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PART B –

TNAS GENERAL TERMS & CONDITIONS

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# TNAS GENERAL TERMS & CONDITIONS <sup>i</sup>

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## BACKGROUND

The telecommunications joint venture company TNAS Limited is the contracting vehicle for the Toll Free Number Portability industry joint venture. Toll Free Number Portability allows a Customer to change their Service Provider while retaining their Toll Free Number. The Joint Venture has developed a common industry database system known as the TNAS System for the introduction of Toll Free Number Portability in New Zealand. This system co-ordinates the processes necessary for the Allocation and Porting of Toll Free Numbers.

These TNAS General Terms & Conditions set out the basis upon which TNAS agrees to enable Service Providers and Carriers to have access to the TNAS System, and the basis upon which the TNAS System will be managed, maintained and operated.

## 1 DEFINITIONS & INTERPRETATION

1.1 In these TNAS General Terms & Conditions, unless the context otherwise requires:

“**Account Number**” means a Customer Account Number or an End Use Customer Account Number (as the case requires);

“**Agreement**” has the same meaning as given to that term in the Toll Free Database Access Agreement;

“**Allocation**” means a process whereby a Toll Free Number which was previously Available becomes Allocated to a Service Provider for a Customer;

“**Allocated**” means a Toll Free Number status where a Toll Free Number is being used by a Service Provider in conjunction with the provision of a Toll Free service to a Customer and is therefore not currently Available to any other Service Provider;

“**an Associated Person**” in relation to a party to this Agreement, has the meaning given to that expression in section OD7 of the Income Tax Act 1994;

“**Available**” means a Toll Free Number status where a Toll Free Number is not currently Allocated to a Service Provider or where the process of Relinquishment has been completed, and that Toll Free Number is therefore able to be Allocated;

“**Billing Relationship**” means where the Service Provider has a bona fide right to charge the Customer for any chargeable activity relating to the services provided to that Customer for a Toll Free Number or where the Toll Free Number has been Allocated to a TNAS Client for its own bona fide direct use;

“**Business Day**” means a day (other than on Saturday or Sunday or statutory holidays or the Auckland, Canterbury or Wellington Anniversary Day);

“**Business Hours**” means 8.00am to 6.00pm on Business Days;

**“Business Transaction”** means the process of providing a Toll Free service that involves:

- (a) viewing the status of a Toll Free Number in the TNAS System when an inquiry is made as to the status of the number; or
- (b) changing the status of a Toll Free Number in the TNAS System to Allocate the number; or
- (c) changing the status of a Toll Free Number in the TNAS System to Port the number;

**“Carrier”** means a Relay Carrier or a Host Carrier or both. The same person may be both a Carrier and a Service Provider;

**“Change Request”** has the meaning given to that term in section 11.1;

**“Charges”** means the charges payable by Service Providers and Carriers to TNAS as set out in Appendix 4 and as may be varied from time to time by TNAS in accordance with section 8;

**“Claim”** means in relation to any person:

- (a) a duty, liability or obligation;
- (b) a loss, cost, expense or damage; or
- (c) a claim, demand, notice, action, proceeding, judgment or other requirement,

incurred by or to or made or recovered by or against the person, however arising and whether present, unascertained, immediate, future or contingent;

**“Confidential Information”** means information that is:

- (a) obtained at any meeting of TNAS; or
- (b) obtained from any correspondence between any of the parties to this Agreement concerning the subject matter of this Agreement; or
- (c) obtained from or stored in the TNAS System,

but does not include:

- d) any information that is in the public domain other than by the default of the relevant TNAS Client or its officers, employees or contractors;

“**Customer**” means a person who has a bona fide Billing Relationship with a Service Provider in respect of a Toll Free Number;

“**Customer Account Number**” means the number used by a Service Provider to uniquely identify a Customer for the purposes of establishing and maintaining the Billing Relationship with that Customer;

“**Default Rate**” means, in respect of any day of the month, the average 90 day bank bill buy rate published in New Zealand on Reuters Screen BKBM at 11.00am on the first Business Day of that month (or, if such rate is not available as at that time, the rate which TNAS reasonably determines to be the nearest practicable equivalent) plus 5.0 percentage points;

“**Demarcation Point**” means the physical interface point at which the TNAS Client’s network connects to the router forming part of the TNAS System to gain access to the TNAS System, as advised by TNAS in writing to the TNAS Client from time to time;

“**Departing Carrier**” has the meaning given to that term in section 13.3;

“**Departing Service Provider**” has the meaning given to that term in section 13.1;

“**Due Date**” means 4.00pm on the 20<sup>th</sup> day of the month immediately following the month in which the invoice is received by the TNAS Client;

“**End Use Customer**” means a person who has a bona fide End Use Customer Billing Relationship with a Reseller in respect of a Toll Free Number;

“**End Use Customer Account Number**” means the number used by a Reseller to uniquely identify an End Use Customer for the purposes of establishing and maintaining the End Use Customer Billing Relationship with that End Use Customer;

“**End Use Customer Billing Relationship**” means where the Reseller has a bona fide right to charge the End Use Customer for any chargeable activity relating to the services provided to that End Use Customer for a Toll Free Number or where that End Use Customer has a bad debt or unpaid invoice with the Reseller;

“**Fault**” means the failure, in whole or in part, in the supply of, or a material degradation in the quality of, the TNAS System or a failure to provide any data, report or document to a TNAS Client;

“**Fault Severity**” means the level of severity of any Fault, in accordance with the following:

Severity	Definition
Critical	<ul style="list-style-type: none"> <li>• TNAS System is unavailable to a TNAS Client; or</li> <li>• Severe operational impact degrading the performance or outputs of the TNAS System; or</li> <li>• the TNAS System (or any output from the TNAS System) is affecting the integrity or correct operation of any telecommunications network used by any Service Provider.</li> </ul>
High	Significant operational impact affecting portions of the TNAS System or impacts on the ability of the TNAS System to perform effectively.
Medium	Allows the TNAS System to continue to operate (possibly with a work-around in place) but a minor part of it is unavailable or not working as contemplated under this Agreement.
Low	Non critical to TNAS Clients.

“**Help Desk**” means the System Administrator's Help Desk which is contacted by phoning the numbers, or by emailing the address set out in Appendix 2, or such alternative phone number or email address as TNAS may, from time to time, advise the TNAS Clients in writing;

“**Host Carrier**” means any person which:

- (a) operates a public switched telephone network (or a functionally equivalent system) delivering Toll Free calls; and
- (b) is responsible for translating Toll Free Numbers and routes Toll Free calls onward for termination; and
- (c) has entered a Toll Free Database Access Agreement with TNAS Limited for access to the TNAS System as a Carrier;

“**Intellectual Property**” includes, where appropriate, know how, expertise, copyright, trade secrets, patents and patent applications, trade marks (registered or unregistered), designs (registered or pending), and proprietary software and firmware;

“**Inquiry**” means the process involving a profile search on Toll Free Number's which indicates whether those numbers are Available, Allocated or Unavailable;

“**Joint Venture**” means the activities of the parties to the JVA to be carried out in accordance with the JVA specifically for purposes related to the introduction of Toll

Free Number Portability into New Zealand and providing for the administration and allocation of Toll Free Numbers in a non-discriminatory manner;

**“Joint Venture Agreement”** or **“JVA”** means the Joint Venture Agreement dated 7 May 1999 relating to the Joint Venture as it may be varied from time to time;

**“NAD”** means the organisation established under the Numbering Administration Deed dated 20 December 1998, or such successor organisation or agreement that may be formed and that parties to the JVA agree is a successor organisation;

**“Network Change”** means the process involving accessing the TNAS System and recording the change of the Host Carrier in respect of an Allocated or Relinquished Toll Free Number;

**“New Service Provider”** means the Service Provider who initiates a Port of a Toll Free Number on behalf of the Customer or End Use Customer. The New Service Provider becomes the Service Provider for that Toll Free Number at the conclusion of the Port;

**“Planned Outage”** means the temporary suspension in the supply of access to the TNAS System, in order for TNAS to carry out any testing, repair, maintenance, or upgrade or improvement, or change the equipment or software used in the TNAS System on its side of the Demarcation Point, provided that TNAS (or its System Administrator) has given prior notice of such suspension in accordance with section 10;

**“Port”** means a process where a Customer or an End Use Customer can retain an existing Toll Free Number but move from one Service Provider to another or the Service Provider can retain an existing Toll Free Number but move from one Host Carrier to another;

**“Previous Service Provider”** means the Service Provider who provides the Toll Free service to the Customer prior to the initiation of a Port of their Toll Free Number to another Service Provider. The Previous Service Provider ceases to be the Service Provider for that Toll Free Number at the conclusion of the Port;

**“Relay Carrier”** means any person which:

- (a) operates a public switched telephone network (or a functionally equivalent system) which originates, terminates or transits Toll Free calls; and
- (b) passes Toll Free calls to either the corresponding Host Carrier for the Toll Free Numbers or to another network for transiting; and

(c) has entered a Toll Free Database Access Agreement with TNAS Limited for access to the TNAS System as a Carrier;

**“Relinquishment”** means a process whereby a Toll Free Number which was previously Allocated is returned to the TNAS System for inclusion in the pool of Toll Free Numbers available for Allocation (and **“Relinquish”** shall have a corresponding meaning);

**“Reseller”** means a Customer of a Service Provider who contracts with that Service Provider to resell their Toll Free service to End Use Customers;

**“Resolution Time”** means the period from the time a Fault is discovered by the System Administrator or is logged by the TNAS Client (whichever is the earlier) (in accordance with these TNAS General Terms & Conditions) until the time that Fault has been Resolved (inclusive);

