



# **Partner Program Agreement**

**General Terms and Conditions**

Revised 30-Oct-2017

## The Parties

1.1 ZettaNet Pty Ltd ABN 48 066 394 509 (hereinafter referred to as "ZettaNet", "us", "our") and the Customer (being an entity subscribing to ZettaNet for the provision of network, Internet, voice over IP or traditional telephony services) agree that by accessing our services, you (hereinafter referred to as "The Customer", "you" and "your") accept, without limitation or qualification, the terms and conditions contained within the Standard Form of Agreement.

## Definitions

1.2 This Agreement contains the complete terms and conditions that apply to an individual's or entity's participation in the ZettaNet Channel Partner Program (the "Program").

1.3 As used in this Agreement, "we" (and "us" and "our") means ZettaNet, associated web sites and companies, and "you", "your", "Partner", "Channel Partner" means the applicant.

1.4 "Active Referral" means a referral for which the subscriber is currently active and the Partner is receiving revenue.

1.5 "Business Day" means 0800 to 1800 Monday to Friday in the state of Western Australia, excluding Public Holidays in New South Wales and Western Australia.

1.6 "Expired Referral" means a referral for a subscriber that has discontinued a Qualifying Service.

1.7 "Confidential Information" means the following, whether or not in material form:

a) all information that is treated or designated by a Party as confidential, which is not generally known to the other Party's personnel, and which should be reasonably regarded in all the circumstances as confidential, including, without limitation, information relating to the Party's technical and computer operations, including its equipment, software and data for processing, information relating to the Party's staff, business dealings, contracts, customers, marketing, sales, business plans, transactional data, financial data and other sensitive corporate or personal information;

b) all notes and other records prepared by a Party based on or incorporating any of the information referred to in paragraph a);

c) all copies of the information, notes and other records referred to in paragraphs a) and b); and

d) all data input into the System by a Party or with its authority, all reports generated by the System using such data and all information

relating to this agreement whether obtained before or after execution of this agreement.

1.8 "Control" has the meaning given to that term under section 50AA of the Corporations Act 2001 (Cth).

1.9 "Customer" means the person or company responsible for the payment of the service to ZettaNet.

1.10 "Documentation" means all user guides, training materials, technical reference manuals and other documents relating to the operation of the ZettaNet service.

1.11 "Fees" means all payments of any type required to be made by ZettaNet to the Partner under this agreement.

1.12 "Force Majeure Event" means, with respect to ZettaNet or Partner ("Affected Party") an event which is beyond the reasonable control of the Affected Party which directly results in the Affected Party being unable to observe or perform on time an obligation under this agreement.

1.13 "GST" and "GST law" have the respective meanings given to them by section 195-1 of the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

1.14 "Insolvent" has the meaning given to that term under section 95A of the Corporations Act 2001 (Cth).

1.15 "Intellectual Property Rights" means all rights (whether created before, on or after the date of this agreement and whether registered or unregistered) in respect of copyright, trademarks, patents, designs, protection of confidential information, circuit layouts, inventions, know-how, product or business concepts and any other identifiable result of intellectual endeavour, whether arising under statute or otherwise.

1.16 "Minimum Payment Value" means the minimum value of the commissions accrued before a payment of those fees is made to the Partners nominated bank account.

1.17 "Parties" means ZettaNet and the Partner and "Party" means ZettaNet or the Partner, as the case may be.

1.18 "Pending Referral" means a referral that has not yet been made active or expired. These are typically where the payment for a new subscription has not been received.

1.19 "Personnel" means any officer, employee, agent or contractor (or any officer, employee or agent of a contractor) of the Partner.

- 1.20 "Personal Information" has the meaning given under the Privacy Act from time to time. As at the date of this agreement, it means information or an opinion (including information or an opinion forming part of a database) whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.
- 1.21 "Program" means the ZettaNet Partner Program.
- 1.22 "Privacy Act" means the Privacy Act 1988 (Cth) and includes any determinations, guidelines and interpretative explanations issued from time to time by the Office of the Privacy Commissioner under that Act.
- 1.23 "Qualifying Services" means those services for which the Partner payment revenue for.
- 1.24 "Referral" means those customers that have supplied the Partners code when applying for a qualifying service. Referrals maybe in three states: Pending, Active and Expired.
- 1.25 "Related Corporation" means a "related body corporate" as that term is defined in section 50 of the Corporations Act 2001 (Cth).
- 1.26 "Services" means any or all services to be provided under this agreement.
- 1.27 "Site" means a World Wide Web site and, depending on the context, refers either to our sites at ZettaNet.com.au or to your site.
- 1.28 "Tax Invoice" and "Taxable Supply" have the respective meanings given to them by section 195-1 of the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

