total construction cost of the data centres, being \$2,139,305.00.
- (c) If Transend fails to complete the Works within the first month following the relevant Handover Date, then, for the [ **Confidential until such time as the TMRN is decommissioned or replaced** ] data centre, from the commencement of the second month of delay from the relevant Handover Date, Transend will pay to the Crown as a result of such failure by way of Liquidated Damages, being half of a percent per week of the total construction cost of the data centres, being \$2,139,305.00.
- (d) The total liquidated damages payable to the Crown under clauses 2.6(a), 2.6(b) and 2.6(c) is capped at a maximum of 15% of the total construction cost for the data centres.

(e) Transend acknowledges that:

- (i) the Liquidated Damages under clauses 2.6(a), 2.6(b), 2.6(c) and 2.6(d) represent a genuine pre-estimate of the costs and losses (including financing costs) likely to be incurred by the Crown if the Works are not completed by the relevant Handover Dates;
  - (ii) any such amounts payable are not to be construed as a penalty;
  - (iii) notwithstanding clauses 2.6(a), 2.6(b), 2.6(c) and 2.6(d), Transend shall not be liable for delays due to causes beyond its reasonable control and covered under Force Majeure. Under these circumstances, the Handover Date or performance shall be extended for the period equal to the time actually lost by reason of such Force Majeure event;
- (f) Transend must promptly advise the Crown when it becomes aware of any likely change to the expected Handover Date.

## **2.7 Rights subject to Transend's service obligations**

Provided that there is no derogation from the Crown's right of quiet enjoyment or any disruption to the Crown's operation of its equipment at the Leased Premises, Transend reserves the right to have Premises Utilities and Premises Connections pass through or under the Leased Premises. Transend shall have access to those Premises Connections for the purpose of maintenance, repair or replacement, or to provide additional Premises Connections subject to obtaining the written consent of the Crown which shall not be unreasonably withheld or delayed but which may be given on any conditions that the Crown considers necessary. Transend retains the right to share the use of any Premises Connections with the Crown where this is necessary to carry out the business activities of Transend;

## **2.8 Transend Works at the Leased Premises**

- (a) Prior to the commencement of the Lease, Transend shall complete the Works:
  - (i) at its cost;
  - (ii) after obtaining all necessary approvals and permits, including those from all necessary Authorities;
  - (iii) in a proper and workmanlike manner using good quality new materials;
  - (iv) so that the Works and the Leased Premises are handed over to the Crown on or before the Handover Dates;
  - (v) to the requirements of the Standard; and
- (b) When Transend considers that the Works, or part of the Works will achieve Practical Completion within 2 Business Days, Transend must conduct an assessment of whether the Works, or part of the Works has achieved Practical Completion and permit the Crown to participate in such assessment. Transend must notify the Crown and identify the Works, or the part of the Works that remain to be completed in the notice. On the day that

is 2 days after receipt of such notice the Crown and the Superintendent, or any other person appointed by the Crown, shall attend the assessment of the Works, or part of the Works with Transend, to determine whether Practical Completion has been achieved.

- (c) If the Superintendent determines that Practical Completion of the Works has been achieved by the Handover Date the Superintendent shall issue a written notice to Transend, certifying that the Works, have been accepted by the Superintendent, stating the date of acceptance and listing any minor Defects required to be corrected by Transend during the Defects Liability Period.
- (d) If the Superintendent does not agree that Practical Completion of the Works has been achieved by the Handover Dates then (and without effecting the Crown's rights under clause 2.6) the Superintendent shall provide a written notice to Transend listing the Defects with the Works and where reasonably appropriate list the rectification works to be performed to achieve Practical Completion.
- (e) Once Transend considers that it has rectified the issues set out in sub-clause (d) above it must give the Superintendent 2 Business Days notice for the Superintendent to conduct an inspection of the Works to determine whether the Practical Completion has been achieved. The Superintendent must as soon as reasonably possible after the inspection advise Transend whether the Works have been completed. If the Works are determined by the Superintendent as completed, then sub-clause (f) applies. If the Works are not determined as completed, then this sub-clause (d) will continue to apply until the Works are determined to have reached Practical Completion by the Superintendent. For the avoidance of doubt, the Works are not completed until all of the Works are completed to the satisfaction of the Superintendent.
- (f) Transend must within a reasonable time after receipt of a notice from the Superintendent of any Defects during the Defects Liability Period, rectify in a proper and workmanlike manner all such Defects.
- (g) After the commencement of the Lease, the Crown shall permit Transend access to the Leased Premises for the purpose of rectifying any Defects in accordance with clause 12.11.

## **2.9 Registration of Lease**

Should the Crown determine that it is necessary, the Parties will prepare and finalise a formal lease document for the Lease on the terms of this Agreement, in a form complying with the requirements of the Tasmanian Land Titles Office, so that the Lease can be formally registered.

## **3. Provision of the services and the agreed performance standards of the Licensed Circuits and Leased Premises**

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### **3.1 The Services**

Transend will provide the Licensed Services and Leased Premises to the Crown for the Term.

### **3.2 Performance standards for Licensed Circuits and Leased Premises**

Transend will ensure the Licensed Circuits and Leased Premises operate, at all times during the Term, at the performance levels described in Annexure B.

### **3.3 Transend costs and standard of the Licensed Services**

Transend is responsible for all costs associated with:

- (a) providing the Licensed Services, and
- (b) meeting the performance standards described in clause 3.2,

and will undertake all works as are necessary in a timely and workmanlike manner. Transend undertakes to ensure that the Licensed Services are delivered with due care and skill and to a standard reasonably to be expected of a person both competent and experienced in providing services similar to the Licensed Services, to be provided in accordance with this Agreement.

### **3.4 Transend personnel to be properly qualified**

Transend must ensure that all personnel who are engaged to perform the services hold all the necessary qualifications, licences, permits and authorities that are applicable to the work they are to perform.

### **3.5 Transend to maintain sufficient resources to fulfil its obligations**

Transend must provide, manage and maintain sufficient resources including human resources, equipment, Spares and facilities to enable it to fulfil its obligations under the Agreement and must as and when required by the Crown's Representative provide the Crown with written details of all current resourcing levels.

## **4. Nature of Crown relationship**

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### **4.1 Personal rights only**

Except for the leasehold estate and interest created by the Lease, the rights conferred by virtue of this Agreement are personal rights in contract only and will not create any tenancy or any estate or interest whatsoever in or over the Licensed Area.

### **4.2 No exclusive possession**

Except for the leasehold estate and interest created by the Lease, this Agreement does not confer on the Crown any right of exclusive possession of the Licensed Area.

### **4.3 Denial of relationships**

Nothing contained in this Agreement will constitute the relationship of partnership or employer and employee or principal and agent or joint venturers and it is the express intention of the parties that such relationships are denied.

## **5. Planned Outages**

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### **5.1 Right to schedule outages**

- (a) Despite clause 3, Transend may schedule outages to the Licensed Circuits (Planned Outages).
- (b) Transend will provide the Crown with information about any Planned Outage and the need for the Planned Outage.
- (c) The timing of all Planned Outages must be agreed by the Parties provided that the Crown must not act unreasonably in delaying or withholding its consent.
- (d) The duration of Planned Outages will be excluded from the calculation of the relevant MTTR.
- (e) Transend will promptly reimburse the Crown's reasonable call-out costs where a Transend Planned Outage requires a Crown call-out.

### **5.2 Notification of Planned Outages**

Transend will provide a timetable for Planned Outages of the Licensed Circuits to the Crown at the beginning of each Month. This plan is to give details of the dates, times, period and coverage of all scheduled outages and impacts relating to degraded coverage, grade of service and functionality resulting from those outages. Transend will keep the Crown informed, with not less than 2 Business Days written notice, of any subsequent changes to the plan during the course of any Month.

### **5.3 Crown right to request change to Planned Outages**

The Crown will have the right to request Transend to change the date and/or time of Planned Outages, as described in sub-clause 5.2:

- (a) which have a material adverse impact on the operations or functions of the TMRN; or
- (b) interrupt the provision of required radio services,

and Transend will make all reasonable efforts to accommodate those requests.

### **5.4 Disruption to be minimised**

All work associated with the Planned Outages is to be performed so as to minimize disruption to the Crown's use of the Leased Premises, Licensed Areas, the Licensed Circuits and the operation of the TMRN.

## **6. Fault response**

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### **6.1 Fault Response Standard**

Subject to the terms and conditions of this Agreement, Transend warrants that the Licensed Services will be provided within the specified MTTR during the Term.

## **6.2 Fault Charges**

If a Fault occurs during the Term, Transend must respond and undertake any practicable remedial work at no additional charge.

## **6.3 Crown to notify Transend**

If at any time the Crown believes that there is a Fault, the Crown's Helpdesk Representative must notify Transend of the Fault.

## **6.4 Response Priorities**

Where more than one Fault occurs at any time, the Crown's Representative may prioritise the urgency of each Fault. Unless impracticable to do so, Transend will respond to each Fault in accordance with the Crown's directions.

## **6.5 Commencement of the Licensed Services to be within MTTR's**

Subject to clause 6.4, Transend must rectify the Fault (excluding Systemic Faults) within the relevant MTTRs, whether remotely or by on site diagnosis.

## **6.6 Transend reimbursement if no Fault identified**

Where a call-out is instigated and no Fault is identified Transend will be entitled to claim a reimbursement from the Crown for any costs reasonably incurred by Transend as a result of attending to the call-out.

## **6.7 Fault not capable of rectification by Transend**

To the extent that Transend is unable, despite using its best efforts, to rectify a fault which proves to be a Systemic Fault, or identify the cause of the Fault, Transend must:

- (a) immediately advise the Crown's Representative; and
- (b) continue to work diligently with the Crown to determine the cause of the problem including the provision of all reasonable assistance to any third party appointed by the Crown to rectify the problem.

