



NetworkTasman

Dark Fibre Master Agreement for Service Providers

Parties

Network Tasman Limited

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 PO Box 3005,
 Richmond 7050

Contact Person Andrew Stanton

Phone Number 03 989 3602
 Fax Number 03 989 3631
 Email Address andrew.stanton@networktasman.co.nz

Service Provider

Postal Address

Contact Person

Phone Number Fax Number

Email Address

Agreement

The Parties have agreed that from the date of this Agreement NTL will, from time to time, allow the Customer to use certain of the dark fibres owned by NTL on the terms of this Agreement (which comprises this page, the Standard Terms and Conditions and the Schedules attached).

By: Network Tasman Limited

By: _____

Director/Authorised Signatory

Director/Authorised Signatory

Date

Date

Invoicing Contact Details

<input type="text"/>	
Service Provider Name	
<input type="text"/>	<input type="text"/>
Contact Name	Company Position
<input type="text"/>	<input type="text"/>
Contact Phone Number	Contact Fax Number
<input type="text"/>	
Contact Email	
<input type="text"/>	
Invoice Postal Address	
<input type="text"/>	<input type="text"/>
Town/City	Post Code

Technical Contact Details

<input type="text"/>	<input type="text"/>
Primary Technical Contact Name	Position
<input type="text"/>	<input type="text"/>
Contact Phone Number(s)	Contact Fax Number
<input type="text"/>	
Contact Email	
<input type="text"/>	<input type="text"/>
Secondary Technical Contact Name	Position
<input type="text"/>	<input type="text"/>
Contact Phone Number(s)	Contact Fax Number
<input type="text"/>	
Contact Email	

Schedule 1 – Standard Terms and Conditions

A Guide to your Rights and Obligations – February 2009

Network Tasman Limited (NTL) is the owner and operator of a Fibre Optic Network (the Network) located in the Nelson region. Business address for Network Tasman Limited is: 52 Main Road Hope, Richmond 7020, Nelson, Postal address PO Box 3005, Richmond 7050, Nelson; Phone +64 3 989 3600, Toll-free within Network Tasman's distribution area 0800 508 098, Fax +64 3 989 3631, Email info@networktasman.co.nz, Website www.networktasman.co.nz

These terms and conditions are the terms and conditions on which NTL agrees to supply a Dark Fibre Circuit for your use. If you contract to use a Dark Fibre Circuit supplied by Network Tasman you will be deemed to have accepted these terms and conditions.

Network Tasman reserves the right to change these terms and conditions, modify the range of products and services offered and the individual costs and charges for these products and services from time to time unless you are on a Fixed Term Contract. If there is any change NTL will notify those changes at least 90 days before they come into effect.

These terms and conditions should be read together with Network Tasman's Application for Supply of Dark Fibre Circuit Connection, and any other relevant quotation documents.

NTL works to provide a reliable and cost effective Network for the benefit of its customers. Please do not hesitate to contact a Network Tasman representative with any questions or comments.

Agreement

The Parties have agreed: That from the date of this Agreement NTL will, from time to time, allow the Customer to use certain of the dark fibres owned by NTL on the terms of this Agreement, which comprises the Standard Terms and Conditions and the Schedules attached.

Fibre Circuit Requests: Requests for fibre circuits are to be made on NTL's standard "Application for Supply of Dark Fibre Circuit Connection" form either in hardcopy or through our web portal.

Specific Contract: The acceptance by NTL of a request made on NTL's standard "Application of Dark Fibre Circuit Connection" form shall evidence the creation of a Specific Contract for the use of the Dark Fibres referred to in the Application.

General

Client Responsibility: You will be responsible for Network activity conducted by you through the connection provided by NTL to your premises. This means, for example, that if you rent Dark Fibre from Network Tasman you will be responsible for providing media converters, any other active electronics, power supplies, and ongoing maintenance, operation and management of such equipment. NTL is solely the provider of the Dark Fibre Circuit connection.