**“Resolved”** means that a Fault has been rectified and the TNAS System has been returned to normal operating conditions as reasonably determined by TNAS (and **“Resolution”** shall have a corresponding meaning);

**“Response Time”** means the period from the time a Fault is discovered by the System Administrator or is logged by the TNAS Client (whichever is the earlier) (in accordance with these TNAS General Terms & Conditions) until the time the System Administrator has advised TNAS that it has commenced action to diagnose and rectify the Fault (inclusive);

**“Service Levels”** means the criteria to which the System Administrator will ensure the performance of the TNAS System as described in appendix 1;

**“Service Provider”** means any person responsible for the relationship with the Customer, (including Customer account billing) who for the purpose of access to the TNAS System has entered a Toll Free Database Access Agreement as a Service Provider. The same person may be both a Carrier and a Service Provider;

**“Suspension Event”** has the meaning given to that term in section 18.1;

**“Suspension Period”** has the meaning given to that term in section 18.2;

**“System Administrator”** means the party appointed by TNAS from time to time to maintain and operate the TNAS System;

**“System Transaction”** means a single action involving the TNAS System which, when combined with such other actions, facilitates a Business Transaction;

**“TNAS Client”** means a Service Provider or a Carrier or both;

**“TNAS Co-ordinator”** means the third party or person (who may also be a TNAS Client) appointed by TNAS and notified to TNAS Clients from time to time, to liaise with the System Administrator and/or the TNAS Clients on matters relating to the TNAS System;

**“TNAS General Terms & Conditions”** means these TNAS general terms & conditions which form part B of this Agreement and which set out the rules, procedures and terms and conditions, as may be amended from time to time in accordance with section 22;

**“TNAS Limited”** or **“TNAS”** means Toll Free Number Administration Services Limited, the limited liability company incorporated for the purpose of entering into contractual arrangements on behalf of the Joint Venture;

**“TNAS System”** means the software, hardware and other shared facilities operated and managed by TNAS necessary to give effect to the JVA and the Toll Free Database Access Agreements and which records the status of Toll Free Numbers;

**“Toll Free”** means that:

- (a) irrespective of terminal type, calls are free to the caller and free to the end user of the calling connection; and
- (b) calls may be charged to the called party or the called line; and
- (c) if callers use a subsequent service as a result of successfully making a call, charges may be applied but only with the prior consent of the caller;

**“Toll Free Database Access Agreement”** or **“TFDAA”** means part A of this Agreement entered into by TNAS Limited on behalf of the Joint Venture with a Carrier and/or a Service Provider for gaining access to the TNAS System;

**“Toll Free Number”** means a telephone number beginning with the digits 0800 or 0508 used for calls originating in New Zealand which are Toll Free and allocated to TNAS Clients by the NAD, or recognised by the NAD as having been allocated to TNAS Clients, and in the future may include any other national telephone numbers that are Toll Free as TNAS may from time to time notify TNAS Clients;

**“Toll Free Number Portability”** means the ability of Customers or End Use Customers in New Zealand to continue to use a Toll Free Number, notwithstanding a change to the Customer’s Service Provider in respect of that Toll Free Number;

**“Unavailable”** means a Toll Free Number status where a Toll Free Number which is not currently Available or Allocated;

“**User Administrator**” has the meaning given to that term in section 10.17;

“**User Guide**” means the guide to using the TNAS System web pages, reports and data extracts, as amended by TNAS from time to time by written notice to TNAS Clients;

“**Warehousing**” means:

- (a) in respect of a Service Provider, to obtain the Allocation of a Toll Free Number without:
  - (i) either:
    - (1) there being, and at all times continuing to be, in force a bona fide Billing Relationship between a Customer and the Service Provider for that Toll Free Number; or
    - (2) having a reasonable expectation that such a Billing Relationship will be entered within 5 Working Days of the Allocation of that Toll Free Number to a Customer; and
  - (ii) the Service Provider reasonably believing that the Customer is using that Toll Free Number in conjunction with Toll Free services, or the Service Provider having a reasonable expectation of the Customer using that Toll Free Number in conjunction with Toll Free services within a reasonable period from Allocation,

but, excludes the Allocation of any Toll Free Number to a TNAS Client for its own bona fide direct use as a Toll Free Number; or

- (b) in respect of a Reseller, to make a Toll Fee Number available for use by an End Use Customer without:
  - (i) either:
    - (1) there being, and at all times continuing to be, in force a bona fide End Use Customer Billing Relationship between the Reseller for that Toll Free Number and the End Use Customer; or
    - (2) having a reasonable expectation that an End Use Customer Billing Relationship will be entered into within 5 Working Days of the Allocation of that Toll Free Number to the Service Provider for the Reseller; and
  - (ii) the Reseller reasonably believing that the End Use Customer is using that Toll Free Number in conjunction with Toll Free services, or the Reseller having a reasonable expectation of the End Use Customer

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using that Toll Free Number in conjunction with Toll Free services within a reasonable period from Allocation;

**“Working Day”** means Monday to Friday, excluding statutory holidays (provided that this exclusion of statutory holidays shall not include regional anniversary days); and

**“Working Hours”** means 8.00am to 5.00pm on Working Days.

- 1.2 Section and other headings are for ease of reference only and will be ignored in construing this Agreement.
- 1.3 Unless the context otherwise requires, references to sections and appendices are references to sections of and appendices to, these TNAS General Terms & Conditions.
- 1.4 Any reference in this Agreement to a statute, statutory instrument, regulation or order will be construed as a reference to such statute, statutory instrument, regulation or order as amended or re-enacted from time to time.
- 1.5 References to a party is to a party to this Agreement (unless otherwise specifically provided) and will be deemed to include its successors and permitted assigns.
- 1.6 A reference to a “person” includes an individual, firm, company, corporation, unincorporated body of persons, state or government or agency thereof and any other body or entity (in each case whether or not having separate legal personality).
- 1.7 Unless the context otherwise requires all amounts payable under this Agreement are expressed exclusive of GST. If GST is payable on any amount it will be added to that amount and will be payable on each such amount at the time the amount itself is payable.
- 1.8 Any reference in this Agreement to any gender includes all genders and a reference to the singular includes the plural and vice versa.

## **2 OWNERSHIP OF TOLL FREE NUMBERS AND NUMBERING SCHEMES**

- 2.1 Save to the extent expressly provided in this Agreement (including these TNAS General Terms & Conditions), this Agreement will not confer on any person any right, title or interest in any:
  - 2.1.1 Toll Free Number; or
  - 2.1.2 any numbering scheme.
- 2.2 Subject to section 4.7 and without limiting section 2.1, TNAS shall make available any Available Toll Free Number for Allocation to a Service Provider for a Customer.

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- 2.3 Without limiting section 2.1, no ownership rights in any Toll Free Number or numbering scheme will be conferred upon a Carrier, Service Provider, Customer, or End Use Customer by virtue of this Agreement or by the Toll Free Number being Allocated or Ported within the TNAS System.

### **3 TOLL FREE NUMBER ADMINISTRATION RULES**

- 3.1 TNAS will contract with a System Administrator to develop and manage the TNAS System in accordance with these TNAS General Terms & Conditions, as they may be amended from time to time.
- 3.2 The TNAS System will administer all Toll Free Numbers which are allocated by the NAD, or recognised by the NAD as having been allocated, to TNAS Clients and parties to the Joint Venture.
- 3.3 Toll Free Numbers will be administered in their numeric form only.
- 3.4 The TNAS System will not store any Customer or End Use Customer information, apart from the Customer Account Number or End Use Customer Account Number, nor involve any direct interface with any Customer or End Use Customer.
- 3.5 The TNAS System will not disclose to any Service Provider any information as to which Carrier is the Host Carrier for any Toll Free Number nor to which Service Provider a Toll Free Number is Allocated apart from a Services Provider's own Toll Free Number Allocations.
- 3.6 All information within the TNAS System will be regarded as Confidential Information provided that a Service Provider is entitled to inform its Customer of the status of a Toll Free Number. No Service Provider will be entitled to seek any information as to which Carrier is the Host Carrier for a particular Toll Free Number except for Toll Free Numbers which are currently Allocated to that Service Provider.
- 3.7 Where a Service Provider is also a Carrier, the Service Provider will ensure that strict levels of internal confidentiality will be observed so that the Service Provider function will not seek from the Carrier function any information as to which Carrier is the Host Carrier of any Toll Free Number and the Carrier function will not provide such information.
- 3.8 Notwithstanding sections 3.5, 3.6 and 3.7, the fault service function of any Service Provider or Carrier can seek and obtain access to Host Carrier information in relation to any Toll Free Numbers if such information is necessary for the diagnosis and remedy of a genuine fault and provided that such information is not disclosed to any other function of that Service Provider or Carrier.