# **7. Failure to meet Availability Standards**

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## **7.1 Entitlement to Service Credits**

- (a) Subject to clause 7.2, if Transend breaches the Availability Standards in any Month, the Crown shall be entitled to a Service Credit.
- (b) Transend must deduct (in the month following the breach described in Clause 7.1(a)) any Service Credit from the Charges payable by the Crown under this Agreement.

## **7.2 Cap on Service Credits**

The aggregate value of all Service Credits which the Crown is entitled to receive in respect of any Month is limited to:

- (a) ten percent of the total Monthly Circuit Charges for any Licensed Circuit which failed to meet the Availability Standard; or
- (b) five per cent of the total Charges for that Month;

whichever is lesser.

## **7.3 Exclusions from Service Credits**

- (a) Transend shall not be responsible, and the Crown shall not accrue Service Credits, for any failure to meet a Availability Standard in the event that the problem underlying the failure is classified as an EPP provided that Transend gives the Crown notice of the relevant event or circumstance and its impact on a Licensed Service or Licensed Services within a reasonable time, but not later than 5 Business Days, after becoming aware of it.
- (b) Transend must make all reasonable efforts to provide Licensed Services, despite the event of an EPP.

# **8. Performance Report**

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## **8.1 Monthly Performance Report**

Within 10 Business Days of the end of each Month, Transend must prepare and submit a written performance report to the Crown's Representative for inspection.

## **8.2 Contents of Performance Report**

The Performance Report will include the following information:

- (a) a summary of relevant events or departures from normal during the Month,
- (b) a detailed list of Faults and the Licensed Services provided during the Month, including:
  - (i) a description of the Fault, including the component that required maintenance or repair;
  - (ii) the time that the Fault was reported , who reported it; and the Transend representative who recorded the Fault,
  - (iii) Identification details for the circuit causing the Fault,
  - (iv) Details of any Service Credit due following a Fault,
  - (v) Actual Availability ("AA") of the Licensed Circuits,
  - (vi) the actual time taken to repair any Fault that was capable of repair;



- (vii) any delay which is directly attributable to the Crown;
- (viii) a report on the cumulative number of Faults for the Month and year to date;
- (ix) a comparison of the actual time taken to repair Faults that it was reasonably practicable to repair to MTTR,
- (x) copies of any proposed amendments to the Manual that are to be tabled at the next Monthly performance meeting; and
- (xi) notice of any proposed increases to the Charges or the Monthly Circuit Charges that are to be tabled at the next Monthly performance meeting.

### **8.3 Monthly performance meeting**

The Crown and Transend must hold monthly meetings, unless otherwise agreed in writing, to review the Performance Report. These meetings are to be held at an agreed time in each Month, following the receipt by the Crown of the Performance Report for that Month.

## **9. Charges**

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### **9.1 Charges**

The Crown will pay to Transend the Charges on the days specified in Item 8 of the Schedule. If necessary, the first and last payments will be apportioned in respect of time.

### **9.2 Annual Licence Fee Adjustment**

On each Review Date during the Term and any Subsequent Term, the Charges and Labour Rates will be adjusted in accordance with changes in the CPI during the 12 months preceding such rates adjustment, provided that a relevant amended fee shall not be less than the relevant fee for the preceding year.

### **9.3 GST**

- (a) Subject to any other provision of this Agreement expressing a contrary intention, if GST is imposed on a supply made under it, then the Party paying for the supply must pay the amount of the GST to the Party making the supply, at the same time as, and in addition to, the amount payable for the supply.
- (b) A Party making a taxable supply under this Agreement must give the recipient a tax invoice for the taxable supply when that supply is made.
- (c) In this clause "GST" refers to goods and services tax under *A New Tax System (Goods and Services) Act 1999* (Cth) and the terms used have the same meanings as in that Act.

## **10. Term And Option To Renew**

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### **10.1 Term**

The Term of this Agreement is specified in Item 2 of the Schedule.

### **10.2 Option of Renewal**

- (a) Transend will, on the written notice of the Crown given at least 3 Months before the expiration of the Term, and provided the Crown is not then in unremedied default or in the course of remediation of the Agreement, extend the Agreement for a further period of 1 year, on the same terms and conditions as this Agreement.
- (b) If the option referred to in clause 10.2(a) has been exercised, Transend will on the written notice of the Crown given at least 1 Month before the expiration of the first Subsequent Term, and provided the Crown is not then in unremedied default or in the course of remediation of the Agreement, extend the Agreement for a further 1 year, on the same terms and conditions as this Agreement, but not including this option for renewal.

## **11. Transend's Procedure Manual**

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### **11.1 Rules to be promptly developed**

The Crown and Transend agree to use their best endeavours to promptly develop the Manual within 60 days of the commencement of this Agreement. In the event of an inconsistency between this Agreement and the Manual, this Agreement prevails.

### **11.2 Parties required to comply**

The Parties must comply with the Manual.

### **11.3 Prior consultation**

Transend must consult with the Crown's Representative as regards any proposed changes to the Manual.

### **11.4 Changes to the Manual**

All changes to the Manual which would have the effect of imposing an additional fee or charge, or materially diminishing the Licensed Services must be agreed in writing by the Crown's Representative.

## **12. Use of Land**

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### **12.1 Installations and Modifications**

- (a) The Crown must only install or modify equipment on the Licensed Areas in full compliance with the Manual and with Transend's consent.
- (b) For the purposes of Clause 12.1(a), installing or modifying equipment does not include preventative maintenance or fault restoration.

- (c) Transend will permit modifications to the interior of the Leased Premises which are not likely to impact on Transend's electricity or communications network, provided that,
  - (i) Transend is advised of the full details of the proposed work;
  - (ii) A job safety assessment is completed (and provided to Transend) in relation to the works by a qualified person;
  - (iii) the works do not increase fire risks to the Leased Premises;
  - (iv) if structural repairs, or other repairs or modifications to the service connections, are to be made, then a Transend nominated contractor is used for the work;
  - (v) Any electrical equipment to be installed is certified as electrically safe;
  - (vi) Precautions are taken to prevent wiring, pipes, cabling and other infrastructure from being damaged, overloaded, or impaired by the work.

All other installations or modifications must not be carried out without Transend's prior written consent (which must not be unreasonably withheld or delayed).

## **12.2 Compliance with Legislation and Authorities**

The Parties must comply with the Laws and the requirements of all public authorities and other competent authorities, in relation to their use and/or operation of the Licensed Areas, the Leased Premises or the Licensed Circuits.

## **12.3 Permits and licences etc**

- (a) The Crown must obtain and keep current, at its own expense, all permits, approvals, licences and other things required by any authority or body, statutory or otherwise, in relation to the Permitted Use, or its use of the Licensed Areas. If Transend is required to sign any documentation to enable the Crown to obtain or keep current any such permits, approvals or licences, then Transend must sign all such documentation promptly and do all things that the Crown reasonably requires.
- (b) Transend warrants that it has obtained the written consent of all persons having an interest in the Land that is superior to Transend's interest in the Land, to the grant by Transend of the Crown's interest in the Leased Premises, the Licensed Areas and the Access Rights for the purposes set out in this Agreement.

## **12.4 Conduct on the Licensed Areas and the Land**

The Crown:

- (a) must use the Land, Leased Premises and the Licensed Area for the Permitted Use and the Leasehold Permitted Use only;

- (b) must keep the Leased Premises and the Crown's Facilities in good and substantial repair, order and condition (fair wear and tear excepted);
- (c) must maintain the Leased Premises and the Licensed Area and keep them clean, tidy and secure;
- (d) must not use, permit, or suffer any equipment, convenience or structure to be used by it for any purpose other than those for which it was constructed or provided;
- (e) subject to the proper exercise of its rights under this Agreement, must not do or suffer to be done any act or thing that might damage or affect the Building or Land; and
- (f) subject to the proper exercise of its rights under this Agreement, must not engage in any offensive conduct, noise, nuisance or disturbance that will unduly interfere with the use and enjoyment of the Licensed Areas, the Land or adjoining land by other owners or occupiers, and
- (g) Transend agrees that it will not claim ownership of the Crown's Facilities, including those described in Item 3 of Annexure D, and acknowledges that they remain the property of the Crown despite being affixed to the Land.

#### **12.5 Special Leased Premises Equipment Arrangements**

- (a) Transend acknowledges that the Crown's equipment located within the Leased Premises is operated and maintained by or on behalf of the Crown during the term of the Lease and any renewal of the term;
- (b) Transend must take all reasonable steps to prevent any disruption to the Crown's usage of the Leased Premises and agrees that it will not undertake any construction or maintenance works to the Building which could affect the Crown's occupation of the Leased Premises without first consulting with the Crown.

#### **12.6 Special arrangements for power supply**

The Parties agrees that they must not connect any equipment (excluding electrically safe test equipment) to the power supply without the written approval of the other Party (and a Party must not unreasonably withhold its approval). To seek approval a Party must give the other Party at least 5 Business Days notice of its intention to connect such electrical equipment to the UPS. In the case of an emergency the a Party may install additional electrical equipment without first having to notify the other Party, provided they notify the other Party as soon as reasonably practicable after such installation.

#### **12.7 Repair obligations for the Leased Premises**

- (a) Transend must maintain the Building in good structural repair, wind and water tight and in accordance with the Standards.
- (b) Transend is required to carry out Structural Repairs
- (c) Transend is not required to remedy Latent Defects, except:
  - (i) when required for the stability or safety of the Building; or

- (ii) To ensure the use and enjoyment of the Building and the Leased Premises by the Crown.
- (d) Unless the Lease expressly states otherwise, the Crown is not responsible for:
  - (i) Latent Defects;
  - (ii) Structural Repairs, unless the need for repair directly results from:
    - (a) the conduct or negligence of the Crown or of persons for whose conduct the Crown is legally liable; or
    - (b) through the Crown's particular use and occupation of the Leased Premises or the use of Transend's Equipment.