Duration of the Client's Connection: Unless your connection is for a Fixed Term Contract as specified in your Application for Supply of Dark Fibre Circuit NTL's Minimum Period of Service is 12 months from connection to your premises. At the expiry of your Fixed Term Contract or after the Minimum Period your connection will continue for as long as you require it. If you vacate the premises or wish to cease using the Network, you must give notice of this.

Notice of Termination: NTL requires at least 30 working days notice of your intention to cease using the Network. Notice must be provided to NTL in writing and must be acknowledged by NTL. The final day for termination of service will be the last day of the following month that notice of termination is delivered to NTL.

Early Termination Fee: An Early Termination Fee will apply for early termination during any Fixed Term Contract period or prior to the Minimum Period For Service being reached, unless termination is on the grounds of the failure or inadequacy of the Dark Fibre Circuit not meeting acceptable performance in respect of availability and fault repair restoration times as measured against accepted good industry practice.

Effect of Termination: Following Notice of Termination, NTL will disconnect the Dark Fibre Circuit from your premises.

Indemnity: You agree to indemnify NTL against all reasonable costs (including but not limited to legal fees and commissions) incurred by NTL, or its duly authorised agents relating to the recovery of any money you owe us pursuant to services and connections as described in these Terms and Conditions. This clause will survive the termination of your Application and Agreement for Connection.

Assignment: You may not assign or transfer any of your rights, benefits and obligations under these terms and conditions to any other person. If you are a company, any change in control will be an assignment for the purposes of this clause.

Joint and Several Responsibility: If you have entered into an arrangement for the provision of this connection service with other

people or organisations, then these Terms and Conditions will apply jointly and severally to you and those other persons or organisations.

Personal Information: You have a right to access the personal information that NTL holds on you. Should you consider the information to be inaccurate you may request that NTL correct that information. We shall not release any personal information about you to any other person except as required by law. The information is collected for the purpose of providing services to you and may also be used to make available to you any other products or services which we think you may be interested in. We may also use your information for carrying out credit rating checks, and we may share that information with a debt collection agency if you owe us money.

Availability of the Network Connection: The Network is constantly changing as the needs and requirements of our customers change. And while the Network is extensive, there are areas where connections are not available. You should contact NTL for details of your nearest connection point.

Access to Customer Premises: You must provide ready access to Network Tasman's authorised personnel to the NTL connection points for the purposes of Network management, configuration and repair. This will typically be during normal working hours; but to assist with the working requirements of some customers access may be outside these times.

Identification: NTL will ensure that any such authorised personnel are suitably identified. You are entitled to ask any person to provide evidence of their identity before letting them into your premises.

Obstruction: If it appears to NTL that you are preventing our authorised personnel from gaining access for the purposes set out above, NTL may treat this as a breach of these Terms and Conditions, which may lead to disconnection.

Public Liability Insurance: NTL's legal liability for personal injury and damage to property caused by the negligence of its authorised personnel in the course of construction or servicing of the cable network is limited to \$5,000,000.

Occupational Safety and Health: NTL is a responsible company and maintains a strict policy for Occupational Safety and Health. In all its activities, NTL will ensure the safety of its staff and contractors.

Accounts and Payment

Delivery of Accounts: Accounts will be sent electronically by email to the address given by you below. Accounts will be deemed to be received 24 hours after sending. You must advise NTL immediately if any of the details shown on your account information details are incorrect or become incorrect.

Due Date: Single invoice/statement accounts are payable within 14 days of receipt of the combined invoice/statement.

Payments: Accounts for regular charges such as the Monthly Service Charge will be invoiced monthly in advance.

Monthly Accounts: Accounts for regular charges are calculated on a daily rate which is derived from the Monthly Service Charge multiplied by 12/365 multiplied by the Accounting period.

Disconnection for Non-Payment: If you have not paid your account by the "due date" as shown on your account, NTL may give you notice of its intention to disconnect your Network connections.

This disconnection may take place at the end of the period set out in the notice. NTL will not disconnect you if you have a genuine dispute over the amount to be paid on your account. However, you may be disconnected if the issue has been resolved and the amount due remains unpaid 14 days after notice of the resolution.