### **Channel Partner Program Applications**

- 1.29 To begin the application process, please complete the Channel Partner Application Form on the ZettaNet website. You will receive an acknowledgement of the submission of your application by email.
- 1.30 We will assess your application based upon the information you have provided to us.
- 1.31 Although we hope your application will be successful, we reserve the right to reject or cancel applications for any or no reason.
- 1.32 For example, we may reject or cancel your application or current subscription if we determine that your business or dealings is unsuitable for the Program, including if it:
- 1.33 Promotes sexually explicit materials, violence or discrimination based on race, sex, religion, nationality, disability, sexual orientation, or age

- 1.34 Promotes illegal activities
- 1.35 Incorporates any materials which infringe or assist others to infringe on any copyright, trademark or other intellectual property rights or to violate the law
- 1.36 Is otherwise in any way unlawful, harmful, threatening, defamatory, obscene, harassing, or racially, ethnically or otherwise objectionable to us in our sole discretion.
- 1.37 Contains software downloads that potentially enable diversions of commission from other Channel Partners in our program.
- 1.38 Is deemed to directly compete with our business interests.
- 1.39 If we reject your application, you are welcome to reapply to the Program at any time. You should also note that if we accept your application and your site is thereafter determined (at our sole discretion) to be unsuitable for the Program, we may terminate this Agreement.
- 1.40 Channel Partners who are terminated from the Program are forbidden to reapply at any time in the future. Any such attempts to do so will result in commissions not being issued.
- 1.41 Our employees are not eligible to become Channel Partners.

### **Customer Application Processing**

- 1.42 We will process signup orders placed by you or customers who provide your Channel Partner code on the Application Form.
- 1.43 We reserve the right to reject payment to you where applications do not provide Channel Partner code.
- 1.44 Commissions are in no way retrospective and cannot be claimed for customers already with ZettaNet.
- 1.45 We will be responsible for all aspects of order processing. Among other things, we will hold and store end user customer details, process payments and cancellations and handle customer service.
- 1.46 We will track sales made by Channel Partners to customers. The form, content and frequency of the reports may vary from time to time at our discretion.

### **Qualifying Services**

- 1.47 Products that are entitled to earn Partner revenue under the rules set forth above are hereinafter referred to as "Qualifying Services" as per Appendix A.

- 1.48 Changes to the available Qualifying Services and incentives will be notified in writing to the Channel Partner.
- 1.49 Income generated from excess data charges or traditional telephony (rebill) calls is not eligible to be included in any Channel Partner reward program.

### **Commissions**

- 1.50 For a customer subscription to generate a commission, the customer must:
- a) sign up on a ZettaNet site or submit a signed document using your Channel Partner in the appropriate area,
  - b) accept our End User Terms and Conditions of Service;
  - c) and remit full payment to ZettaNet.
- 1.51 Commissions are only payable for active referrals to Qualifying Services. Pending or Expired referrals are not eligible for commissions.
- 1.52 Commission rates are fixed for a period of 12 months from the inception of this agreement. ZettaNet may change the commission rates after the initial term by giving the partner no less than 30 days' notice.

### **Payment**

- 1.53 We will pay you earned commission fees on a monthly basis when you have met the minimum requirement of AUD\$150.00 and have 3 active services.
- 1.54 Approximately 30 days following the end of each calendar month, we will send you payment for the earned revenue on Qualifying Services for which ZettaNet received payment during that month, less any taxes that we are required by law to withhold. However, if the commissions payable to you for any calendar month are less than AUD\$150.00 or the subscriber has been with ZettaNet less than 90 days, we will hold those commissions until the total amount due is at least AUD\$150.00 or (if earlier) until this Agreement is terminated.
- 1.55 We will issue you with a recipient generated tax invoice when monies are to be paid by us to you.
- 1.56 The tax invoice will be forwarded electronically to the accounting email contact address of the Channel Partner Portal following transfer of the monies to your nominated bank account.
- 1.57 This tax invoice and will include GST. We will not accept tax invoices from you.
- 1.58 We will only pay you via Electronic Funds Transfer into the bank account you specify.

- 1.59 We will not be held liable for monies transferred to an incorrect account where your banking details are incorrect at the time of transfer.