## **12.8 Nature of Lessor's Repairs**

The Lessor may carry out repairs, including maintenance, installations, alterations, replacement or renewal, in respect of the Building, the Leased Premises, Premises Connections situated in or around the Leased Premises, in order:

- (a) to undertake work which the Transend is required or desires to carry out in accordance with this Lease;
- (b) to comply with the requirements of any authority;
- (c) to carry out work in conjunction with or to adjoining premises which cannot be reasonably undertaken without access from or through the Leased Premises;
- (d) to undertake work which the Lessee:
  - (i) failed to carry out, in breach of its obligations under this Lease, or following notice from the Transend;
  - (ii) failed to complete in a workmanlike manner;
- (e) to remove unauthorised work, alterations or signs, undertaken or installed by the Lessee in breach of its obligations under this Lease;
- (f) to restore or rebuild the Leased Premises following damage or destruction.

## **12.9 Crown's additional specific repair obligations**

Unless the need for it is caused or contributed to by the negligence, act, omission or default of Transend, the Crown must carry out the following repair and maintenance to the Leased Premises throughout the Term of the Lease:

- (a) promptly repair or replace all damaged, broken or faulty light globes and fluorescent lights;
- (b) maintain and repair all door and window locks and fittings; and
- (c) repair any damage or breakage to the Leased Premises, to Transend's property in the Leased Premises, and to Premises Connections in the Leased Premises, caused misuse by the Crown or by its employees or agents.

### **12.10 Carrying out repairs**

When carrying out any repair in accordance with this clause, where appropriate the Crown shall ensure that:

- (a) the work is carried out by appropriately licensed and qualified tradespersons;
- (b) the work is carried out promptly;
- (c) the work is completed with good workmanship and with good quality materials;
- (d) fittings and materials of similar style and quality to the items being repaired or replaced are used;
- (e) the required consent or approval of any statutory authority is obtained to carry out the work and the conditions of approval are observed; and
- (f) the work is carried out without creating undue noise, nuisance or interference with the use and enjoyment of adjoining or nearby leased premises.

### **12.11 Right of entry and inspection**

Transend, or persons authorised by Transend, may enter the Leased Premises in the company of the authorised officer of the Crown:

- (a) to inspect the condition of the Leased Premises and Premises Connections;
- (b) to ascertain that the Crown is complying with the Crown's obligations under the Lease;
- (c) for the purpose of carrying out repairs or work; and
- (d) for any other purpose authorised by this Agreement.

Transend may exercise this right of entry:

- (e) at reasonable times during business hours on a Business Day;
- (f) after giving not less than five (5) Business Days prior written notice to the Crown of the intended time of the inspection, except in an emergency when prior notice is not required before entry.

### **12.12 Maintenance of Transend Equipment**

Notwithstanding any other clause of this Agreement, Transend has responsibility to maintain, repair and replace all Transend Equipment during the Term.

## **13. Interference and Emergencies**

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### **13.1 Interference by Crown**

The Parties must comply with the Manual in the event of an Emergency or any occurrence causing an obstruction or interference with Transend's Facilities, the TMRN, the Crown's Facilities or the activities of any other lawful user of the Land or the Licensed Areas.

### **13.2 Equipment which causes interruption to the Crown's Facilities**

- (a) Transend must not, following the execution of this Agreement, knowingly or recklessly grant to any person a lease, licence or permit to occupy or use any part of the Land or the Licensed Areas if that use will interfere with or obstruct the TMRN or the Crown's Facilities.
- (b) The Crown must, if its equipment is regulated by the Australian Communications and Media Authority ("ACMA") ensure that it has obtained prior assurance from the ACMA that any additional equipment or use will comply with the ACMA's licence conditions.

### **13.3 Rectification of Interference**

- (a) If another licensee of Transend's Facilities is interfering with the TMRN or the Crown's Facilities, then the Crown can provide written notice to Transend of the details of the interference ("Interference Notice").
- (b) Upon receipt of the Interference Notice:
  - (i) Transend will, within a reasonable period, provide written notice to the other licensee requesting the relevant licensee test its equipment in order to determine whether it is causing the interference, and
  - (ii) if the other licensee fails to test its equipment within a reasonable period, or it is established that interference is being caused by the other licensee, then Transend will use its best endeavours to immediately stop the interference.

### **13.4 Early termination**

Despite any other provision of this Agreement, if another licensee of Transend's Facilities is causing ongoing interference with the TMRN or Crown's Facilities that cannot be, or has not been, rectified within a reasonable period, then the Crown may terminate this Agreement on 6 months written notice to Transend and will not be liable for any loss or damage suffered by Transend as a result, or liable to make any other payments whatsoever.

## **14. Risk**

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### **14.1 No representations made by Transend as to suitability**

Transend makes no representation or warranty to the Crown that the Land is suitable for the Permitted Use.

### **14.2 Crown to satisfy itself as to condition of Licensed Areas**

The Crown warrants that it has inspected the Licensed Areas and has satisfied itself as to condition and state of repair (including Structural Repair where the context so admits). The Crown has accepted the Licensed Areas and the Land in their current condition.

### **14.3 Crown's acknowledgement**

The Crown acknowledges that:

- (a) Transend is providing access to the Leased Premises and to the Licensed Areas, and for the Licensed Areas such access is only in respect of the Operating Licence and Access Rights.
- (b) Transend is responsible for the continuity or reliability of the Licensed Circuits, or the services operated from the Leased Premises, only to the extent explicitly provided for in the Performance Standards.
- (c) Upon termination or earlier expiration of this Agreement, no compensation will be payable for loss or damage in respect of any improvement whatsoever effected by the Crown.

## **15. Liability**

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### **15.1 Unlimited Liability**

The liability of a Party under this Agreement in respect of the following occurrences will be unlimited:

- (a) personal injury (including sickness and death);
- (b) loss of, or damage to, tangible property;

### **15.2 Limited Liability**

Subject to clauses 15.1 and 15.3, the liability of a Party under this Agreement, in respect of each occurrence, will be limited to an amount of \$5 million.

### **15.3 Consequential loss**

A party's liability does not include liability for Consequential Loss.

### **15.4 Occurrence**

In clause 15 "occurrence" means either a single occurrence, or a series of occurrences if these are linked or occur in connection with one another from one original cause, as the case may be.

### **15.5 Reduction of Liability**

- (a) The liability of a Party for any loss or damage sustained by the other Party will be reduced to the extent that any wrongful (including negligent) act or omission of the other Party contributed to the loss or damage.
- (b) The liability of a Party in respect of an occurrence for which it has paid any rebate or service credit under any scheme provided for in the Agreement will be reduced by the amount of any rebate or service credit paid to the other Party.



### **15.6 Exclusion of liability in Emergency**

Transend will not be liable for any loss or damage to the extent that it has been caused by it suspending the operation of the Licensed Circuits, Leased Premises or the provision of the Licensed Services in an Emergency provided:

- (a) the situation was not caused by the wrongful or negligent acts or omissions of Transend or its Agent;
- (b) Transend has substantially and materially complied with the Manual as regards how to deal with the situation; and
- (c) the recommencement after the Emergency of the operation of the Licensed Circuits, Leased Premises, or the Licensed Services is not unreasonably delayed by Transend.

### **15.7 Consequential Loss**

In this clause 15, "Consequential Loss" means loss recoverable at law (other than loss arising in the usual course of things) which is:

- (a) consequential upon other loss;
- (b) a loss of opportunity or goodwill;
- (c) a loss of profits or other expectation loss;
- (d) a loss of anticipated business or savings;
- (e) a loss of value of property;
- (f) exemplary, punitive or other indirect loss or damage,

and any costs or expenses in respect of a loss of the kind referred to in paragraphs (a) to (f) inclusive.

### **15.8 Indemnity**

- (a) Subject to Clause 15.2, a Party (the "Indemnifying Party") hereby indemnifies the other Party (the "Affected Party") against all losses, expenses or damages which may be incurred in connection with third party claims against the Affected Party, including any claims for litigation or professional costs, which arises in connection with the negligence of the Indemnifying Party, or a breach of this Agreement by the Indemnifying Party.
- (b) Each indemnity of a Party contained in this Agreement is a continuing and separate obligation and remains in full force and effect after the termination of this Agreement.

## **16. Insurance**

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### **16.1 Transend to insure**

Transend must hold and keep current throughout the Term, contracts of insurance with a reputable insurer lawfully carrying on insurance business in Australia in relation to:

(a) Transend's liability for:

- (i) personal injury to, or death of, any person; and
- (ii) subject to clause 16.1(a)(iii), either or both loss of, or damage to, the property of the Crown or a third party;

for at least \$20,000,000 for each individual claim or series of claims arising out of a single occurrence, or for such other sum as the Crown's Representative reasonably determines; and

(iii) Electronics & Information Technology Commercial Liability for at least

- (i) \$5,000,000.00 for each individual claim or series of claim arising out of a single occurrence in relation to the failure of electronics and information technology products and services.
- (ii) \$1,000,000.00 for offences in relation to breach of copyright, intellectual property rights, defamation, or breach of privacy.

(b) Transend's liability for workers' compensation.

The liability to be insured against under paragraph (a) is liability arising from, or attributable to, Transend carrying out its duties and responsibilities under this Agreement, to the extent that the injury, death, damage or loss is caused by a wrongful act or omission of Transend or its Agent. A policy of insurance may be subject to such exclusions as are reasonable for a commercial insurance arrangement of that type.

### **16.2 Evidence of insurance**

Upon request, Transend must give the Crown's Representative written confirmation by way of a certificate of currency that each insurance contract referred to in clause 16.1 is current.