Reconnection: If you have been disconnected for non-payment of an account, your service connection may be re-instated within 2 working days of the following conditions being satisfied: payment of the amount owing; a cash deposit; and the appropriate reconnection fee.

Liability for Loss

Non-availability of network: NTL will make every possible endeavour to maintain constant access to the Network and ensure that the Network is available for use by you. However, NTL cannot be held responsible for accidental non-availability or outages of service, or for unforeseen interruptions to service. Neither is NTL liable for the provision of services over the Network. NTL shall not be held responsible for any loss or damage (incurred by you or any other person) caused by any failure of any nature on the part of your service supplier to supply you with sufficient services and connections, to maintain the quality of service or network that NTL may be endeavouring to supply.

Planned Interruption to Service: Where outages or interruptions are planned, NTL will make every effort to ensure these outages are of minimum duration and that you are notified of the schedule of these outages.

Special Circumstances: In special circumstances of Network activity, NTL may impose Network restrictions, if required, in order to permit safe and reasonably careful installation, maintenance, repair and/or management of the Network, or other plant or equipment or if needed to minimise danger to human life or damage to property.

Liability for Damage: Furthermore, notwithstanding any other provisions in these Terms and Conditions, NTL will not be liable for any loss or damage incurred by you or any other person caused by an interruption or failure in the Network, or by any other cause which is the result of: an act or default or omission of, or any representation made by, any person other than NTL or NTL's employees, or agents, or a cause independent of human control.

Restoration of Services: In the event of a Network outage or interruption of service, NTL will endeavour to restore a connection and services as soon as possible. NTL's Service Level Agreement (SLA) details are specified separately.

Force Majeure: Notwithstanding any other provision, non-performance by NTL of any of its obligations shall be excused, without liability for non-performance; during the time and to the extent that such performance is prevented, wholly or substantially by Force Majeure.

Limit of Liability: In the event that NTL is held to be liable to the Customer under this Agreement notwithstanding the above clauses, the parties agree NTL shall only be liable for direct loss and the total liability of NTL to the Customer shall not exceed the amount of Fees paid by the Customer to NTL for the supply of the Network for the 6 months prior to the date on which the event giving rise to the liability arose, or if the event occurs prior to this Agreement being in existence for 6 months, a reasonable estimate of what the Fees would have been without taking into account the relevant event.

Breach of Agreement

Breach: Failure to comply with these Terms and Conditions or with any obligations placed on customers by any statute or regulation relevant to the supply of network connections and services pursuant to this agreement may amount to a breach of the contract between you and NTL.

Disconnections: If you are deemed by NTL to have breached the conditions of these Terms and Conditions, NTL may serve you with a notice setting out the nature of the breach, and the steps that must be taken to remedy the situation. If you have not complied or taken appropriate steps within five (5) working days, NTL will disconnect you from the Network without further notice.

Safety

Disconnections: If NTL is required to disconnect your supply for reasons of statute, regulation or safety, your service and network connection will be disconnected immediately and without notice to you.

Unauthorised use of Network or Services

Dedicated Fibre circuits: Fibre connections are dedicated fibre services to be used by customers for their own operational needs.

No connections, other than the subscriber's contracted end nodes, will be made to the circuit.

Disconnections: If you take or make use of the Network connections or services in any unauthorised manner, NTL reserves the right to disconnect supply and/or services without notice to you and may take legal proceedings in respect of unauthorised use.

No Right to On-Sell: For purposes of clarity, NTL customers have no right other than the use of the network for their own purposes in terms of signalling, communication and entertainment. NTL does not allow the on-sale or re-selling of access or unused portion of access to its network or the contents of the NTL network, unless expressly agreed in writing.

On-selling of Value added Services: In cases where the customer is a Service Provider approved by NTL, then service may be resold where the Service Provider provides layer 2 or higher functionality and the service is resold as a value added package with a defined bandwidth.

Consumer Guarantees Act 1993

The Provisions: Of the Consumer Guarantees Act 1993 shall have effect notwithstanding anything to the contrary in these Terms and Conditions unless Sections 40 or 41 of the Act apply.