### **Policies and Pricing**

- 1.60 For the avoidance of doubt, customers who utilise services through the Channel Partner Program will be customers of ZettaNet for the qualifying service, unless you are reselling the service. We will provide the customer with a tax invoice for ZettaNet services only.
- 1.61 We will only be responsible for providing services to the customer as per the General Terms and Conditions and Service Description for that service. Where you provide products or services to the customer you will remain solely responsible for this.
- 1.62 If you represent a customer and require access to the customers technical account information we must receive an account authority form signed by the account holder before we will permit access to customer information.
- 1.63 Accordingly, all ZettaNet rules, policies and operating procedures concerning customer orders, customer service and sales will apply to those customers. Such policies and operating procedures may be changed at any time. For example, ZettaNet will determine the prices to be charged for Services sold under this Program in accordance with its own pricing policies.
- 1.64 Prices and availability may vary from time to time. Because price changes may affect Services that you already have listed on your site, we recommend that you do not include price information in your descriptions. ZettaNet will use commercially reasonable efforts to present accurate information, but we cannot guarantee the availability or price of any particular Service.
- 1.65 ZettaNet will make reasonable efforts to inform Partners 10 days before the change in service pricing for which the Partner is qualified to resell.
- 1.66 Where Partners have resold a qualifying service ZettaNet will provide the partner with the reward agreed at the commencement of the customers' contract for the duration of the initial term of the contract.

### **Reselling the Service**

- 1.67 You may resell the service.
- 1.68 Where You elect to resell the service then the You shall be responsible for the direct Customer account management and support.

- 1.69 Where You elect to resell the service then the You shall remain solely responsible for the payment of these Services to ZettaNet.

### **Partner Support**

- 1.70 Partners will be provided with a dedicated partner support service telephone line and email address.
- 1.71 The helpdesk will be operational on Business Days between 8:00am and 6:00 EST.
- 1.72 Outside these hours a message service will be operational.
- 1.73 You will be required to supply your Account ID when contacting the Channel Partner helpdesk.

### **Reporting**

- 1.74 ZettaNet will make statistical information available via the ZettaNet website. The information will include:
- a) Commission by Service
  - b) Commission by Calendar Month
  - c) Commission by Customer
- 1.75 The data displayed in the ZettaNet partner website will be available immediately following the end of the calendar month.
- 1.76 Each party must keep full, true and accurate books of accounts and records which disclose all amounts which are required to be taken into account when determining what is required to be paid under this Agreement.

### **Intellectual Property**

- 1.77 The Partner acknowledges that ZettaNet will own all Intellectual Property Rights in all data, in whatever form, that are stored, exchanged, processed or otherwise accessed or used via the System or by the Partner, and have been input or forwarded by, or have originated from, the Partner or a Related Corporation or a user of the System ("ZettaNet Data").
- 1.78 Each party and any related third parties shall continue to own their pre-existing intellectual property.
- 1.79 Each party will have the perpetual right to use any know-how it acquires or generates in the performance of this Agreement.
- 1.80 To the extent that the law does not recognise as property any part or aspect of the Intellectual Property Rights contemplated by this agreement, any agreed assignment of such Intellectual Property Rights is deemed an agreement by the supposed assignor to treat them in all respects as the property of the supposed assignee, and in particular to refrain (in perpetuity) from

reproducing them, commercialising them, dealing in them or using them in any manner other than as provided under this agreement or otherwise agreed by the Parties in writing.

- 1.81 Except for the license granted under this section, you do not obtain any rights under this Agreement in any intellectual property, including, without limitation, any intellectual property with respect to the pricing, technical specifications, guidelines or graphical artwork referenced above, or with respect to the ZettaNet domain name or services.

### **Confidentiality**

- 1.82 During and after termination or expiry of this agreement, each Party must:
- a) keep all Confidential Information of the other Party strictly confidential and not disclose it to any third party without the other Party's prior written consent;
  - b) only disclose Confidential Information of the other Party to those of its Personnel who need to know and who have been expressly directed to and have agreed to keep that information confidential;
  - c) put in place and maintain adequate security measures to protect Confidential Information of the other Party from unauthorised access or use;
  - d) immediately notify the other Party of any threatened, likely, suspected or actual unauthorised use, copying or disclosure of Confidential Information of the other Party, and provide assistance as reasonably required by the other Party in relation to any steps or proceedings the other Party may take as a result;
  - e) not copy Confidential Information of the other Party without the other Party's prior written consent, and mark all copies "CONFIDENTIAL" or, where any notices of proprietary rights and/or confidentiality appear on the Confidential Information of the other Party, ensure that those notices are reproduced on any copies;
  - f) only use Confidential Information of the other Party to the extent necessary to perform its obligations under this agreement; and
  - g) immediately notify the other Party if it is required by law to disclose any Confidential Information of the other Party and provide assistance as reasonably required by the other Party if the other Party wishes to take steps (which may include court action) to prevent or restrict any such disclosure.