### **16.3 Crown may insure**

If Transend fails to hold or renew each insurance contract required under clause 16.1, then without being obliged to do so, the Crown may:

- (a) take out or renew an insurance contract that Transend does not hold or has not renewed; and
- (b) pay any unpaid premium.

Transend must pay to the Crown, on demand, all costs that the Crown incurs to do that, and interest on those costs, at the rate of ten percent per year, from the date of outlay to the date of payment.

#### **16.4 Transend not to prejudice insurance**

Transend must not do anything that may result in insurance under clause 16.1, or any part of it, becoming invalid or unenforceable.

### **17. Force Majeure**

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#### **17.1 Suspension of obligations by either party**

Other than accrued monetary obligations, either Party may suspend the performance or observance of,

- (a) an obligation which is affected by a Force Majeure event, or
- (b) in the event of a failure of service across the network, this Agreement, if a Force Majeure event occurs.

#### **17.2 Notice obligations**

If a Party invokes clause 17.1 it must:

- (a) immediately notify the other Party;
- (b) as soon as practicable thereafter, but not later than 3 Business Days following the date on which the affected Party became aware of an event under clause 17.1, give particulars to the other Party of the event and of the obligations of the affected Party under this Agreement which have been, will be or are likely to be affected by the event; and
- (c) keep the other Party informed, both at reasonable intervals and upon request by the other Party, as soon as practicable following the receipt of that request, of
  - (i) the affected Party's estimate of the likely duration of the event under clause 17.1 and its likely implications on the affected Party's ability to perform its obligations under this Agreement;
  - (ii) the action taken and the action proposed to be taken to mitigate the effect of the event under clause 17.1;
  - (iii) the cessation of that event under clause 17.1 or the successful mitigation or minimisation of the effects of that event; and
  - (iv) any other matter which the other party may reasonably request in connection with the occurrence of the event under clause 17.1.

#### **17.3 Mitigation**

The Party invoking clause 17.1 must:

- (a) as soon as practicable after the occurrence of the event under clause 17.1, use its reasonable endeavours to mitigate the effects of the event under clause 17.1; and
- (b) use its reasonable endeavours to overcome or remove the event under clause 17.1.

#### **17.4 Amendment or termination of Agreement**

- (a) If the event under clause 17.1 continues to prevent a Party from performing or observing its substantial obligations under this Agreement for a prolonged period (which shall not be Less than 30 days) from the date of its occurrence, either Party may upon not less than 10 Business Days but no more than 60 days' notice request that the other Party negotiate in good faith amendments to this Agreement (including any obligations to make any payments under this Agreement) which would remove the aspects of this Agreement affected by the event under clause 17.1, from the operation of this Agreement.
- (b) If the Parties are unable to reach agreement under clause 17.4(a) within 30 days from receipt of the written notice under clause 17.4(a), and the event under clause 17.1 continues substantially to impede the performance of this Agreement, the Party who gave the written notice may terminate this Agreement at any time by issuing further written notice to the other Party.

### **18. Default, termination, right of re-entry**

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#### **18.1 Default and right of re-Entry**

During the Term, either Party may immediately terminate the Agreement by written notice to the other Party if:

- (a) the other Party suffers an Insolvency Event; or
- (b) the other Party commits a breach of any of the provisions of this Agreement and fails to remedy the breach within 20 Business Days from the date on which the Party not in default delivers written particulars of the breach, requiring it to be remedied; or
- (c) the other Party commits a subsequent repeat breach within 30 Business Days of an earlier breach being notified to that Party under sub-clause 18.1(b).

#### **18.2 Decommissioning or withdrawal of TMRN by the Crown**

- (a) Subject to Clause 18.2(c), if the Crown undertakes Decommissioning of all of the TRMN then the Crown will have the right to terminate this Agreement and will not be liable for any loss or damage related to loss of profits suffered by Transend as a result of the Decommissioning.
- (b) Subject to Clause 18.2(c), if the Crown undertakes Decommissioning of part only of the TMRN it will have the right to terminate any relevant part of this Agreement and will not be liable for any loss or damage related to loss of profits suffered by Transend as a result of the Decommissioning PROVIDED THAT the Crown pays Transend within a reasonable time all amounts that would have been payable for the terminated rights or services had they been provided by Transend for the balance of the Term.
- (c) Subject to clause 13.4, upon early termination of the Lease for any reason, the Crown must pay to Transend within a reasonable time all amounts in Annexure C Paragraph B, Annexure C paragraph C 1(a) and Annexure C

paragraph C 2(a) that would have been payable under the Lease had the Leased Premises been provided to the Crown by Transend for the Term.

### **18.3 Change to regulatory requirements**

Subject to Clauses 18.2(b) and 18.2(c), if during the Term:

- (a) there is a change to the law, terms of any licence, consent, approval or exemption given by an applicable Authority which would result in it being unlawful or no longer practicable to continue to provide or accept the Leased Premises or Licensed Services on an ongoing basis; or
- (b) A Party is required to hold or obtain a "carrier licence", or some other form of additional licence, approval or consent under the *Telecommunication Act 1997* (Cth) and cannot obtain that licence,

then the affected Party will have the right to immediately terminate this Agreement by the giving of notice in writing to the other party, and will not be liable for any loss or damage suffered by the other Party as a result.

### **18.4 Survival of Accrued rights**

Termination of this Agreement is without prejudice to:

- (a) any rights which either Party may have accrued as at the date of termination; or
- (b) the right of a Party to recover damages at law or exercise any other legal right where the other Party breached the Agreement.

### **18.5 Crown to vacate**

On termination of this Agreement, for any reason, the Crown will as soon as practicable:

- (a) remove the Crown's Facilities from the Licensed Areas;
- (b) at the request of Transend, repair any damage to the Licensed Areas caused by the Crown's removal of the Crown's Facilities; and
- (c) vacate and deliver up possession of the Licensed Areas in good order and condition, subject to fair, wear and tear, and Transend will not be liable for damages to, or arising from, any improvements effected on the Land.

## **19. Holding over**

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- 19.1 If the Crown occupies a Licensed Area after the expiry of the Term the Crown does so as a monthly licensee on the same terms and conditions as this Agreement. Either Party may terminate this Agreement, during the period of any holding over, by giving to the other Party 20 Business Days notice in writing.
- 19.2 If the Crown occupies the Leased Premises after the expiry of the Term, the Crown does so as a 6 monthly tenant on the same terms and conditions as the Lease.

Either Party may terminate the Lease, during the period of any holding over, by giving to the other Party 90 Business Days notice in writing.

## **20. Destruction of Leased Premises, Licensed Area**

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### **20.1 Damage or Destruction**

If a Leased Premises or Licensed Area, or any part thereof, is destroyed or so damaged as to render it unfit for use and occupation by the Crown for the Permitted Use, then the Rent, Licence Fee, Outgoings and any other money payable under this Agreement by the Crown, or a fair and just proportion thereof according to the extent of the destruction or damage, will be suspended for a reasonable period until the Leased Premises or Licensed Area is reinstated and again rendered fit for such access and use, provided that if the Leased Premises or Licensed Area is in the reasonable opinion of either Party totally or substantially destroyed so as to render the TMRN unusable then either Party may, at any time after such event, terminate this Agreement by giving written notice to the other and this Agreement will end, without prejudice to any accrued rights as at the date of termination.

### **20.2 Reinstatement**

If Transend fails to reinstate the equipment and services it is obligated to provide to the Crown under this Agreement to an affected Leased Premises or Licensed Area within a reasonable period of time after an event referred to in clause 20.1, then the Crown may terminate this Agreement by providing 20 Business Days written notice to Transend.

### **20.3 No liability for loss or damage**

A Party who terminates under this clause 20 will not be liable for any loss or damage suffered by the other Party as a result, or liable to make any other payments whatsoever, except for Charges which have accrued up to the date of termination, provided that the events that are the grounds for the termination were not caused or induced by the wrongful acts or omissions of the Party who terminates.

## **21. Dispute Resolution**

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### **21.1 Notice and dispute meeting**

- (a) Either Party may give to the other Party a written notice ("Dispute Notice") identifying matters in dispute.
- (b) In the event of a dispute, each Party must attempt to resolve the dispute using the escalation procedure specified in the Manual.

### **21.2 Mediation**

If the dispute has not been resolved within 20 Business Days after the Dispute Notice has been given, the Parties may agree to participate in a mediation of the dispute in accordance with the Institute of Arbitrators & Mediators Australia Mediation and Conciliation Rules.

### 21.3 Independent Expert

- (a) If the Parties do not agree within 5 Business Days to commence mediation, or the dispute has not been resolved within 20 Business Days after the termination of mediation, the Parties may agree to refer the dispute to determination by an independent expert.
- (b) Where the Parties agree to refer the dispute to an independent expert the expert determination will be conducted in accordance with the Institute of Arbitrators & Mediators Australia Expert Determination Rules.
- (c) Except for any application for an urgent injunction or declaration, the Parties agree not to issue court proceedings in connection with a dispute while a dispute is being dealt with in accordance with this clause 21.

## **22. Assignment and dealings**

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### **22.1 No assignment**

The Crown must not without the prior written consent of Transend assign, transfer, sub-licence or otherwise deal with any of its rights arising from or relating to this Agreement.

### **22.2 Transend's sale, transfer or surrender of interests in the Land**

If Transend wishes to dispose of, transfer or surrender its interest in the Land or the Buildings, then before doing so, Transend must provide the Crown with not less than 20 Business Days notice of its intention to do so, and must in respect of a disposal or transfer cause the purchaser or transferee to enter into an agreement with the Crown, in a form reasonably satisfactory to the Crown, in which the purchaser or transferee agrees its interest is subject to the Crown's interest, and agrees to comply with the terms of this Agreement as if it had entered into this Agreement with the Crown.