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## 4 TOLL FREE NUMBER RULES

- 4.1 All Toll Free Numbers included within the TNAS System are to be regarded as being of equal value and no Toll Free Number is to be regarded as having any intrinsic value.
- 4.2 Once a Toll Free Number has been Allocated to a Service Provider, the Service Provider has 5 Working Days from the date of Allocation, to complete the process of establishing a Billing Relationship with the Customer for that Toll Free Number and if such a Billing Relationship is not established within this period the Service Provider will Relinquish that Toll Free Number immediately at the end of that period.
- 4.3 A Service Provider must complete Relinquishment for a Toll Free Number within 5 Working Days after the Billing Relationship with the relevant Customer for that Toll Free Number terminates.
- 4.4 A Relinquishment request shall be rejected where an outstanding Port request exists in the System Transaction queue for the Toll Free Number.
- 4.5 No Service Provider will Warehouse any Toll Free Numbers.
- 4.6 Within the TNAS System all Toll Free Numbers will have one of the following three states at any one time:
- 4.6.1 Allocated; or
  - 4.6.2 Available; or
  - 4.6.3 Unavailable.
- 4.7 TNAS may from time to time classify a Toll Free Number as Unavailable if it:
- 4.7.1 causes interference with other Toll Free Numbers which were Allocated before the particular Toll Free Number was Allocated, in which case TNAS must be satisfied that such interference is sufficient to justify such classification; or
  - 4.7.2 is being interfered with by other Toll Free Numbers which were Allocated before the particular Toll Free Number was Allocated, in which case TNAS must be satisfied that such interference is sufficient to justify such classification; or
  - 4.7.3 is currently Available, and when it is Allocated it causes interference with other Toll Free Numbers and a TNAS Client requests such classification, in which case TNAS must be satisfied that such interference is sufficient to justify such classification; or
  - 4.7.4 is the subject of or connected to a dispute and the Courts, or any government entity or quasi-government entity having jurisdiction, requires (or

compliance with any judgment, decision, order or ruling requires) the Toll Free Number to be classified as Unavailable; or

4.7.5 has been allocated to a TNAS Client by the NAD (or recognised by the NAD as having been allocated to them) and the Toll Free Number is in the process of being migrated on to the TNAS System; or

4.7.6 has not been allocated by the NAD (or recognised by the NAD as having been allocated to them) to any TNAS Client,

and if TNAS classifies a Toll Free Number as Unavailable TNAS may require TNAS Clients to immediately take appropriate steps to return that Toll Free Number to the TNAS System for reclassification to give effect to this section 4.7.

## **5 NUMBER ALLOCATION RULES**

- 5.1 Toll Free Numbers will only be Allocated through the TNAS System.
- 5.2 All Service Providers will have equal access to Toll Free Numbers that are Available, on a first come, first served basis.
- 5.3 The parties agree that Customers will only access Toll Free Numbers through a Service Provider.
- 5.4 The parties agree that no person can access the TNAS System unless and until it has entered into an appropriate Toll Free Database Access Agreement with TNAS.
- 5.5 Where a Customer Relinquishes a Toll Free Number, the Service Provider must use reasonable endeavours to return that Toll Free Number to the TNAS System within the timeframe specified in section 4.3, for inclusion in the pool of Toll Free Numbers Available for Allocation. No Toll Free Number may be allocated by a Service Provider to a Customer outside the TNAS System or retained by a Service Provider for reallocation outside the TNAS System unless a Customer (or End Use Customer) is transferring a Toll Free Number allocated to it to a third party purchaser of that Customer's (or End Use Customers) business where the Toll Free Number is used in conjunction with that Customer's business, or as otherwise approved by TNAS.
- 5.6 It is the sole responsibility of the Service Provider requesting an Allocation, Port or notifying of a Host Carrier or change of Host Carrier for a Toll Free Number, to ensure that there is a Billing Relationship established for each such request or notification.
- 5.7 If an Allocation, Port or Relinquishment request or a notification of Host Carrier or a change of Host Carrier by a Service Provider is in any way incorrect or contains any error, that Service Provider will use all reasonable endeavours to immediately correct such error.
- 5.8 If the TNAS System confirms to a particular Service Provider that a Toll Free Number is Available, that number may then be held for that Service Provider for a period not

exceeding 15 minutes. For the duration of that reservation period, that number will be recorded as "Available - Held" in the TNAS System while the Service Provider completes the Allocation. At the end of the reservation period, if the Service Provider has not issued a confirmed Allocation request for that Toll Free Number, then that number will cease to be "held" by the TNAS System and shall immediately revert to the general Available status.

## **6 SERVICE PROVIDER RULES**

### **6.1 The Service Provider is responsible for:**

- 6.1.1 dealing directly with, and providing Toll Free service(s) to, the Customer;
- 6.1.2 exchanging Toll Free Number Allocation, Porting and Relinquishment information with the TNAS System;
- 6.1.3 implementing Toll Free services consistent with the data held in the TNAS System and with this Agreement;
- 6.1.4 ensuring, to the best of its abilities, that its operations do not cause interference with other Toll Free services and Customers;
- 6.1.5 ensuring that it only allocates a Toll Free Number to a Customer where an Allocation for that Toll Free Number has been made to it by the TNAS System, or the Allocation is otherwise in accordance with section 5.5;
- 6.1.6 arranging with Carriers for the delivery of Customers' calls and notifying TNAS of name and contact details of the Service Provider's Host Carrier;
- 6.1.7 maintaining appropriate records to satisfy the routing, billing and audit requirements of this Agreement;
- 6.1.8 arranging the number translation, routing and billing features for the Customer;
- 6.1.9 paying all charges due to TNAS incurred in relation to its use of the TNAS System in accordance with this Agreement or as is otherwise provided for in this Agreement;
- 6.1.10 ensuring, to the best of its abilities, that any of its Resellers do not Warehouse or withhold Porting consent for an End Use Customer Toll Free Number;

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- 6.1.11 ensuring, to the best of its abilities, that each contract with its Resellers for the resale of Toll Free Number services provides for and gives effect to, the matters referred to in section 6.1.10 provided that, in respect of such contracts which are in force as at the date of this Agreement, it will not be obliged to comply with section 6.1.10 until such time as the first opportunity that that contract with the Reseller can be varied; and
- 6.1.12 acting in good faith to facilitate Allocation, Porting and Relinquishment.
- 6.2 A Service Provider will need to establish and maintain a commercial relationship with a Host Carrier to provide for number translation and routing of Toll Free calls for the Toll Free service offered to a Customer.
- 6.3 Each Service Provider will maintain an interface with the TNAS System at the Demarcation Point, through which Inquiries can be made as to the status of particular Toll Free Numbers, and to Allocate, Relinquish and Port particular Toll Free Numbers. The TNAS System will only be accessed by Service Providers in this manner.
- 6.4 Subject to sections 6.6 to 6.11 (inclusive), the Previous Service Provider will not be entitled to any prior notice of a Port.
- 6.5 The New Service Provider will be solely responsible for ensuring that:
- 6.5.1 all Port requests are valid and correct; and
- 6.5.2 prior to inputting a Port request into the TNAS System for each Toll Free Number, a valid consent has been obtained from the Customer or (if applicable), End Use Customer(s) Porting the Toll Free Number ("Consent"). As part of this Consent process, the New Service Provider will obtain either the:
- (a) Previous Service Provider's Customer Account Number from the Porting Customer; or
- (b) Reseller's End Use Customer Account Number from the Porting End Use Customer(s) for use in the Port process described in sections 6.6 to 6.11 (both inclusive). If there is more than one Customer for a Toll Free Number, the Consent must be obtained from all Customers.
- 6.6 Subject to sections 6.12 and 6.13, a Port request will be validated by the TNAS System where:
- 6.6.1 the Account Number of the Previous Service Provider (or what the New Service Provider believes (in good faith) is the Account Number) has been input into the TNAS System by the New Service Provider; and

- 6.6.2 the Account Number of the Previous Service Provider has been requested by the TNAS System from the Previous Service Provider (the "Request"); and
- 6.6.3 the Previous Service Provider has responded to the TNAS System within 5 Working Hours of the Request with the same Account Number as that input by the New Service Provider; or
- 6.6.4 the Previous Service Provider has not responded to the TNAS System with the Account Number within 5 Working Hours of the Request from the TNAS System.

For the purposes of this section 6.6, references to "the Account Number of the Previous Service Provider" may refer to the Customer Account Number or the End Use Customer Account Number.

- 6.7 A Port request will not be validated by the TNAS System where:
  - 6.7.1 an outstanding Allocation, Relinquishment or Port request (other than the Port request being dealt with) exists in the TNAS System transaction queue for that Toll Free Number; or
  - 6.7.2 the Previous Service Provider responds to the TNAS System within 5 Working Hours of the Request with a different Account Number to the Account Number input by the New Service Provider .
- 6.8 If the Previous Service Provider responds to the TNAS System within 5 Working Hours of the Request with an Account Number which is different from the Account Number input by the New Service Provider, the New Service Provider will check the Account Number with the Customer or End Use Customer (as the case requires). If the Account Number input by the New Service Provider:
  - 6.8.1 is found to be incorrect, the New Service Provider will input the correct Account Number into the TNAS System, and section 6.6 shall again apply except that there shall be no requirement on the Previous Service Provider to re-input the Account Number; or
  - 6.8.2 is confirmed by the Customer or the End Use Customer (as applicable) to the New Service Provider as being correct, the New Service Provider will liaise directly with the Previous Service Provider (by phone or email) to determine the nature of the problem and the Previous Service Provider shall co-operate with the New Service Provider (the "Co-operative Period") to facilitate Porting for the Customer or the End Use Customer (as the case requires).
- 6.9 The Previous Service Provider will use its best endeavours to minimise the length of the Co-operative Period and to facilitate the Porting of the Customer or End Use Customer (as applicable). In any event, the Previous Service Provider shall use reasonable endeavours to ensure that the Co-operative Period is not longer than 1

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Working Hour for Customers (other than Resellers), 8 Working Hours for domestic based Resellers and 40 Working Hours for overseas based Resellers.