### **Relationship of Parties**

- 1.83 You and we are independent contractors and nothing in this Agreement will create any partnership, joint venture, agency, franchise, sales representative, or employment relationship between the parties or our respective Associates. You will have no authority to make or accept any offers or representations, guarantees or warranties on our or our associates' behalf, including with respect to our or our associates Products or services.
- 1.84 You will not make any statement or representation, whether on your site or otherwise, that you are connected or affiliated with us or our site, other than for the purpose of referring customers to our site as defined under this Agreement, or that otherwise reasonably would contradict anything in this Section.
- 1.85 You may not make any press release with respect to this Agreement or your participation in the Program without our prior written consent, which may be given or withheld in our sole discretion. You must e-mail [support@zetta.net.au](mailto:support@zetta.net.au) if you wish to get written consent.
- 1.86 We may list your business name, website address, email address and service area on our website to identify you as a Channel Partner.

#### **Lead Source**

- 1.87 Where a partner registers an opportunity with ZettaNet and the end-customer then elects to purchase the service directly from ZettaNet, this will be considered a referral and ZettaNet will provide the partner with commission for the service.

#### **Limited License**

- 1.88 We grant you a nonexclusive, revocable right to use the materials on the ZettaNet website and such other images for which we grant express permission, solely for the purpose of identifying your site as a Program participant and to assist in generating sales. You may not modify the icon or any of our images in any way. We reserve all of our rights in the icon, any other images, our trade names and trademarks, and all other intellectual property rights. We may revoke your license at any time by giving you written notice.

#### **Your Responsibility**

- 1.89 You will be solely responsible for the development, operation and maintenance of your site and for all materials that appear on your site. For example, you will be solely responsible for: the technical operation of your site and all related equipment; creating and posting Product descriptions on your site and linking those descriptions to the ZettaNet catalogue using Special Links and special link

formats provided by us; the accuracy and appropriateness of materials posted on your site (including, among other things, all Product-related materials) ensuring that materials posted on your site do not breach or infringe upon the rights of any third party (including, for example, copyrights, trademarks, privacy or other personal or proprietary rights; ensuring that materials posted on your site are not defamatory or illegal. We disclaim all liability for these matters. Further, you will indemnify and hold us harmless from all claims, damages and expenses (including, without limitation, legal fees) relating to the development, operation, maintenance and contents of your site.

#### **Term of the Agreement**

- 1.90 The term of this Agreement is 12 months. Either you or we may terminate this Agreement at any time, with or without cause, by giving the other party written notice of termination.
- 1.91 You are only eligible to earn commissions on sales of Qualifying Services occurring during the term and fees earned up to the date of termination will remain payable only if the related orders are not cancelled or returned.
- 1.92 We may withhold your final payment for a reasonable time to ensure that the correct amount is paid. Upon termination of this Agreement, you must promptly return to us, or at our request, destroy any and all of our intellectual or proprietary property, information and/or materials in your possession and, subject to receiving written consent to the contrary from us, remove all hypertext links to our site from your site.

#### **Modification**

- 1.93 We may modify any of the terms and conditions contained in this Agreement, at any time and at our sole discretion, by posting a change notice or a new agreement on our site. Modifications may include, for example, changes in the scope of available reward fees, fee schedules, payment procedures and Program rules. If any modification is unacceptable to you, your only recourse is to terminate this agreement. Your continued participation in the Program following our posting of a change notice or new agreement on our site will constitute binding acceptance of the change.

#### **Limitation of Liability**

- 1.94 Neither we, nor any of our associates, will be liable for indirect, special or consequential damages (or any loss of revenue, profits or data) arising in connection with this Agreement or the Program, even if we, or any of our associates, have been advised of the possibility of such

damages. Further, to the fullest extent permitted by law, our and our associates' collective aggregate liability arising with respect to this Agreement and the Program will not exceed the total reward fees paid or payable to you under this Agreement at the time the act or omission giving rise to the liability occurred.

#### **Disclaimers**

1.95 To the fullest extent permitted by law, neither we nor any of our associates makes any express or implied warranties or representations with respect to the Program or any Products sold through the Program (including, without limitation, warranties of fitness, merchantability, non-infringement or any implied warranties arising out of a course of performance, dealing, or trade usage), and the same are hereby excluded. In addition, neither we, nor any of our associates, make any representation that the operation of our site will be uninterrupted or error-free and none of us will be liable for the consequences of any interruptions or errors.