### **22.3 Dealings in the Land by a person with a superior interest to Transend**

If a person, who has an interest in the Land that is superior to Transend's interest, wishes to dispose of or transfer its interest in the Land, then Transend will use its best endeavours to cause the person with a superior interest in the Land and the transferee of that person's interest to enter into a deed with the Crown, and in a form reasonably satisfactory to the Crown, in which the transferee agrees that it will take its interest in the Land, subject to the Crown's interest in the Land and agrees to allow the Crown to continue to use the Licensed Area for the Permitted Use for the Term.

## **23. Confidentiality**

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### **23.1 Parties may disclose contract provisions**

Despite any confidentiality or intellectual property right subsisting in this document or an annexure or attachment to it, a Party may publish, without reference to the other, all or any part of this document, except those parts identified in Annexure F (Exempt Material).

### **23.2 Exempt Material**

The Crown Contracts Confidentiality Standing Committee has determined that the Exempt Material is exempt from the Crown's policy on disclosure of information in Government contracts.

### **23.3 Confidentiality of Exempt Material**

The Parties must maintain confidentiality of the Exempt Material for the period of the exemption, so far as the law allows, except to the extent that:

- (a) a law requires a party to file, record or register something that includes Exempt Material;



- (b) disclosure is necessary or advisable to get a consent, authorisation, approval or licence from a governmental or public body or authority;
- (c) it is necessary or advisable to disclose the Exempt Material to a taxation or fiscal authority;
- (d) it is necessary to disclose the Exempt Material in answer to a question asked of a Minister in the Parliament or otherwise to comply with a Minister's obligations to Parliament;
- (e) the Exempt Material is disclosed confidentially to a Party's professional advisers;
- (f) to get professional advice about this document; or
- (g) to enforce this document; or
- (h) the Parties agree otherwise in writing.

#### **23.4 Parties must not disclose other material**

- (a) Subject to clauses 23.1, 23.2 and 23.3, the Parties must not publicly disclose, or use for a purpose other than this document, or any ancillary agreement, any information or material acquired or produced in connection with, or by performing, this document (Confidential Information), without the other Party's prior written consent, except to the extent that:
  - (i) the Confidential Information is available to the public generally, other than by breach of this Agreement;
  - (ii) a law requires the party to disclose, file, record or register something that includes Confidential Information;
  - (iii) disclosure is necessary or advisable to get a consent, authorisation, approval or licence from a governmental or public body or authority;
  - (iv) it is necessary or advisable to disclose the Confidential Information to a taxation or fiscal authority;
  - (v) the Confidential Information is disclosed confidentially to professional advisers:
    - (i) to get professional advice about this document; or
    - (ii) to enforce this document; or
  - (vi) the Parties agree otherwise in writing.

#### **23.5 Employees and Agents to comply**

The Parties must ensure that their respective employees and agents who have access to Confidential Information are aware of, and comply with, all confidentiality obligations affecting it.

### **23.6 Privacy obligations preserved**

Nothing in this clause derogates From a Party's obligations under the Personal Information *Protection Act 2004* (Tas) or the *Privacy Act 1988* (Cwlth).

## **24. Security Clearance**

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### **24.1 Transend's personnel**

- (a) Transend must use such persons, and ensure that its contractors only use such persons, in respect of the Agreement who have been approved by the Crown under this clause. The Crown's approval under this clause is not to be unreasonably withheld.
- (b) Transend must promptly notify the Crown in writing of the names of all personnel it, or its contractors, are proposing to use to carry out work or perform duties on or near the Crown's Facilities for the TMRN under this Agreement ("Works Personnel"). The notice will specify the type of work each of these persons will be doing and the period during which those works will be done.
- (c) The Crown may require Works Personnel which the Crown deems to not be of good character to undertake, at Transend's cost, a Tasmanian Police security clearance which may include fingerprinting and a requirement for the provision of specified personal and residency details ("Security Clearance").
- (d) If Works Personnel refuse to participate in, or fail a Security Clearance, Transend must, within a reasonable time of a request being made by the Crown, provide replacement Works Personnel at no additional charge.

### **24.2 Change in circumstances**

Transend must advise the Crown promptly in writing of any change in the circumstances of any Works Personnel that is reasonably likely to affect the Crown's assessment of that person as an Approved Person or the type and/or level of clearance given to that person.

### **24.3 Removal of approval of person**

The Crown may withdraw a prior approval of any Works Personnel that the Crown subsequently considers may create a breach of security, put at risk an operation of the Crown or result in a misuse of Confidential Information or Exempt Material.

### **24.4 Crown Facilities**

For the purposes of this Clause 24, the term "near Crown Facilities" does not include Transend employees, contractors and invitees that are carrying out activities near, but not within, the Leased Premises, unless those tasks are likely to interfere with the Crown's occupation of the Leased Premises or its Premises Connections.

## **24.5 Security Plan**

Within 60 days of the commencement of the Works, Transend must develop and provide to the Crown a comprehensive "security plan" for the security of the Leased Premises, Licensed Areas and Licensed Circuits, which is reasonably acceptable to the Crown, which will be signed and initialled by the Parties for the purposes of identification.

### **24.6 The security plan must cover:**

- (a) security access policy;
- (b) incident detection, response and reporting;
- (c) personnel security;
- (d) asset and infrastructure security; and
- (e) data information security.

### **24.7 Application of Security Plan**

The Crown and Transend both acknowledge and agree to be bound by the terms and conditions of the security plan and confirm that each will perform their obligations under this Agreement in accordance with the security plan.

## **25. Transition-Out**

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### **25.1 Transition-out period**

Except where to do so would unreasonably compromise the safe and continuous operation of the Tasmanian electricity transmission system, on the expiry or termination of the Term, Transend will, if requested by the Crown, provide such assistance as is reasonably necessary for the operation of the TMRN to continue without interruption for the period of 3 months after the expiration or termination of this Agreement ("transition-out period") on the same terms in this Agreement and to facilitate the orderly transition to an alternative service provider.

### **25.2 Transfer of relevant rights, assets and data**

To the extent that Transend can reasonably do so without breaching any third party contract or requirement of law, in addition to providing for "transition-out" services pursuant to clause 25.1, Transend, at the request of the Crown, will:

- (a) novate to the Crown any third party agreements or licences;
- (b) sell to the Crown, at fair value, any equipment;
- (c) transfer to the Crown any data; and
- (d) licence to the Crown any software developed by Transend;

which has been used by Transend for the purposes of delivering the Service.

### **25.3 Transfer of relevant rights, assets and data**

Subject to clause 25.1, immediately on the expiry or legally effective termination of the Lease or the Agreement, the Crown agrees to yield up possession and control of the Leased Premises and the Licensed Areas to Transend, in the condition and state of repair as required under this Agreement. The Crown must further,

- (a) remove all its property, including furniture, plant, equipment from the relevant Leased Premises or Licensed Areas within 7 days, at Transend's option, those fixtures which the Crown does not remove may remain permanently affixed to the Leased Premises and will become the property of Transend;
- (b) reinstate the Leased Premises and Licensed Areas to their condition before any alterations, additions, installations and partitions were made or installed by the Crown;
- (c) not cause any damage to the Building or to the Leased Premises while removing its property, must leave the Leased Premises clean and tidy after the removal and is liable for the cost of repair of the damage caused by or during the removal; and

if the Crown fails to comply with the obligations in this clause 25.3 then Transend may cause the removal, reinstatement and repairs to be carried out, and the Crown is responsible for and must reimburse Transend for its reasonable costs and expenses in doing so.

## **26. Contract Material**

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### **26.1 Title to, and property in, Contract Material**

The title to, and property (including all Intellectual Property) in, all Contract Material vests in the Crown upon its creation, but that material must remain readily available to Transend to the extent necessary to enable Transend to perform its duties under this Agreement.

### **26.2 Transend must return Contract Material**

On the expiration or earlier termination of this Agreement, Transend must immediately deliver all Contract Material in its possession or control to the Crown's Representative and if necessary transfer any Intellectual Property forming part of that material to the Crown.

### **26.3 Use of Contract Material restricted**

Transend must ensure that the Contract Material is used, copied supplied or reproduced only for the purposes of this Agreement.

### **26.4 Pre-existing Intellectual Property rights**

The Crown agrees that any pre-existing Intellectual Property right owned by Transend in material used to produce Contract Material is not affected by this Agreement.

## **27. Variation**

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- (a) The Crown may request a variation to the Schedules and Annexures of this Agreement at any time by following the procedure set out in the Manual.

- (b) Subject to Clause 27(a), upon,
  - (i) acceptance of any proposed fees and conditions by the Crown; and
  - (ii) final approval by Transend of the variation to the Agreement,

the Agreement is to be read as a single integrated document incorporating the approved variations to the Schedules and Annexures, subject to any fees or conditions imposed by Transend.

- (c) The Parties agree that communications for the purposes of varying services must be by written notice which may be communicated by email or facsimile.
- (d) Other than the variations to the Agreement in accordance with Clause (a) and (b) above, this Agreement may not be modified or amended except by instrument in writing signed by all the parties hereto.

## **28. Governing law and jurisdiction**

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### **28.1 Law of Tasmania**

The law of Tasmania governs this Agreement, and the Parties submit to the jurisdiction of the Courts of Tasmania.

### **28.2 Proceedings issued under or about this Agreement**

Any proceedings issued against the Parties under, or about, this Agreement, must be instituted either:

- (a) in a Tasmanian court; or
- (b) in the Federal Court, from the Tasmanian Registry of that court.

## **29. General**

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### **29.1 Order of precedence**

In the event of any inconsistency between documents, and for the purposes of interpretation, the documents have the following order of precedence:

- (a) this instrument, excluding the Manual;
- (b) the Manual;
- (c) any attached Transend guidelines, policy and standards documents.