- 6.10 If the New Service Provider is aware that the Customer is a Reseller or an End Use Customer and therefore that the Previous Service Provider is likely to want to validate the Port request with the Reseller prior to responding to the TNAS System, then to save time the New Service Provider may liaise directly with the Previous Service Provider and commence the Co-operative Period without first having input an Account Number into the TNAS System.
- 6.11 During the Co-operative Period, the following scenarios involving Resellers could apply before the Port proceeds:
- 6.11.1 when an End Use Customer Ports before a domestic based Reseller's contract with the Previous Service Provider is varied in accordance with section 6.1.11, the Previous Service Provider may check with the domestic based Reseller to ensure that there is a match between the Toll Free Number and the End Use Customer Account Number input by the New Service Provider and to obtain the domestic based Reseller's consent (if required) to comply with the domestic based Reseller's contract with the Previous Service Provider;
  - 6.11.2 when an End Use Customer Ports after a domestic based Reseller's contract with the Previous Service Provider is varied in accordance with section 6.1.11, the Previous Service Provider may check with the domestic based Reseller to ensure that there is a match between the Toll Free Number and the End Use Customer Account Number input by the New Service Provider; and
  - 6.11.3 when a domestic based Reseller Ports, the Previous Service Provider may check with the domestic based Reseller to confirm which Toll Free Number is to be Ported. (This is a safety check for the Previous Service Provider as, in the case of Resellers, there is not always a direct relationship between the Toll Free Number and the Customer Account Number).
- 6.12 When an End Use Customer of an overseas based Reseller requests an international-to-national Port, the Previous Service Provider may request from the New Service Provider a copy of the End Use Customer consent form for an international-to-national Port and the Previous Service Provider may send that form to the overseas based Reseller requesting acknowledgement of the international-to-national Port in accordance with the provisions of ITU-T Recommendation E.152 and the recommendations of the International Toll Free Forum. If such a form is requested, then the Port request will not be validated by the TNAS System until the Previous Service Provider has received a validly completed form.
- 6.13 When an overseas based Reseller Ports, the Previous Service Provider may request from the New Service Provider a copy of the service order form that the New Service Provider has received from the overseas based Reseller. This form should generally be

in the format contained in ITU-T Recommendation E.152 with the "Portability" section correctly completed. If such a form is requested, then the Port request will not be validated by the TNAS System until the Previous Service Provider has received a validly completed form.

- 6.14 The Co-operative Period ceases when the Port proceeds in accordance with the process described in section 6.6 using the Account Number or any other prearranged number.
- 6.15 Previous Service Providers will use reasonable endeavours to respond to the TNAS System within 5 Working Hours of the Request, except where the Co-operative period has applied, where the Previous Service Provider will use reasonable endeavours to respond to the TNAS System within 30 minutes of the Port Request.
- 6.16 In the case of End Use Customers, the relevant Service Provider and the relevant Reseller may not be Associated Persons.

## **7 CARRIER RULES**

- 7.1 Each Carrier will maintain an interface with the TNAS System at the Demarcation Point. The TNAS System will transmit instructions to each Carrier via this interface. The TNAS System will only be accessed by Carriers in this manner.
- 7.2 Subject to clause 7.3, each Carrier will make the necessary changes, additions or deletions to its Toll Free databases and to its networks to give effect to the instructions issued by the TNAS System. Each Carrier will comply with the Service Levels specified in Appendix 1, Part B.
- 7.3 Nothing in this Agreement affects the activation of Toll Free Numbers, the routing of Toll Free calls, or the passing of any Toll Free calls between the networks of any Carriers. Any arrangements governing those matters will be contained in separate agreements between the relevant Carriers and nothing in this Agreement requires any Carrier to take any action in relation to any of those matters unless it has entered into such separate agreements with the relevant Carriers.
- 7.4 Carriers will act in good faith to facilitate Allocation, Porting and Relinquishment.

## **8 CHARGES & PAYMENT**

- 8.1 TNAS will invoice TNAS Clients for the Charges and default interest (if any) each calendar quarter during the term of this Agreement.
- 8.2 Notwithstanding section 22, TNAS may, at its absolute discretion, vary the Charges and/or the Default Rate at any time by giving not less than 20 Business Days prior written notice to TNAS Clients.

- 8.3 TNAS Clients shall pay TNAS (or to the credit of TNAS in a New Zealand Bank Account nominated by it) the amount of each invoice rendered to them without set off or deduction of any kind (except as required by law) no later than the Due Date. If the Due Date is not a Business Day, payment may be made on the next Business Day.
- 8.4 If any amount falls overdue for payment under this Agreement, the TNAS Client shall (without prejudice to any other right or remedy of TNAS under this Agreement) pay default interest to TNAS at the Default Rate from the Due Date until the date on which payment of the overdue amount is received by TNAS. Default interest shall be calculated daily at the Default Rate.
- 8.5 If a TNAS Client disputes any or all of an amount contained in an invoice pursuant to section 8.1:
- 8.5.1 the TNAS Client will immediately notify TNAS of the dispute and provide reasons for the dispute;
  - 8.5.2 the TNAS Client shall pay the full amount of the invoice including the disputed amount by the Due Date; and
  - 8.5.3 the parties will comply with section 19 in order to resolve the dispute.
- 8.6 No invoice may be disputed by a TNAS Client if a dispute has not been notified to TNAS within six months from the date of the invoice.

## **9 CONNECTION TO THE TNAS SYSTEM**

- 9.1 TNAS shall operate and manage the TNAS System and subject to any contrary provision in this Agreement, shall continue to provide the TNAS Client access to the TNAS System at the Demarcation Point, if and for so long as this Agreement remains in full force and effect.
- 9.2 The access to the TNAS System shall be via a connection at the Demarcation Point using a connection method acceptable to the TNAS. TNAS Clients shall be responsible for everything on their side of the Demarcation Point, including the communication links to the TNAS System router.
- 9.3 TNAS shall provide TNAS Clients such reasonable technical advice, assistance, and information for the interface applicable at the Demarcation Point to enable TNAS Clients to establish the initial access to the TNAS System at the Demarcation Point. Any subsequent support may be provided to TNAS Clients at the discretion of TNAS, but shall be at the cost of the TNAS Client.
- 9.4 Notwithstanding any other provision of this Agreement, TNAS may restrict or suspend the supply of all or some of the functions of the TNAS System to the TNAS Client:
- 9.4.1 in the event of any Planned Outage; or

- 9.4.2 where the TNAS Client has committed any breach of this Agreement and that breach is continuing (following the issuing of notice to the TNAS Client of that breach); or
  - 9.4.3 where the TNAS Client has failed to pay any Charges owed to TNAS by the Due Date; or
  - 9.4.4 where the TNAS Client and TNAS may otherwise agree in writing.
- 9.5 TNAS Clients will comply with the User Guide. TNAS may vary the User Guide from time to time at its discretion. TNAS will notify TNAS Clients in writing of any such variation. Any variation shall take effect from such date as TNAS specifies in the notice to TNAS Clients advising of the variation. TNAS will give no less than 20 Business Days notice of the date from which any such variation is to take effect.

## **10 FAULT MANAGEMENT**

### **Support Services**

- 10.1 The following support services shall be available:
- 10.1.1 TNAS will procure that the System Administrator shall make available the Help Desk to the TNAS Client on a 24 hour 7 day per week basis, for the purpose of reporting and resolving Faults and operational issues or enquires that arise in relation to the TNAS System. TNAS shall notify the TNAS Client in writing of any changes that occur to the relevant telephone or email address of the Help Desk set out in appendix 2.
  - 10.1.2 The Help Desk will maintain:
    - (a) a reception point for logging Faults and enquires;
    - (b) Fault progress tracking and reporting;
    - (c) TNAS System outage tracking;
    - (d) for the duration of any Fault, direct contact, as reasonably required by the TNAS Client, between the System Administrator and the TNAS Client's specialist operations groups; and
    - (e) a co-ordination point for the restoration of TNAS System.
  - 10.1.3 TNAS shall procure that the System Administrator shall, through the Help Desk and in accordance with the Service Levels, and after becoming aware of any Fault in respect of the TNAS Client:
    - (a) take all action reasonably necessary in order to rectify that Fault, with as little disruption to the TNAS Client as is reasonably possible;

- (b) advise the TNAS Co-ordinator and the relevant TNAS Client of any actions being taken in order to rectify the Fault;
  - (c) provide the TNAS Co-ordinator and the relevant TNAS Client with an estimate of the time required to rectify the Fault;
  - (d) provide the TNAS Co-ordinator and the relevant TNAS Client with ongoing progress reports in respect of the actions being taken to rectify the Fault in accordance with the times for the relevant update frequency specified in the Service Levels as set out in appendix 1, Part A, paragraph 2.
- 10.2 The TNAS Client shall be responsible for managing its own staff training in relation to the use of the TNAS System and shall not call the Helpdesk for this unless agreed otherwise with the TNAS Co-ordinator.
- 10.3 A breach of the Service Levels specified in appendix 1, Part A shall exclude any breach which arises:
- 10.3.1 due to an event of force majeure; or
  - 10.3.2 due to a material default by the TNAS Client of any of its obligations under this Agreement; or
  - 10.3.3 due to any material default under any TFDA or TNAS general terms & conditions between TNAS and any other TNAS Client; or
  - 10.3.4 from any act or omission by a TNAS Client, their officers, employees, agents, contractors or consultants or any other person for whom the TNAS Client is responsible other than any act or omission taken or not taken (as the case may be) at the direction of TNAS, its officers, employees, agents, contractors, sub-contractors; or
  - 10.3.5 as a direct result of the malfunction of a TNAS Client's connection or equipment or any other connection or equipment which is not under the control of TNAS; or
  - 10.3.6 during any Planned Outage.