If you are a Business: Or have presented yourself as a business, then any rights or remedies under the Consumer Guarantees Act 1993 shall not apply in respect of goods and services supplied pursuant to any agreement between you and NTL.

Supply and Installation Requirements

General: The Network could be brought into your premises by a variety of means. Generally, a form of underground or overhead cable is brought in from a neighbouring connection point. Typically a cable will be brought in and may carry on to another customer. This will not affect your use.

Point of Entry: If the Network cable entry is through your premises, it must be immediately accessible to NTL's authorised personnel at all times. You must make sure that the point of entry is not damaged. As the point of entry is on your property, any repairs or maintenance carried out on your behalf to the point of entry by NTL will be paid for by you. If the Network cable entry or any other equipment of NTL is to be installed on property that does not belong to you, you must obtain the consent of the owner of the property on terms acceptable to NTL (including the provision of any easement over the property at your cost) before the installation of any of NTL's equipment. If you fail to get consent, you will indemnify NTL for all loss suffered by NTL as a result of such failure and for claims made by the owner of the property or any other person.

Your Responsibilities: You are responsible for the installation, repair and maintenance of all cables and equipment from the NTL service cabinet to your own equipment.

Network Tasman's Responsibilities: NTL is responsible for the installation, repair and maintenance of its own cables, poles, trenches and connectors in the streets.

Compliance: You must comply with any reasonable instructions, orders or regulations made under the Telecommunications Act 2001 and any other relevant legislation.

Customer Installations: The installation of a Network connection must be carried out in accordance with NTL's Network Requirements.

Property

Ownership: All cable and network components remain the property of NTL. You may be held liable for any damage caused to NTL cable or components located on your premises in the event you directly or indirectly cause such damage.

Prohibited Use

Network use: The Dark Fibre Circuit connection is not designed, manufactured or intended for use or resale in applications in which the failure or inaccuracy of the connection carries a risk of causing death or serious bodily injury. This includes, but is not limited to, various applications found in nuclear facilities, aircraft navigation or communication, air traffic control, and/or sea traffic control, medical life support or other applications representing a similar degree of potential hazard.

Backhaul Redundancy: If an Approved Service Provider does intend to resell time critical Service and Products over any long haul route then it is strongly recommended that an appropriately sized redundant service be made available to ensure continuity of Service and Products if the Network were to fail.

Non-availability of Network and Faults

- **Network Tasman:** Will make every reasonable endeavour to maintain constant access to the Fibre Network and ensure that the Fibre Network is available for use by you. In the case of fault situations requiring the assistance of Network Tasman personnel, Network Tasman will respond to requests for assistance logged with the company's telephone service on 03 989 3600 or toll free 0800 508 098. You must identify such calls as Fibre Fault calls, so that the appropriate level of urgency can be applied.
- **The Client:** Is primarily responsible for reporting any observed fault or problems with the Fibre Network connection promptly. You are liable for a reasonable callout charge to be invoiced by Network Tasman in the event that the "fault" cause was not related to the Fibre Network.
- **Technical Contact Details:** You must advise Network Tasman immediately if any of the Technical contact details held by Network Tasman are incorrect or become incorrect.
- **Network Tasman shall not:** Be held responsible for any loss or damage (incurred by you or any other person) caused by any failure of any nature on the part of your service supplier to maintain the quality of service or network that Network Tasman may be endeavouring to supply.
- **Fault Time Frames:** When a fault call has been placed, Network Tasman personnel will endeavour to respond within the following time-frames:

	Business Hours Service Support	After Hours Service Support
Return call to Client	20 min	30 min
Network Tasman personnel on-site (Nelson)	60 min	120 min
Network Tasman personnel on-site (Marlborough)	120 min	180 min
Expected Cable Network Repair time from fault call	8 hours	12 hours

- Should a major cable be damaged, Network Tasman will use its best endeavours to repair and restore service, within a 6 to 8 hour time window (elapsed time).
- **Fault Process Summary**
 - Client identifies fault on Network Tasman network link or network connection.
 - Client reports fault to Network Tasman service line (03 989 3600) or call free (0800 508 098)
 - Fault call details logged in Network Tasman Fault Call Register
 - Network Tasman or its agent contacts Client (if needed) to localise or further define fault condition
 - Network Tasman or its agent allocated fault call (with Network Tasman personnel or its agents callout if needed after hours)
 - Network Tasman or its agents manages fault to conclusion (with Client kept informed as needed)
 - Client informed of the nature of the fault discovered and rectified
 - Fault Call Register signed off upon satisfactory fault clearance.