### **29.2 Notices**

- (a) A notice or other communication to be given or made under this Agreement must be in writing and addressed to the recipient party at its address in Item 10 of the Schedule.
- (b) A notice of or other communication is taken to have been duly served:

- (i) in the case of hand delivery – when delivered;
- (ii) if sent by prepaid post – on the third Business Day after the date of posting;
- (iii) if sent by facsimile transmission (if the sending facsimile machine produces a print out of the time, date and uninterrupted transmission record of the sending of the notice) – upon completion of sending if such completion is within ordinary business hours in the place where the recipient's facsimile machine is located, but if not, then at 9:00 am on the next Business day in that place.

### **29.3 Severability**

Any provision of this Agreement which is invalid or unenforceable in any jurisdiction is, if possible, to be read down for the purposes of that jurisdiction so as to be valid and enforceable, and is otherwise severed to the extent of the invalidity or unenforceability, without affecting the remaining provisions of this Agreement or affecting the validity or enforceability of that provision in any other jurisdiction.

### **29.4 Waiver**

No failure to exercise and no delay in exercising any right, power or remedy under this Agreement will operate as a waiver. No single or partial exercise of any right, power or remedy will preclude any other or future exercise of that or any other right, power or remedy.

### **29.5 Entire agreement**

This Agreement constitutes the entire understanding of the Parties on the subject matter and supersedes any and all other representations or statements by either Party or its representatives, whether oral or in writing, made prior to the date of this Agreement.

### **29.6 No third party rights**

Except as specifically provided in this Agreement, the Parties do not intend to create rights in or grant remedies to any third party as a beneficiary of this Agreement and all agreements contained in this Agreement are for the sole and exclusive benefit of the Parties to this Agreement.

### **29.7 Counterparts**

This Agreement may be executed in any number of counterparts. All counterparts together will be taken to constitute one instrument.

**Executed as an Agreement**

**Signing Page**

Dated: 2010

**Signed** for and on behalf of **The** )  
**Crown in Right of Tasmania** by )  
(a duly authorised person) in the ) .....  
presence of:

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Name of witness (block letters)

\_\_\_\_\_  
Address of witness

\_\_\_\_\_  
Occupation

**Executed** by **Transend Networks Pty Ltd** )  
**ACN 082 586 892** in accordance with Section )  
127 of the *Corporations Act* 2001(Cwlth): ) .....  
Director

.....  
Director/Company Secretary

## Schedule

<b>ITEM 1 - COMMENCEMENT DATE</b>	1 July 2009
<b>ITEM 2 - TERM</b>	Eight (8) years, commencing on the Commencement Date.
<b>ITEM 3 - SUBSEQUENT TERM:</b>	<p>The Crown will have the following two options to extend the Term:</p> <ul style="list-style-type: none"><li>(a) for one year from the expiry of the initial Term; and</li><li>(b) if the option referred to in (a) has been exercised, for one further year.</li></ul>
<b>ITEM 4 - REVIEW DATE:</b>	Each 1st of July during the Term.
<b>ITEM 5 - FEE REVIEW ALTERNATIVE:</b>	Not applicable.
<b>ITEM 6 - PERMITTED USE:</b>	To use, install, construct, operate (or continue to operate), repair, replace, renew, maintain the Crown's Facilities on the Licensed Areas for the purposes of extending the range of the TMRN.
<b>ITEM 7 - CHARGES:</b>	See Annexure C.
<b>ITEM 8 - DUE DATE FOR PAYMENT OF CHARGES:</b>	<p>Payment commences from:</p> <ul style="list-style-type: none"><li>(a) For Licensed Areas, the Commencement Date; and</li><li>(b) For Leased Premises, from the date in Item 12 of the Schedule;</li></ul> <p>and is payable within 30 calendar days of the end of each Month during the Term or Subsequent Term.</p>



**ITEM 9 - OUTGOINGS:**

Licensed Areas INCLUDED IN FEE.

For Leased Premises outgoings see description in Paragraph C, Annexure C

**ITEM 10 - ADDRESS FOR NOTICES:**

**Transend's Contact Person:**

Title: Operations Manager  
Transend Communications Services

Address: 6b Lampton Avenue, Derwent Park,  
Tas. 7009

Telephone: (03) 6271 4744

Facsimile: (03) 6271 4747

**Crown's Contact Person:**

Title: Ms Emsada Babic, Project Director

TMRN Project, Department of Police  
and Emergency Services

Address: 47 Liverpool Street, Hobart 7000

Telephone: (03) 6230 2143

Facsimile: (03) 6230 2144

**ITEM 11- LEASEHOLD PERMITTED USE**

the operation of the Crown's Leased Premises within the Leased Premises for the Crown's TMRN

**ITEM 12- COMMENCEMENT OF LEASE**

The Lease shall commence in respect of each Leased Premises site from the earlier of,

- (a) the date of the Superintendent's notice under Clause 2.8 that Practical Completion has been achieved in respect of that Leased Premises site, or
- (b) the date Crown takes possession of the Leased Premises at that site, excluding testing and commissioning permitted by Transend prior to the Handover Date.

**ITEM 13 – SUPERINTENDENT**

Patrick Stanton, or in the event of that person not being available for any reason, another

person agreed by both Parties.

#### ITEM 14 – HANDOVER DATES

Transend is to give notice to the Crown of practical completion of the Works by the following dates,

- (i) [ Confidential until such time as the TMRN is decommissioned or replaced ] 21 May 2010,
- (ii) [ Confidential until such time as the TMRN is decommissioned or replaced ] 16 August 2010.

#### ITEM 15 – TRANSEND EQUIPMENT

- An existing Generator installed at the [ Confidential until such time as the TMRN is decommissioned or replaced ] data centre the use of which is intended to be shared between the Parties
- 2 x AC process coolers
- Gas suppression tank and pipework
- VESDA controller and pipework
- Switchboard (UPS supply)
- [ Confidential until such time as the TMRN is decommissioned or replaced ] generator
- Switchboard (Essential supply)

## **Annexure A**

### **Particulars of Circuits and Equipment Used for Licensed Services**

**[ Confidential until such time as the TMRN is decommissioned or replaced ]**



## Annexure B

### Performance Standards for Licensed Circuits and Ethernet Services

#### Item 1: Circuit Availability Standard Generally

**Table 1 Availability**

CIRCUIT TYPES	SERVICE STANDARD FOR ACTUAL AVAILABILITY	BANDWIDTH
Analogue Circuits (e.g. 4 wire E&M)	99.95% actual availability	64kb/s
Digital Data Circuits (V28/24, G.703)	99.95% actual availability	64kb/s to 2Mb/s
Layer 2 Ethernet	99.95% actual availability	64kb to 15Mb/s

The Actual Availability for each Operational Circuit is calculated in accordance with the following formula:

$$\text{Actual Availability ("AA")} = \frac{\text{Available Time}}{\text{In Service Time}} \times 100$$

*NB: AA is rounded to the nearest two decimal points.*

For the purposes of this Annexure, Available Time is calculated in accordance with the following formula:

$$\text{Available Time} = \text{In Service Time} - \text{Actual Fault Time}$$

Where:

**"In Service Time"** means the total seconds in the month.

**"Actual Fault Time"** means the time period from when a Fault is reported or detected to the time the Fault is fixed (excluding Systemic Faults).

For the purposes of calculating Available Time, the total time of EPP event/s in the relevant Month is included in the calculation of In Service Time.

## Item 2: Fault Response Requirements

### (a) Circuits generally

The following table details the response time targets for operational circuits:

**Table 2 Response and MTTR Targets.**

TELECOMMUNICATIONS SERVICES	ALL HOURS
Response Target (o)	Time of Call Out.
Restoration Target (#)	MTTR of 4 Hours

**Note:**

(o) = Response Target is the time at which the fault is notified

(#) = Restoration Target is the time elapsed from receipt of the fault until when the service is restored to acceptable working order.

## Item 3: Spares at [ Confidential until such time as the TMRN is decommissioned or replaced ]

(The Spares requirements in this Item 3 no longer apply after the completion of the TMRN Digital Upgrade.)

Transend Networks will carry at least one of each of the active component types listed in **Table 3** at our [ Confidential until such time as the TMRN is decommissioned or replaced ] as operational spares. The Crown has responsibility to provide ongoing access to the [ Confidential until such time as the TMRN is decommissioned or replaced ] facility.

**Table 3: Active Component Types**

Component	Part Number	Component Description
SUE	TNX:A4B00002001056	Supervision Unit
CUD	S42024-A1851-D1	Central Unit for Drop-Insert
CPF2	TNX:A4B00002001058	Channel Processor Card for Fast Data
cimV24	TNX:A4B00002001064	Customer Interface module V.24
UAC68	TNX:A4B00002001059	Universal Analogue Card
APDP	S48703-L0370-B001	APDP: Power Distribution Panel for TA92A rack

#### Item 4: Key Performance Indicators (KPI's) for Layer 2 Ethernet Services

These KPIs apply to the circuits identified in Item 3 in Annexure A,

Parameter	KPI (achieved for 99% of Ethernet frames)
Network latency	30ms
Ethernet frame loss	<= 0.1%
Network jitter	25ms

##### **Notes;**

1. KPIs are measured end to end across the network from the Ethernet port on the Crown router located at a base station site to the Ethernet port on the Crown router located at the Leased Premises.

2. Where practicable and applicable, the testing, measuring and reporting will be conducted in accordance with RFC2544, Benchmarking for Network Interconnect Devices.

3. Transend will monitor all aggregation switches using (Simple Network Management Protocol (SNMP) based Network Management System (NMS) software. This will provide continuous 24/7 monitoring and event logging. Reporting on network events, bandwidth utilisation and other SNMP based data such as RMON will be possible. Transend will provide a monthly performance report and that will include service affecting network events that have been logged via SNMP.