### **Faults**

- 10.4 Nothing in this Agreement shall require TNAS to provide continuous or fault free access to the TNAS System.
- 10.5 The TNAS Client shall comply with such specific procedures and obligations in relation to the management of Faults as reasonably required by TNAS.

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- 10.6 TNAS shall procure that the System Administrator shall monitor the TNAS System on a 24 hour per day / 7 day per week basis for the purpose of early identification of any Faults, or any circumstances that might reasonably give rise to a Fault.
- 10.7 On becoming aware of any Fault, the TNAS Client agrees that it shall check that the Fault relates to the TNAS System prior to notifying the Help Desk. If, after such checking, the TNAS Client still believes (acting reasonably) that the Fault is with the TNAS System, the TNAS Client shall notify the Help Desk by phone (at any time) or by email (only recommended during Business Hours) as soon as reasonably practicable. Each such notice shall specify:
- 10.7.1 details of the nature of the Fault; and
- 10.7.2 the Fault Severity of that Fault.

### **Response Time**

- 10.8 Upon becoming aware of any Fault in the TNAS System, TNAS shall ensure the System Administrator shall comply with the Response Times and Resolution Times in relation to rectification of that Fault and will use its best endeavours to respond to all Faults within a shorter timeframe.
- 10.9 Only Faults with Critical or High Fault Severity Level will require a Response outside of Business Hours unless otherwise approved by the TNAS Co-ordinator or TNAS.
- 10.10 TNAS shall procure that the System Administrator will provide an incident report to the TNAS Client affected by the incident, within 1 Business Day of Resolving a Fault, for all Faults with a Critical or High Fault Severity Level plus any other logged Faults specifically requested.

### **Planned Outages**

- 10.11 Subject to section 10.13, 10.14 and 10.15, TNAS shall use its best endeavours to ensure that all Planned Outages occur between 12.00am and 04:00am on the first Sunday of each month, and that the Planned Outage does not exceed these hours.
- 10.12 Subject to sections 10.13, 10.14 and 10.15, TNAS shall procure that the System Administrator shall give the TNAS Client and the TNAS Co-ordinator a minimum of 2 Business Days prior written notice of any Planned Outage. Each such notice shall include the following information:
- 10.12.1 the reason for the Planned Outage;
- 10.12.2 the proposed date and time of the Planned Outage;
- 10.12.3 the estimated duration of the Planned Outage; and

- 10.12.4 the name and contact details of the appropriate person whom the TNAS Client should contact for further information in relation to the Planned Outage.
- 10.13 Where the proposed date and time for the Planned Outage is outside of the timeframe specified in section 10.11 and is:
- 10.13.1 outside Business Hours, the notice period referred to in section 10.12 for the Planned Outage shall be a minimum of 1 Business Day; or
- 10.13.2 within Business Hours, the notice period referred to in section 10.12 for the Planned Outage shall be a minimum of 10 Business Days,
- and in either case, the notice to the TNAS Client shall include the information referred to in section 10.12 and the reason why the Planned Outage is occurring at that time.
- 10.14 If TNAS considers (acting reasonably) that any Planned Outage requires the TNAS Client to:
- 10.14.1 undertake staff training; or
- 10.14.2 assist with the Planned Outage,

TNAS shall, subject to section 10.15, procure that the System Administrator gives the TNAS Client a minimum of 10 Business Days notice or a shorter notice period if agreed by all TNAS Clients.

- 10.15 Where:
- 10.15.1 the Planned Outage is as a result of a major enhancement to the TNAS System (as reasonably determined by TNAS), then TNAS will endeavour to consult with each TNAS Client prior to the System Administrator giving notice to agree the length of the notice period, and TNAS shall procure, notwithstanding section 10.14, that the notice period shall be a minimum of 20 Business Days or such longer period as agreed to by TNAS;
- 10.15.2 the circumstances giving rise to a Planned Outage are such that an immediate, temporary suspension or restriction of the TNAS System is required and the System Administrator is not able to give notice as set out above, TNAS shall procure that the System Administrator shall use its best endeavours to provide the TNAS Co-ordinator and the TNAS Client with such prior notice as is reasonably possible in the circumstances.

### **Escalation**

- 10.16 If a Fault is unable to be resolved by the System Administrator within a reasonable timeframe then the TNAS Client may escalate the problem in accordance with the timeframes identified in the Service Levels to the System Administrator personnel identified in appendix 2.

### **TNAS Client/TNAS Interface**

- 10.17 The TNAS Client, by written notice to TNAS and the TNAS Co-ordinator, shall appoint a user administrator ("User Administrator") and shall maintain the appointment of a User Administrator throughout the term of this Agreement. The TNAS Client may replace, from time to time, by written notice to TNAS and the TNAS Co-ordinator, their User Administrator.
- 10.18 The principal function of the User Administrator shall be to manage the relationship between the TNAS Client and the TNAS Co-ordinator and the relationship between the TNAS Client and the System Administrator, in each case, in accordance with these TNAS General Terms & Conditions.

## **11 CHANGE REQUESTS**

- 11.1 The TNAS Client may seek a variation or change to the TNAS System or these TNAS General Terms & Conditions by submitting at its own cost a written request ("**Change Request**") to the TNAS Co-ordinator in the form appearing in appendix 3 (or such other form TNAS may advise from time to time) specifying in detail the change requested.
- 11.2 All Change Requests will be considered by the TNAS Co-ordinator or, at the TNAS Co-ordinator's discretion, the System Administrator or, if required, by TNAS, TNAS and the TNAS Co-ordinator will liaise with the TNAS Client in relation to the Change Request.
- 11.3 Unless authorised in writing by the TNAS Co-ordinator, the TNAS Client will not liaise directly with the System Administrator in relation to any Change Requests, or in relation to any other matter other than day to day operational issues without the prior approval of TNAS.
- 11.4 Any variation to these TNAS General Terms & Conditions, following the approval by TNAS of any Change Request, will be notified to all TNAS Clients in accordance with section 22 and, for the avoidance of doubt, will be binding on all TNAS Clients.
- 11.5 For the avoidance of doubt, the TNAS Client acknowledges and accepts that any such variation of these TNAS General Terms & Conditions:
- 11.5.1 may result from a Change Request that was not submitted, or is not supported by, the TNAS Client; and
  - 11.5.2 may require the TNAS Client to incur costs and/or Charges to ensure compliance with these TNAS General Terms & Conditions following any variation.

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## 12 MIGRATION

- 12.1 A Service Provider shall contribute and migrate all Toll Free Numbers it has been allocated by the NAD (or recognised by the NAD as having been allocated to them), for inclusion in the TNAS Toll Free Number pool and administration by the TNAS System.
- 12.2 Until such time as the migration of the Service Providers Toll Free Numbers is successfully completed by the Service Provider, as advised in writing to the Service Provider by TNAS or the TNAS Co-ordinator) the Service Provider shall not directly or indirectly use the TNAS System for anything other than testing its own system and provided such tests do not affect the live operation of the production environment of the TNAS System (as reasonably determined by TNAS).
- 12.3 If the Service Provider has been allocated new Toll Free Numbers by the NAD, until such time as the migration of the Service Provider's new Toll Free Numbers is successfully completed as advised in writing to the Service Provider by the TNAS Co-ordinator, the Service Provider shall not reserve or Allocate any of the new Toll Free Numbers to any Customers.

## 13 EXITING THE TNAS SYSTEM

### Service Providers

13.1 Without limiting section 18.4, in the event that this Agreement is terminated for any reason (whether on expiry of its term or otherwise) the Service Provider (referred to in this section 13 as the "Departing Service Provider") shall:

13.1.1 leave all the Toll Free Numbers the Departing Service Provider has been allocated by the NAD, (or recognised by the NAD as having been allocated to it), up to the date of termination, in the TNAS Toll Free Number pool;

13.1.2 be entitled to retain Allocations made to Customers of the Departing Service Provider up until the date of termination until such time as that Toll Free Number is Relinquished by the Departing Service Providers Customer provided the Departing Service Provider has entered into an agreement to become a Customer of another Service Provider prior to this Agreement being terminated. Once that agreement has been entered into with another Service Provider, the Departing Service Provider will become a Reseller under this Agreement;

13.1.3 prior to this Agreement being terminated, activate arrangements with another Service Provider to make the necessary changes to the TNAS System to:

- (a) maintain the integrity of the TNAS System;
- (b) continue to facilitate Porting; and
- (c) ensure that the Toll Free Numbers managed by the TNAS System can continue to be correctly routed;

13.1.4 implement such other actions as are reasonably necessary (as determined by TNAS) to ensure that Customers and the remaining TNAS Clients are not significantly disadvantaged. The Departing Service Provider will use all reasonable endeavours to implement such actions within 1 day of being requested to do so by TNAS.

13.2 The Departing Service Provider agrees that other Service Providers shall continue to be entitled to Port any Toll Free Numbers Allocated to the Departing Service Provider pursuant to section 13.1.2.

### Carriers

13.3 Without limiting section 18.4, in the event that this Agreement is terminated for any reason (whether on expiry of its term or otherwise), the Carrier (referred to in this Section 13 as the "Departing Carrier") shall:

13.3.1 give not less than 90 days prior notice of the Carrier's intention to terminate this Agreement to all Service Providers the Carrier provided services to

pursuant to this Agreement to enable them to make the necessary changes to the TNAS System to:

- (a) maintain the integrity of the TNAS System;
- (b) continue to facilitate Porting; and
- (c) ensure that the Toll Free Numbers managed by the TNAS System can continue to be correctly routed; and

13.3.2 implement such other actions as are reasonably necessary (as determined by TNAS) to ensure that Customers and the remaining TNAS Clients are not significantly disadvantaged. The Departing Carrier will use all reasonable endeavours to implement such actions within 1 day of being requested to do so by TNAS.