Schedule 2 – Service Level Agreement

This section is intentionally blank – any SLA required for any specific fibre circuit will be documented with the application form for that specific fibre circuit.

Schedule 3 – Charges

Pursuant to Schedule 1 *Introduction* these tables will be amended from time to time.

Monthly Charges

Dark Fibre charge	Service	Monthly Fee
Nelson-Annesbrook	Single Strand Dark fibre Point to Point	\$649*
Annesbrook-Richmond		\$649*
Richmond-Nelson		\$949*
Other zones		Bespoke

* Where fibre is already installed in the same street as the customer, Minimum Period of Connection is 12 Months.

Volume Discounts

Volume	Discount
21 th Fibre circuit	5%
51 th Fibre circuit	10%
101 th Fibre circuit	20%

Term Discount

Term	Discount
5 year term	10%

Contractual Periods

- "Year 1" shall begin and be measured from the Commissioning Date of the circuit concerned ("Year 1 Start Date") and shall end the day before the anniversary of the Year 1 Start Date;
- "Year 2" shall begin the day after the end of Year 1 ("Year 2 Start Date") and end on the day before the anniversary of the Year 2 Start Date;
- "Years 3" onwards shall begin and end in the same manner as described for Year 2 above.

Future Charges

- The Annual Licence amount is the sum of Twelve Monthly Fees.
- Unless expressly agreed in writing the Annual Licence amount for all leased circuits shall be subject to CPI increases.
- On the anniversary of the "Review Date" the Monthly Fee will be adjusted by any movement in the CPI (All Groups) Index during the previous four quarters.
- The Annual Licence amount for the Year subsequent to the Review Date will be calculated as the Sum of Twelve CPI adjusted Monthly Fees.
- The Review Date is the same date for all leased circuits and unless expressly recorded below is the date on which this agreement is signed.
- Annual Licence "Review Date": _____

Glossary of Terms

Network Tasman: Network Tasman is a trading name for Network Tasman Limited, a registered limited liability trading company.

Cable: Any communications medium, which provides the transmission of information signals. This would include fibre optic, coaxial, UTP, STP, twisted pair, etc.

Circuit: A circuit is defined to be a single network path represented by one or more unique circuit elements which start and end at common physical node points. A circuit element is any single span of cable connecting two node points for a single customer. The span may carry any one unique Network Tasman service.

Client: The user of Network Tasman's products and services, the term Client is interchangeable with the term Customer.

Fibre: Optical filaments drawn out into a cable and covered in a protective sheath.

Dark Fibre: A segment of "fibre cable" which is provided without any information signal processing, termination equipment, protocol definitions, operational management, or network services.

You and your: Indicating or instructing the potential or existing client reader of this document.

Force Majeure: means any act of God, fire, earthquake, storm, flood or landslide; strike, lockout or other labour hindrance; explosion or public mains electrical supply failure; electromagnetic radiation, power surge, sabotage, riot, civil disturbance, insurrection, epidemic, national emergency (whether in fact or law) or act of war (whether declared or not); requirement or restriction of, or failure to act by, any government or semi-governmental or judicial entity; unavoidable accident; and any other similar cause beyond the reasonable control of Network Tasman.

Specific Contract: means a contract between NTL and the Customer pursuant to which NTL agrees to allow the Customer to use certain of the Dark Fibres owned by NTL in accordance with a Request made on NTL's standard "Application of Dark Fibre Circuit Connection" form and subject to the terms of this Agreement.

End