All network interface points provided by Transend will be capable of Ethernet OAM (802.3ah). The L2 OAM functionality compliments SNMP and will provide the ability to use OAM loopbacks for testing and service verification. Transend will install four RFC2544 capable Network Demarcation devices at the data centre sites and thirteen at interface points at the network extremities. The demarcation device will be capable of providing throughput, latency, frame loss and jitter from one of the thirteen interface points (located at the end of the TDM extension points or as otherwise agreed between the Crown and Transend) to/from either NCS site. This information will be reported to the Crown on a monthly basis.

#### 4. Network Limitation for Ethernet Services

The Transend network will be transparent at Layer 3 and will pass IPv4, IPv6 and associated routing protocols including EIGRP.

At L2 the service is effectively transparent with the following caveats:

- Bridge protocol data units (BPDU's) are not transported.
- Transport of proprietary L2 protocols (i.e. Cisco discovery protocol (CDP)), VLAN trunking protocol (VTP)) is not guaranteed.

5. (a) Transend will implement Spanning Tree Protocol but Transend does not guarantee that this protocol can be relied upon as the over-arching packet routing mechanism.
  - (b) The Crown must not intentionally introduce Layer 2 loops to the Transend Layer 2 Network.
6. KPIs will only be measured where there is a Network Interface Device installed at the site.

### ***Definitions***

For the purposes of this Item 4,

***Ethernet Frame Loss*** means the ratio of total lost Ethernet frames to total transmitted frames in a population of interest. Total lost frames include any delivered with errors or with network latency greater than 3 seconds. This excludes packet loss caused by queuing/buffering due to utilization above the specified rate limits included in the network design.

***Jitter*** means the difference between the actual network latency of an Ethernet frame and reference network latency for an Ethernet frame of a population of interest. The reference network latency of a population of frames is the minimum latency for the frames within the population of interest. Jitter is a statistical sample, measured over a frame population of interest.

***Network latency*** means the one-way time interval taken for an Ethernet frame to transit the network, calculated over the Measurement Period. This measurement shall exclude packetisation delay, serialisation delay, queuing/buffer delay, VOIP coder processing delay and any other delay introduced through layers 3-7.

***Throughput*** means the maximum unidirectional rate at which none of the offered frames are dropped by the Network under test. The Layer 2 Network will provide for Throughputs as outlined in Annexure A, Item 4 – Circuit Bandwidth Requirements.

## **Item 5: 15Mb/s Backbone Testing (Ongoing Post-Layer 2 Ethernet Circuit Commissioning)**

### **Introduction**

Transend will facilitate the periodic testing of the TMRN network by creating a break on the 15 Mb/s backbone at a predetermine time for a predetermined period. The Crown shall nominate the time and point of the break.

### **Timing**

The Crown may request an outage every 6 months. The Crown shall submit the Outage Request form 15 working days before the nominated outage date. Transend will respond with confirmation within 5 working days. At the nominated outage time Transend will create a break in the 15 Mb/s backbone at the nominated point. Transend will then reinstate the break at the end of the nominated period (generally 1hour, or as otherwise agreed). Transend's preference is for the outage to be scheduled during normal working hours.

### **Location**

The Crown can nominate 1 of 8 predefined break points on the 15 Mb/s backbone as detailed in the following table:



15 Mb/s Break Option	Link
1	[ Confidential until such time as the TMRN is decommissioned or replaced ]
2	[ Confidential until such time as the TMRN is decommissioned or replaced ]
3	[ Confidential until such time as the TMRN is decommissioned or replaced ]
4	[ Confidential until such time as the TMRN is decommissioned or replaced ]
5	[ Confidential until such time as the TMRN is decommissioned or replaced ]
6	[ Confidential until such time as the TMRN is decommissioned or replaced ]
7	[ Confidential until such time as the TMRN is decommissioned or replaced ]
8	[ Confidential until such time as the TMRN is decommissioned or replaced ]

#### Outage Request Form

An Outage Request form will be created by Transend, which details (as a minimum):

Date, Time

Break Location

Outage Duration

Outage Status

Contacts

Outage Coordinator Details

Approved by Ericsson, Crown and Transend

The form must be sent to Transend before each outage for approval. Transend will then respond with the approved form if the outage is possible.

#### Reporting

Transend will report on the outcome of each test. The report would detail:

Confirmation of a break and reinstallation.

Network issues (Transend network only).

Traffic utilisation graphs for before, during and after the interruption taken at four points on the 15 Mb/s backbone namely [ Confidential until such time as the TMRN is decommissioned or replaced ].

#### **Item 6: Project Management and Facilities Management Standards for Construction and Operation of Leased Premises**

**(a)** Air Conditioning and Power Supply Availability Standard

**Table 1 Availability**

<b>SERVICE TYPE</b>	<b>STANDARD FOR AVAILABILITY</b>
Air Conditioning	99.95% actual availability
Power supply	99.95% actual availability

The Actual Availability for each Service is calculated in accordance with the following formula:

$$\text{Actual Availability ("AA")} = \frac{\text{Available Time}}{\text{In Service Time}} \times 100$$

*NB: AA is rounded to the nearest two decimal points.*

For the purposes of this Annexure, Available Time is calculated in accordance with the following formula:

$$\text{Available Time} = \text{In Service Time} - \text{Actual Fault Time}$$

Where:

**"In Service Time"** means the total seconds in the year when the service was operational using either the primary or back-up systems.

**"Actual Fault Time"** means the time period from when a Fault is reported or detected to the time the Fault is fixed (excluding Systemic Faults).

For the purposes of calculating Available Time, the total time of EPP event/s and Planned Outages in the relevant year is included in the calculation of In Service Time.

Air conditioning and power supply availabilities are to be reported on a monthly basis in the Transend monthly performance report.

Alarms –

both the air conditioning and power supply systems will alarm if there is a loss of supply or temperature warning. Alarms will be monitored by Transend's control room and reported to the Facilities Manager for action. The control room will log the incident. The facilities group will contact the Crown to report any significant power supply or air conditioning fault and will advise of response arrangements.

Operational Response Times - Air Conditioning and power supply interruptions – the target response times set out in Item 2 of Annexure B apply.

Maintenance Standards – Transend will update the current maintenance standards for the property to include the Leased Premises. A copy of the current maintenance standards will be provided to the Crown upon request at any time.

#### Testing and Inspection

##### 1. Air Conditioning

Inspections – Monthly

##### 2. Fire Suppression Equipment

Inspections – Monthly

##### 3. Back-up Generator

Monthly off-load testing

3 monthly full function testing

6 monthly diesel motor check and routine maintenance

Repairs as necessary

#### Site Access

The Crown will have 24x7 access to the Leased Premises. The Crown's access to site will be regulated by a card access system. The Crown will advise Transend of the individuals the Crown wishes to add to the list of security card holders.

#### Security of Leased Premises

The security of the property containing the Leased Premises is monitored by camera and alarm on a 24x7 basis. Security responses e.g. breach of fencing of building security will be managed by Transend. Transend will report to the Crown any breach of security that affects the Leased Premises.

#### Security Clearances for Maintenance Contractors

Transend will not be required to seek security clearances for **its** air conditioning and power supply contractors. Transend will ensure that its contractors are appropriately supervised when performing any maintenance activities on the Leased premises.

#### Construction Standards

The Standard will apply except for the items listed in Annexure E – Deviations from the TIA 942 Standard.

## Annexure C

### A. Particulars of Circuit Charges

#### Item 1 Access Rights and Operating Licence fees

Price per annum \$207,591.00 exclusive of GST

NB: The current pricing is based on the requests made by the Crown prior to March 2009. This amount is likely to be amended if further facilities requests are made by the Crown during the TMRN Digital Upgrade for items such as variations to rack space and antenna usage.

#### Item 2 - Circuit Licence Fees (including Ethernet circuits)

Price per annum

- (a) \$1,035,629.45 per annum for 4W E&M circuits (exclusive of GST)
- (b) \$1,300,159.18 per annum for Layer 2 Ethernet circuits. This pricing will be applied following the commissioning of the 15 Mb/s links by Transend and acceptance by the Crown for the Leased Premises. This price will increase by CPI on 30/06/2010

NB: All prices subject to CPI change in accordance with Clause 9.2

#### Item 3: Labour Rates

These rates relate to the services of Transend Communications Services technical staff in circumstances involving fault restoration for **[ Confidential until such time as the TMRN is decommissioned or replaced ]** or special service requests from the Crown. (Normal Transend network fault restoration is covered by the charges levied in Item 1 & 2 of Annexure C).

Should the Crown wish Transend Networks to carry out additional special services work the Crown is to provide a scope and Transend Networks will forward a quote for the work and await the Crown's approval prior to commencing work.

#### Item 4: **[ Confidential until such time as the TMRN is decommissioned or replaced ]**

See Annexure A, Item 2

#### Item 5: Service Credits

##### 1. *Definitions*

In this Item 5, unless the context otherwise requires:

“SC” means the Monthly Service Credit for the relevant Licensed Circuit.

“MSC” means the Monthly service charge for the relevant Licensed Circuit.