## **14 AUDITING RIGHTS**

### **Right**

14.1.1 TNAS shall be entitled to audit any TNAS Client to ensure that TNAS Client is complying with this Agreement and, in particular but without limitation:

14.1.2 no Warehousing of any Toll Free Numbers is occurring; and

14.1.3 section 6.1.11 has been and is being complied with.

### **Auditor**

14.2 TNAS will be entitled to appoint the auditor to undertake the audit provided that such auditor is not another TNAS Client.

### **Procedure**

14.3 TNAS may, in its discretion, determine to audit any TNAS Client. Any TNAS Client may request TNAS to undertake an audit of another TNAS Client upon production to TNAS of such evidence as TNAS may reasonably require and the TNAS Client requesting the audit agrees to pay the Audit Costs if section 14.5.1(a) applies.

14.4 If TNAS elects to audit any TNAS Client then:

14.4.1 TNAS will give notice of this election to the TNAS Client to be audited ("Audit TNAS Client") and advise who is to undertake the audit;

14.4.2 the Audit TNAS Client shall have five Business Days to agree to the audit or submit in writing to TNAS reasons why the audit should not be undertaken (time being of the essence);

14.4.3 if the Audit TNAS Client gives a submission to TNAS as to why an audit should not be undertaken, TNAS will consider it in good faith and will then

advise the Audit TNAS Client whether or not the audit will be undertaken. If no response from the Audit TNAS Client is received in the five Business Day period, or the Audit TNAS Client advises that it agrees to the audit, TNAS will determine whether or not to undertake the audit.

- 14.4.4 If TNAS determines to undertake the audit, the audit will be undertaken in the following manner:
- (a) not less than five Business Days notice of the date of the commencement of the audit will be given by or on behalf of TNAS to the Audit TNAS Client;
  - (b) the Audit TNAS Client will co-operate fully with the auditor to facilitate a timely inspection.

### **Costs**

14.5 If the audit report states that the Audit TNAS Client:

14.5.1 has complied in all material respects with this Agreement then:

- (a) if the audit was undertaken due to a request from another TNAS Client, then the Audit Costs will be payable to TNAS by that other TNAS Client and, upon receipt of payment of that sum, TNAS will reimburse the Audit TNAS Client its costs as set out below;
- (b) if the audit was undertaken otherwise than due to a request of a TNAS Client each of TNAS and the Audit TNAS Client will bear their own costs; or

14.5.2 has not complied in all material respects with this Agreement then the Audit Costs will be payable by the Audit TNAS Client.

14.6 For the purposes of this section 14, "Audit Costs" means the aggregate of:

- (a) TNAS' direct costs in respect of the audit (including auditing and legal fees); and
- (b) such costs of the Audit TNAS Client in respect of time involved in assisting the audit as are submitted by the Audit TNAS Client to the auditor which the auditor determines and advises TNAS are fair and reasonable.

### **Failing an audit**

14.7 If an Audit TNAS Client is determined by the audit to not be complying with this Agreement TNAS may require that Audit TNAS Client to:

- 14.7.1 immediately relinquish the Toll Free Numbers in respect of which any breach has occurred. Where the Audit TNAS Client has failed to comply in all material respects with this Agreement, those Toll Free Numbers may not be re-allocated to that Audit TNAS Client for 20 Business Days from the date they are relinquished.
- 14.7.2 if this is the second material failure of an audit by that Audit TNAS Client within a period of 12 months prior to the date of the audit report from the auditor, the Audit TNAS Client will be suspended from using the TNAS System for 10 Business Days from the date advised by TNAS.
- 14.7.3 if this is the third (or greater number) material failure of an audit by that Audit TNAS Client within a period of 12 months prior to the date of the audit report from the auditor, the Audit TNAS Client will be suspended from using the TNAS System for 20 Business Days or such longer time as TNAS determines until TNAS is satisfied in its discretion that the Audit TNAS Client has taken appropriate steps to rectify its processes to ensure future compliance with this Agreement upon the suspension being removed.

## **15 CONFIDENTIALITY**

- 15.1 The TNAS Client and TNAS (for the purposes of this section 15 “the Recipient”) each acknowledges that it may acquire Confidential Information in relation to the business and affairs of the other or in relation to the business and affairs of another TNAS Client (for the purposes of this section 15 “the Subject”). Where the Recipient comes into possession of such Confidential Information, then the Recipient and its respective officers and employees shall not, without the specific prior written consent of the Subject, use or disclose such Confidential Information except to the extent that:
  - 15.1.1 it is necessary to enable the Recipient to fulfil its obligations under this Agreement or to enable it to act as a Service Provider or Carrier; or
  - 15.1.2 the Recipient has obtained the information other than pursuant to it being a party to this Agreement; or
  - 15.1.3 the Recipient is required to do so by law.
- 15.2 The TNAS Client shall not:
  - 15.2.1 make any public announcement relating to TNAS’s business or affairs; or
  - 15.2.2 unless required to do so by law, disclose to any other person (other than to its professional advisers) any information relating to TNAS, other than the terms or conditions of this Agreement,without the prior consent of TNAS.

## **16 WARRANTIES**

- 16.1 The TNAS Client represents, warrants and undertakes to TNAS:
- 16.1.1 to duly perform and observe all the terms and conditions to be performed or observed by the TNAS Client under this Agreement;
  - 16.1.2 to act in good faith towards the other TNAS Clients in relation to the operation and administration of this Agreement and the TNAS System, but this obligation shall not in any way limit or restrict the TNAS Client from making or not making any decision, or taking or not taking any action, on any matter having regard to what it perceives to be in its best commercial interests; and
  - 16.1.3 not to do anything which prevents the performance of the TNAS Clients obligations under this Agreement.
- 16.2 The TNAS Client acknowledges that any goods and services supplied by TNAS are supplied for the purposes of a business, and that the provisions of the Consumer Guarantees Act 1993 shall not apply to any such supply.

## **17 LIABILITY**

- 17.1 The parties acknowledge and agree that TNAS has been established as a “not for profit” organisation.
- 17.2 TNAS excludes from this Agreement all conditions, warranties or representations implied by statute, at law, by trade custom or otherwise, in each case, to the maximum extent permitted by law.
- 17.3 Notwithstanding any other provision of this Agreement, the liability of TNAS whether as a result of any breach of this Agreement (including, but not limited to, a breach of any Service Level) or on any other ground or basis whatsoever (including, but not limited to, liability as a result of negligence) will not in any circumstances exceed \$1.
- 17.4 Notwithstanding any other provision of this Agreement, TNAS will not in any circumstances whatsoever be liable to the TNAS Client in contract or in tort or otherwise for:
- 17.4.1 any consequential or indirect damage including, but not limited to, any loss of profit, loss of revenue, loss of use, loss of contract or loss of goodwill of any person including, but not limited to, the TNAS Client and any Customer; or
  - 17.4.2 any loss resulting from liability of the TNAS Client to any other person, including, but not limited to, a Customer.
- 17.5 The TNAS Client shall indemnify and hold TNAS harmless and TNAS’s employees, officers, directors, agents and assignees harmless against Claims arising directly or

indirectly out of or in connection with any matter involving TNAS including any claim by any of the TNAS Client's Customers or any other third party claims made against TNAS in relation to TNAS, the TNAS System or the System Administrator.

- 17.6 For the purpose of the Contracts (Privity) Act 1982, the TNAS Client acknowledges that section 17.2, 17.3, 17.4 and the indemnity in section 17.5 is for the benefit of TNAS and any of TNAS's employees, officers, directors, agents and assignees and is enforceable by any or all of them.

## **18 DEFAULT & TERMINATION**

### **Suspension Event**

- 18.1 It shall be deemed a suspension event ("Suspension Event") under this Agreement if the TNAS Client:
- 18.1.1 fails to pay any amount due and owing to TNAS under this Agreement and the failure is not remedied within 20 Business Days after notice is given by TNAS to the TNAS Client of such non-payment; or
  - 18.1.2 fails to satisfy any of the conditions specified in clause 5 of the TFDAA within 10 Business Days after notice is given by TNAS to the TNAS Client requesting that condition to be satisfied; or
  - 18.1.3 fails to comply with an earlier written notice given by TNAS specifying a material breach of this Agreement which is capable of remedy, and requiring that the TNAS Client remedy that breach within 20 Business Days after receipt of that earlier notice; or
  - 18.1.4 goes into liquidation or has a receiver or statutory manager appointed in respect of any material part of its assets, or it enters into any arrangement for the benefit of its creditors generally or if any event analogous in nature occurs in respect of the TNAS Client under the laws of any relevant jurisdiction; or
  - 18.1.5 has committed a material breach of this Agreement, and that breach is not reasonably capable of being remedied; or
  - 18.1.6 ceases, or threatens to cease, to carry on all or substantially all of its business or operations as a Service Provider or Carrier (as the case may be) or an application or order is made, or a resolution is passed or proposed, for the dissolution of the TNAS Client except, in each case, for the purpose of, and followed by, an amalgamation or solvent reconstruction on terms previously approved in writing by TNAS; or
  - 18.1.7 does not Relinquish the Toll Free Numbers in accordance with this Agreement; or

18.1.8 makes invalid Porting requests or fails to facilitate Porting and the breach is sufficient (having regard to the frequency and/or severity of the breach), in TNAS's, opinion (at its absolute discretion), to warrant suspension.