“**SCM**” means the Service Credit Multiple (maximum value 0.1) calculated as follows:

$$\text{SCM} = (99.95\% - \text{AA}) \times 20 \text{ (rounded up to the second decimal place)}$$

## 2. Formula

The Service Credit in relation to each Licensed Circuit shall be calculated in accordance with the following formula:

$$\text{SC} = \text{MSC} \times \text{SCM}$$

## 3. Examples

**Table 1 - Monthly Service Credit Summary**

Availability Max	Availability Min	Service Credit
100.00%	99.95%	0.00%
99.94%	99.90%	1.00%
99.89%	99.85%	2.00%
99.84%	99.80%	3.00%
99.79%	99.75%	4.00%
99.74%	99.70%	5.00%
99.69%	99.65%	6.00%
99.64%	99.60%	7.00%
99.59%	99.55%	8.00%
99.54%	99.50%	9.00%
99.49%	0.00%	10.00%

**Table 2 – Seconds per Month**

30 Day Month	259200 seconds
31 Day Month	2678400 seconds
28 Day Month	2419200 seconds

**Table 3 - Outage Example Number 1**

Month: June

Monthly Service Charge: \$596.86

One Layer 2 Ethernet circuit between Site A and Site B is reported as being faulty

Time reported to the TCS Service Centre: 08:30

Fault closed with PCS at 11:45

No planned outages occurred in this month

**Calculation of Available Time**

Fault time in Hours 3.25

Fault time in Seconds  $60 \times 60 \times 3.25$

Available Time = In Service Time – Actual Fault Time  $2592000 - 11700 = 2580300$

Actual Availability – (Available Time/In Service Time)\*100 99.54861111

Rounded to 99.55%

Service Credit Multiple = (99.95% - Actual Availability)\*20  $(.9995 - .9955) \times 20$

Rounded up to 2 decimal places 0.08

Service Credit = Monthly Service Charge\*

Service Credit Multiple  $\$596.86 \times 0.08$

Service Credit = \$47.75

**Table 4 - Outage Example Number 2**

2 Mb/s Layer 2 Ethernet service from Site X to Site Y is Faulty

Month: July

Monthly Service Charge: \$3,210.15

Time reported to the TCS Service Centre: 08:30

Fault closed with PCS at 11:00

Actual outage time on Siemens ACI system was 3 hours. PCS took half an hour to report the fault however the fault was picked up via Transend Network Management system at 08:00.

An agreed planned outage of 1 hour (3600 seconds) occurred.

**Calculation of Available Time**

Fault time in Hours	3
Fault time in Seconds	$60 \times 60 \times 3$ 10800
Available Time = In Service Time – Actual Fault Time	$2678400 - 10800$ = 264000
Actual Availability – (Available Time/In Service Time)*100	$(2667600/2678400) \times 100$ 99.596
Rounded to	99.6%
Service Credit Multiple = (99.95% - Actual Availability)*20	$(.9995 - .9955) \times 20$
Rounded up to 2 decimal places	0.07
Service Credit = Monthly Service Charge*	
Service Credit Multiple	$\$3,210.15 \times 0.07$
Service Credit	= \$244.71

## B. Particulars of Layer 2 Ethernet Service Charges

Prepayment lump sum    **\$358,113.00 (ex GST)**

Amount to be invoiced to the Crown following the commission of the 15Mb/s links for the Leased Premises.

## C. Particulars of Leased Premises Charges

Rental calculated per annum , paid monthly in accordance with Clause 9.

The payment regime under this Agreement will be in accordance with this Appendix C and will follow the methodology set out in this Appendix C Paragraph D “Indicative Payment Regime Summary”.

*Rental formula*

1.    **[ Confidential until such time as the TMRN is decommissioned or replaced ]** Leased Premises

- (a) Capital repayment of \$415,000 per annum payable for the first five years of the Lease,

PLUS

- (b) \$610 per square metre per annum, for premises of 158.56 square metres

Total **[ Confidential until such time as the TMRN is decommissioned or replaced ]** rental payment for (b) \$96,722 per annum

2.    **[ Confidential until such time as the TMRN is decommissioned or replaced ]** Leased Premise

- (a) Capital repayment of \$269,000 per annum payable for the first five years of the Lease,

PLUS

- (b) Leased Premises rent of \$610 per square metre, x 62.74 square metres, plus

- (c) Shared Areas rent, (50% of 46.92 sqm total shared area) x \$610 per square metre, plus

- (d) External shared area 34.5 square metres x \$610 per sqm

Total **[ Confidential until such time as the TMRN is decommissioned or replaced ]** rental payment for (b). (c) & (d) is \$73,627 per annum

Notes:

1. Outgoings,

- (a) Included in the Leased Premises Charges are,



- car parking for up to 3 vehicles
  - rates
  - land tax
  - electricity
  - sewerage and water charges
  - office waste collection services (biweekly)
  - security services to the NOCS (24 hour monitoring and biweekly patrols)
  - ongoing utility costs e.g. generator fuel
  - routine fire system, power supply and air conditioning repair and maintenance.
- (b) Not included in outgoings –other charges arising from the Crown’s use of the Leased Premises, Shared Premises, or additional non-routine services including fire or security incident call out charges, additional waste collection services.

#### **D. Indicative Payment Regime Summary for TMRN Upgraded Service and NSC charges**

(this is an estimate only and relies on assumptions of some variables such as completion dates)

##### ***Summary of charges***

##### TCS Licensed Area Fees and Circuit Services

(Annex C Item 1) no change in arrangements – invoice issued at end of each month, payable in arrears for period ending last day of month, payable in 30 days. Additional equipment such as racks and antennas mean a small increase in monthly fees

(NB: total amount including Licensed Area fees not yet ascertainable until full equipment requirements known)

##### Rental payment

commences at Handover Date

**[ Confidential until such time as the TMRN is decommissioned or replaced ]** – 16 August 2010, First year \$ 96,722 ex GST/ 12 = \$8060.17 per month, then subject to rental review as per contract

**[ Confidential until such time as the TMRN is decommissioned or replaced ]** – 21 May 2010, First year \$73,627 /12 = \$6135.58 per month, then subject to rental review as per contract (pro-rata for month of commencement, agreed no CPI on capital)

##### Comms upgrades lump sum repayment

Payable @ commencement of service at **[ Confidential until such time as the TMRN is decommissioned or replaced ]** assumed as 21 Sept 2010 - \$358,113

New circuit charges apply from 21 Sept 2010

(Licensed Area fees are not shown, fees previously were \$207,591pa or \$17,299.25 per month)

Comms circuit charges pre 21 Sept 2010 \$1,035,629.45/12 = \$86,302.45 per month

Post 21 Sept 2010 \$1,300,159.18/12 = \$108,346.60 per month

##### Capital repayments for NCSs

commence **[ Confidential until such time as the TMRN is decommissioned or replaced ]** – 16 August 2010, **[ Confidential until such time as the TMRN is decommissioned or replaced ]** – 21 May 2010, – invoice issued at end of each month, payable in 30 days. Payable for 5 years.

Per email 16/12

**[ Confidential until such time as the TMRN is decommissioned or replaced ]** – \$415K ex GST per annum/12 = \$34,583.33

**[ Confidential until such time as the TMRN is decommissioned or replaced ]** – 269K ex GST per annum/12 = \$22,416.67

**Likely payment regime for year one (ex TCS licensed area fees, ex GST), (NB: TCS circuit fees increase from 21/9/10)**

May 2010 (NSC fees pro-rata from 21 May) - **[ Confidential until such time as the TMRN is decommissioned or replaced ]** rent \$2177.12 (\$197.92 per day for 11 days) + **[ Confidential until such time as the TMRN is decommissioned or replaced ]** capital \$7,954.30 (723.12 p.day x 11 days) + \$86,302.45 circuits

June \$\$22,416.67NSC + \$\$6135.58NSC + \$86,302.45 circuits

\*\*\* July \$\$22,416.67NSC + \$\$6135.58NSC + \$86,302.45 circuits

Aug (**[ Confidential until such time as the TMRN is decommissioned or replaced ]** payments pro-rata from 16 Aug)  
**[ Confidential until such time as the TMRN is decommissioned or replaced ]** \$28,552.25 + rental **[ Confidential until such time as the TMRN is decommissioned or replaced ]** \$ 4160.08 (\$8060.17 x 16/31) + **[ Confidential until such time as the TMRN is decommissioned or replaced ]** capital \$17,849.46 (\$34,583.33 per month x 16/31 days) + circuits \$86,302.45

Sept ( Layer 2 Ethernet circuit charges estimated to start 21 Sept)  
\$28,552.25 + \$358,113 comms capital lump sum + 8060.17 + 34,583.33  
+ \$93,650.50 circuits (86,302.45 x 20/30 and \$108,346.60 x 10/30)

Oct \$28,552.25 + \$42,643.50 += total \$71,195.75 NSCs + \$108,346.60 circuits

Nov \$71,195.75 NSCs + \$108,346.60 circuits

(\*\*\*NB: as per the contract, CPI applies from 1 July on rental, Licensed Areas and circuit charges, based on March quarter result, so quoted rental and licensed circuits charges would alter on that date)

For the purposes of this summary NSC means the relevant data centre

GST charged on all payments in addition to that shown above

## **Annexure D**

**[ Confidential until such time as the TMRN is decommissioned or replaced ]**

## Annexure E

### Item 1: Exceptions to the TIA 942 Standard

**(a) [ Confidential until such time as the TMRN is decommissioned or replaced ] data centre**

The exceptions are as described in the table entitled “Transend TIA 942 Compliance” as circulated by email from Michael Jacques to Ms. Emsada Babic on 21 January 2010 and which will be signed and initialled by the Parties for the purposes of identification. Any variations to the table entitled “Transend TIA 942 Compliance” must be reasonably agreed by the Parties and such varied table will be signed, initialled and dated by the Parties for the purposes of identification.

**(b) [ Confidential until such time as the TMRN is decommissioned or replaced ] data centre**

As only preliminary plans are available, Transend cannot specify the exception but will build to the Standard except where a characteristic of the existing **[ Confidential until such time as the TMRN is decommissioned or replaced ]** building design makes it impractical to comply with the Standard, eg, no computer floor can be provided due to the design of the building and cabling will be overhead instead.

## **Annexure F**

### **Exempt material**

On security grounds;

- (a) Annexure A
- (b) Annexure D
- (c) any attachments after Annexure E

The maps, drawings and notes attached at Annexure E of the “Communication Services Agreement TMRN” executed on 23<sup>rd</sup> July 2009 are incorporated into Annexure F of this Agreement.



**TRANSEND NETWORKS PTY LTD**

**AND**

**THE CROWN**

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**COMMUNICATIONS SERVICES AGREEMENT  
TMRN**

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