### **Suspension**

18.2 If a Suspension Event occurs and the TNAS Client fails to remedy the Suspension Event within the applicable period (if any), then without limiting any other right or remedy of TNAS, TNAS may deny the TNAS Client access to the TNAS System for a period of 5 Business Days ("Suspension Period"). If the Suspension Event is not remedied within the Suspension Period then without limiting any other right or remedy of TNAS, TNAS may:

18.2.1 continue to deny the TNAS Client access to the TNAS System and may suspend the TNAS Client until the default is remedied; or

18.2.2 terminate this Agreement with immediate effect by written notice to the TNAS Client.

### **Termination by TNAS Client**

18.3 Without limiting any other right of termination in this Agreement by the TNAS Client this Agreement may be terminated by the TNAS Client at any time and with immediate effect by written notice to TNAS if TNAS goes into liquidation or has a receiver or statutory manager appointed in respect of any material part of its assets, or it enters into any arrangement for the benefit of its creditors generally or if any event analogous in nature occurs in respect of TNAS under the laws of any relevant jurisdiction.

### **Consequences of termination**

18.4 Upon termination of this Agreement for any reason (whether on the expiry of its term or otherwise):

18.4.1 such termination shall be without prejudice to the rights and remedies of either party to this Agreement accrued prior to termination including in respect of any antecedent breach of this Agreement .

18.4.2 the provisions of sections 8, 13, 15, 16, 17 and 18.4, together with those other sections of this Agreement which are incidental to, and required in order to give effect to, those sections, will remain in full force and effect notwithstanding termination;

18.4.3 each party to this Agreement shall promptly return to the other party all copies of any materials, records and Confidential Information (whether in written, electronic or other form) which relate to that other party and which it has in its possession or under its control; and

18.4.4 each party to this Agreement shall carry out all necessary disconnection work

work and removal of its equipment from the other party's premises. For the purposes of section 18.1, the TNAS Client shall pay the reasonable costs incurred by TNAS in respect of such disconnection and removal. For the purposes of termination for any reason other than as those set out in section 18.1, each party will bear its own costs.

## **19 DISPUTE RESOLUTION**

### **Discussion and negotiation of dispute**

19.1 Subject to section 19.3, if any dispute arises between TNAS and a TNAS Client pertaining to the construction, meaning, application or effect of this Agreement or the rights and liabilities of the TNAS Client (other than in connection with any of the Charges):

19.1.1 the Party claiming the existence of the dispute (*the Claimant*) shall give notice specifying the nature of the dispute to the other Party (*the Respondent*);

19.1.2 TNAS may provide a copy of the notice referred to in section 19.1.1 to other TNAS Clients and may invite other TNAS Clients to participate in the dispute; and

19.1.3 the Parties shall meet to discuss the matter in dispute and shall negotiate in good faith to resolve the matter.

19.2 Any failure by the Parties to the dispute to agree anything which by this Agreement they are required to agree shall be a dispute for the purposes of this section 19.1, unless expressly stated otherwise. For the avoidance of doubt, any TNAS Client that does not participate in the dispute resolution procedures shall nonetheless be bound by the outcome of that process where that process results in a variation to these TNAS General Terms & Conditions.

### **Other contractual arrangements**

19.3 For the avoidance of doubt, nothing in this section 19 applies to disputes arising in relation to services provided by any TNAS Client to another TNAS Client under any other contractual arrangements separate from this Agreement.

### **Reference to mediation**

19.4 If a dispute is not resolved by the Parties within 10 Business Days of the notice being given under section 19.1, any Party to the dispute may request the other Party to the dispute to mediate any unresolved aspect of the dispute.

19.5 Within 5 Business Days of delivery of that notice, each Party is to enter into an agreement based on the model mediation procedures promulgated by the organisation known as "Lawyers Engaged in Alternative Disputes Resolution

Incorporated" (LEADR, Inc), or its successor, or any other organisation agreed by the Parties to the dispute or an agreement in a form otherwise acceptable to the Parties and the mediator with regard to any unresolved aspect of the dispute and commence mediation accordingly.

#### **Mediation at any stage of dispute**

- 19.6 Notwithstanding that a dispute may previously have been mediated under this section, any unresolved aspect of that dispute may, if TNAS agrees, be referred back to mediation at any time.
- 19.7 That unresolved aspect may then be mediated only for so long as each Party agrees that the mediation should continue.

#### **Exemptions from arbitration**

- 19.8 Nothing in this section 19 or this Agreement shall permit the TNAS Client to require arbitration of any dispute under, or including any claim, counter-claim, or defence (whether express or implicit) for breach of, the Commerce Act 1986 or the Fair Trading Act 1986 or any other trade practices legislation enacted in addition to or in substitution for those Acts unless TNAS otherwise agrees in writing.

#### **Appointment of arbitrator**

- 19.9 The Parties shall agree on the arbitrator to be appointed. In each arbitration under this section 19 the number of arbitrators shall be one. If the Parties cannot reach unanimous agreement on the person to be appointed as the single arbitrator any of the Parties may apply to the High Court of New Zealand pursuant to the Arbitration Act 1996 to appoint the arbitrator.

#### **Consent to appointment of arbitrator**

- 19.10 Except where an arbitrator is appointed by the High Court of New Zealand, no person shall be appointed as an arbitrator without the fully informed prior consent of all the Parties to his or her appointment.

#### **Timing and procedure of arbitration**

- 19.11 Notwithstanding the above, the:
- 19.11.1 arbitration shall commence within 20 Business Days (or such other time as may be agreed by the Parties or ordered by the Arbitrator) of the dispute being referred to arbitration;

- 19.11.2 arbitration shall be completed no later than 60 Business Days (or such other time as may be agreed by the Parties or ordered by the arbitrator) after the date of commencement of the arbitration;
- 19.11.3 arbitrator may make interim rulings on procedural or substantive matters, on the application of any Party, or of his or her own motion, and for such purpose may deliver an interim award which may have the effect of an interim injunction or an interim declaration;
- 19.11.4 final award shall be made no later than 20 Business Days (or such other time as may be agreed by the Parties) after the final day of the hearing of the arbitration.

#### **Appeal on question of law arising out of an award**

- 19.12 Pursuant to clause 5 of the Second Schedule to the Arbitration Act 1996, any Party (*the Appellant*) may appeal to the High Court on a question of law arising out of an arbitral award, if:
- 19.12.1 the Parties agree, before an arbitration commences, that an appeal may be taken to the High Court on a question of law arising out of an award made in relation to that arbitration; or
- 19.12.2 the Party is granted leave so to do by the High Court; or
- 19.12.3 subject to section 19.13, the Party elects to appeal the award of the arbitrator on a question of law, notwithstanding that the Parties have not agreed prior to arbitration that the arbitral award may be appealed.

#### **Costs on appeal**

- 19.13 Notwithstanding clause 6 of the Second Schedule to the Arbitration Act 1996, if, in an appeal to the High Court pursuant to section 19.12, the Appellant:
- 19.13.1 is not successful in the appeal of that award, or
- 19.13.2 abandons the appeal of that award prior to the final decision of the High Court, without the prior written consent of the other Parties (*the Respondents*),
- 19.13.3 then the High Court may, if it considers appropriate in the circumstances, award costs to the Respondents which costs may include all actual:
- (a) costs and expenses of legal representation incurred by the Respondents in connection with that appeal to the High Court; and
  - (b) costs and expenses of any witnesses incurred by the Respondents in connection with that appeal to the High Court; and
  - (c) disbursement costs and expenses incurred by the Respondents in connection with that appeal to the High Court,

with a view to discouraging the Appellant from bringing inappropriate or spurious claims if the circumstances so warrant.

#### **Ruling or award not to change extent or the subject matter of this Agreement**

- 19.14 Where a matter is referred for resolution under this section 19, the arbitrator shall not make any ruling or award that has the effect of amending this Agreement or materially changing the extent, subject matter, or scope of this Agreement.
- 19.15 To the extent reasonably practical, in the event of any dispute, the parties to the TFDA will continue to comply with their obligations under this Agreement.

### **20 FORCE MAJEURE**

20.1 Neither TNAS nor the TNAS Client will be liable to pay compensation or any other monetary amount to the other for not meeting or any delay in meeting any responsibility or obligation under this Agreement (other than an obligation to pay any charges or any other monetary amount) because of events beyond TNAS or the TNAS Client's reasonable control.

20.2 For the purpose of this section 20, the following events shall be regarded as beyond a party's reasonable control:

20.2.1 any act of God, nature, war or Government, or any civil disturbance;

20.2.2 a labour disruption, the failure of any goods or services provided to that party by anyone else, or a delay or failure in the supply of goods or services to that party by anyone else, in all cases to the extent that the disruption, failure or delay is beyond that party's reasonable control; and

20.2.3 a significant, material change in the legislative or regulatory environment that has the effect of making the operation of any material part of this Agreement impracticable for TNAS or the TNAS Client or making it incapable of performing a material part of its obligations under this Agreement,

provided that the non performing party has taken all reasonable and prudent preventative mechanisms available at the relevant time.

### **21 NOTICES**

21.1 Any notice required to be given pursuant to this Agreement shall be in writing (other than notices from the System Administrator or TNAS Co-ordinator to TNAS Clients which may be by email). Notices shall be delivered by hand to the designated address of the intended recipient or shall be sent by post with postage prepaid or by facsimile to the intended recipient at that address.

21.2 A notice or other communication delivered by hand shall be deemed to have been received at the time of delivery. However, if the delivery is not made on a Business

Day or is made after 5.00pm on a Business Day, then the notice or other communication will be deemed to have been delivered on the next Business Day.

- 21.3 A notice or other communication delivered by pre-paid post shall be deemed to have been received on the 2nd Business Day after posting.
- 21.4 A notice or other communication sent by facsimile shall be deemed to have been received on the day of transmission. However, if the date of transmission is not a Business Day or the transmission is sent after 5.00pm on a Business Day then the notice or other communication will be deemed to have been given on the next Business Day after the date of transmission.
- 21.5 A designated address for the purpose of this Agreement shall be the registered office in New Zealand for the time being of the TNAS Client. TNAS's designated address shall be the registered office in New Zealand for the time being of TNAS Limited.

## **22 AMENDMENT OR VARIATION**

- 22.1 Except as otherwise expressly provided in these TNAS General Terms & Conditions, these TNAS General Terms & Conditions may be varied from time to time. TNAS will notify TNAS Clients in writing of any such variation and any such variation shall take effect from such date as TNAS will specify in the notice to TNAS Clients advising of the variation provided that TNAS will give no less than 20 Business Days notice of the date such variation is to take effect from. TNAS will not vary these TNAS General Terms & Conditions for the TNAS Client in a manner different from any other TNAS Client.

## **23 WAIVER**

Neither party to this Agreement shall be deemed to have waived any right under this Agreement unless such waiver is in writing and signed by such party. Any such waiver by a party of a breach of any provision of this Agreement shall not constitute a waiver of any subsequent or continuing breach of such provision or of the breach of any other provision of this Agreement by that party.

## **24 CUSTOMER RELATIONSHIP**

- 24.1 Nothing in this Agreement is intended to require any Service Provider to accept as a customer any Customer or End Use Customer of the Previous Service Provider that wishes to Port its Toll Free Number to that Service Provider.
- 24.2 The fact that a Customer or End Use Customer has a bad debt or unpaid invoice with the Previous Service Provider or Reseller (as the case requires) is not in itself sufficient grounds to prohibit the Porting of that Customer's or End Use Customer's Toll Free Number in accordance with this Agreement.

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**25 GOVERNING LAW**

25.1 This Agreement shall be governed by and construed in accordance with New Zealand law.

**26 EXCLUSION OF FIDUCIARY DUTIES**

26.1 Nothing in this Agreement shall evidence or be deemed to constitute a fiduciary relationship between any or all of the TNAS Clients; accordingly any fiduciary duties which may otherwise be implied are hereby excluded.

**27 ASSIGNMENT**

TNAS Clients may not transfer or assign any of their liabilities or rights under this Agreement to any other person without the prior written consent of TNAS (such consent not to be unreasonably withheld).

**28 SUBCONTRACTING**

The TNAS Client may not subcontract or delegate the performance of any of its obligations under this Agreement without the prior written consent of TNAS. Any such subcontracting or delegation will not relieve the TNAS Client from liability for performance of any such obligations.

**29 ENTIRE AGREEMENT**

This Agreement is the entire agreement between TNAS and the TNAS Client (in its capacity as a Carrier and/or Service Provider) on the subject matter of this Agreement; it replaces all earlier negotiations, representations, warranties, understandings and agreements, whether oral or written, between the TNAS and the TNAS Client or any of them relating to the subject matter of this Agreement .

**30 FACSIMILE EXECUTION**

The parties to this Agreement may execute a counterpart copy of this Agreement by photocopying a facsimile of this Agreement and executing that photocopy. The transmission by facsimile by each party of a signed counterpart copy of this Agreement to the other party shall be deemed proof of signature of the original and the signed facsimile so transmitted shall be deemed an original for the purposes of this Agreement and the counterparts together shall constitute a binding and enforceable agreement between the parties.

## APPENDIX 1 - SERVICE LEVELS

### PART A

TNAS shall endeavour to meet the following Service Levels:

#### 1 TNAS SYSTEM AVAILABILITY:

- 1.1 Subject to section 11.3, TNAS shall use reasonable endeavours to ensure the TNAS System is available 99% (at all times) per quarter.

#### 2 FAULT RESPONSE, RESOLUTION & ESCALATION:

- 2.1 The maximum Response Times and Resolution Times are:

Fault Severity	Response Time	Resolution Time	Update Frequency
<b>Critical</b>	30 minutes	4 hours	Every 45 minutes
<b>High</b>	1 hour	8 hours	Every 2 hours
<b>Medium</b>	10 Business Hours (1 day)	50 Business Hours (5 days)	Every second day
<b>Low</b>	20 Business Hours (2 days)	100 Business Hours (10 days)	Every Week

- 2.2 For Faults with a Critical Fault Severity Level, the Response and Resolution Times are based on elapsed hours, all other Fault Response and Resolution Times are based on Business Hours.

- 2.3 Critical and High Fault Severity Response Times and Resolution Times will only be applied to the production environment. The test and training environment is expected to have a lower priority under normal circumstances.

#### 3 MONITORING

- 3.1 The continual proactive (24 hours per day 7 days per week) monitoring of the TNAS System to enable early notification of failures Faults or issues.

### PART B

#### 4 TNAS CLIENT SERVICE LEVELS

- 4.1 The TNAS Client shall meet the following Service Levels:

- 4.1.1 Carriers shall send to the TNAS System a confirmation that each instruction (excluding Porting and Account Number validation) has been received and acted upon no later than 2 hours after that instruction has been made available by the TNAS System;
- 4.1.2 Carriers must have completed the implementation of Ports no later than 3:30am of the day following the Working Day when the Port request was issued to the Carrier.

## APPENDIX 2 - ESCALATION, ROLES AND RESPONSIBILITIES

Escalation/ Level	Role	Responsibility	Contact Details
<b><u>System Administrator</u></b>			
Level 1	Compaq Help Desk	Management of the Call Centre, Initial logging of events, Escalation	0800 224 606 <a href="mailto:nz.callcentre@compaq.com">nz.callcentre@compaq.com</a>
Level 2	Site/Client Manager	Monthly Reporting  Change Control  Escalation of issues	Susan Whitty  03 962 5750  021 412 596
Level 3	Manager FutureSourcing Delivery	Escalation of issues	Adam Agnew  04 496 5842  021 622 301
Level 4	NZ Director of Compaq Professional Services	Escalation of Issues	John Hoonhout  09 918 9541  021 327 741
<b><u>TNAS</u></b>			
Level 1	TNAS Coordinator	Escalation of issues	TBA
Level 2	TNAS Facilitator	Escalation of issues not able to be resolved with TNAS Coordinator	TBA
Level 3	TNAS Management Committee	Escalation of issues requiring TNAS Management Committee authorisation	TBA
<b><u>TNAS Client</u></b>			

<b>Escalation/ Level</b>	<b>Role</b>	<b>Responsibility</b>	<b>Contact Details</b>
<b>Service Provider</b>	User Administrator		As advised by the Service Provider in accordance with the relevant TFDA.
	TNAS Management Committee representative (if applicable)		As advised by the Service Provider in accordance with the JVA.
<b>Carrier</b>	User Administrator		As advised by the Carrier in accordance with the relevant TFDA.
	TNAS Management Committee representative (if applicable)		As advised by the Carrier in accordance with the JVA.

TNAS may add, amend, delete information in Appendix 2, from time to time by notice in writing to the TNAS Client.

**APPENDIX 3 - CHANGE REQUEST FORM**

TNAS Reference:

<b>Project Name:</b>		<b>Reference:</b>
<b>Module:</b>		<b>Date:</b>
<b>Change Title:</b>		
<b>Submitted by:</b>		<b>Phone:</b>
<b>Change Type:</b>	Specify one of problem, enhancement or other	
<b>Severity:</b>	Specify serious, moderate, minor or cosmetic	

Description:

<b>Status</b>	<b>Signature</b>	<b>Date</b>
Name:  TNAS Client Organisation:		
TNAS Approval to Proceed	Approve / Reject	

## APPENDIX 4 - CHARGES

The Charges which apply as at the date of this Agreement are set out below. All Charges payable in this Appendix are stated exclusive of GST.

- 1.1 All TNAS Clients will pay an operating contribution charge calculated as outlined below.
- 1.2 The Operating Charge is payable quarterly. The amount payable for each quarter will be calculated by dividing the actual cost of operating and maintaining the TNAS System for that quarter by the total number of weighted Business Transactions that occur during that quarter. The Business Transactions will have the following weightings
  - 1.2.1 viewing the status of Toll Free Numbers in the TNAS System when an inquiry is made as to number status = 1 (an inquiry transaction can involve viewing up to 70 numbers);
  - 1.2.2 changing the status of a Toll Free Number in the TNAS System to Allocate the number = 5;
  - 1.2.3 changing the status of a Toll Free Number in the TNAS System to Port the number = 10.

**For example:**

*Allocation of costs for the quarter January to March (the example assumes seven initial TNAS Clients)*

*Annual Operating Charge = \$210,000*

*Operating Charge for each quarter = \$52,500*

*Actual number of transactions for period:*

*22,500 Inquiries*

*3,000 Allocations*

*750 Ports*

*Weighted number of transactions:*

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$22,500 * 1 = 22,000$  Inquiries

$3,000 * 5 = 15,000$  Allocations

$750 * 10 = 7,500$  Ports

Total weighted transactions 45,000

Resulting operating charge:

$\text{Inquiry} = (22,500/45,000) * \$52,500/22,500 = \$1.17$

$\text{Allocation} = (15,000/45,000 * \$52,500/3,000 = \$5.83$

$\text{Port} = (7,500/45,000 * \$52,500/750) = \$11.67$

A Party who had 500 inquiries, 100 allocations and 50 ports would therefore pay:

$(500 * \$1.17 + 100 * \$5.83 + 50 * \$11.67) = \$1,750$