#### **1.96 Independent Investigation**

1.97 You acknowledge that you have read this agreement and agree to all its terms and conditions. You understand that we or any of our associates may at any time (directly or indirectly) solicit customer rewards on terms that may differ from those contained in this agreement or operate web sites that are similar to or compete with your web site. You have independently evaluated the desirability of participating in the program and are not relying on any representation, guarantee or statement other than as set forth in this agreement.

#### **Warranty**

1.98 The Partner warrants, as at acceptance of this agreement and during the Term, that:

1.99 a) no conflict of interest exists or is likely to arise in the performance of its obligations under this agreement;

1.100 b) it has the right and authority to enter into this agreement, to grant all relevant rights and perform all relevant functions;

1.101 ZettaNet make no express or implied warranties or representations with respect to the Program or any products sold through the Program (including, without limitation, warranties of fitness, merchantability, non-infringement or any implied warranties arising out of a course of performance, dealing, or trade usage).

1.102 The Partner acknowledges that they have read this agreement and agree to all its terms and conditions. The Partner understands that we may maintain Partners on terms that may differ

from those contained in this agreement or operate businesses that are similar to or compete with your web business. You have independently evaluated the desirability of participating in the program and are not relying on any representation, guarantee, or statement other than as set forth in this agreement.

1.103 ZettaNet may send both service support and marketing material to the customer. The Partner may elect to cease the delivery of marketing material to customers signed up using their Partner ID. Delivery of service support material cannot be restricted by the Partner. This includes but is not limited to invoices, excess usage notices, shaping notices, payment reminders.

#### **Costs of this Agreement**

1.104 Each Party will bear and is responsible for its own costs (including legal costs) in connection with the preparation, execution, completion and carrying into effect of this agreement.

#### **Entire Agreement**

1.105 This agreement, including its Schedules and Annexures:

1.106 a) constitutes the entire agreement between the Parties as to its subject matter; and

1.107 b) in relation to that subject matter, supersedes any prior understanding or agreement between the Parties.

#### **Governing Laws**

1.108 This Agreement will be governed by the laws of the State of Western Australia.

#### **Notices**

1.109 Notices to you are effective if provided in writing to the postal addresses, electronically to the e-mail address set forth in the application or if posted on our website. Notice to us may be given in writing to:

[support@zetta.net.au](mailto:support@zetta.net.au)

#### **Dispute Resolution**

1.110 For the purposes of this clause, a 'Dispute' is any dispute or difference of opinion arising out of or relating to this agreement, or where agreement between the Parties is required by this agreement and there is absence of agreement after a reasonable period.

1.111 If a Dispute has arisen and a Party wishes to take steps to resolve the Dispute, that Party must first send a notice to the other Party (a 'Notice') setting out a full description of the Dispute.

- 1.112 Once a Notice has been served under clause, a General Manager or Managing Director of each Party (or his or her nominee or delegate) must attempt to resolve the Dispute in good faith.
- 1.113 If the Dispute is not resolved within 10 days of receipt of the Notice, or any longer time the Parties may agree in writing, either Party may commence or initiate legal proceedings. However, if legal proceedings are initiated, the Parties nevertheless agree to act in good faith to continue to endeavour to resolve the Dispute using external informal dispute resolution techniques, such as mediation, expert evaluation or determination, but not arbitration.
- 1.114 The Parties will hold confidential, unless otherwise required by law or at the direction of a court of competent jurisdiction, all information relating to the subject matter of the dispute as disclosed during or for the purposes of dispute resolution. All information disclosed during or for the purposes of the dispute resolution process is provided on a "without prejudice" basis unless the Parties otherwise agree in writing.

#### **Parties' Rights**

- 1.115 Any express statement of a Party's right under this agreement is without prejudice to any other right of that Party expressly stated in this agreement, arising at law or in equity.

#### **Publicity**

- 1.116 The Partner must not use ZettaNet's name, logo, trademarks, photographs or other identifying characteristics or those of any of its Related Corporations without ZettaNet's prior written approval, unless otherwise provided by this agreement.
- 1.117 The Partner may not make or authorise a press release or other public statement relating to this agreement (or the negotiations and dealings between the Parties) unless ZettaNet has given its prior written consent to the nature, content and timing of the release or statement.

#### **Severability**

- 1.118 If any provision of this agreement is held invalid, unenforceable or illegal for any reason, that provision will be deleted and the remaining provisions of this agreement will remain in full force.

#### **Variation**

- 1.119 No variation of this agreement will be of any force or effect unless in writing signed by an authorised representative of each Party having at least the same level of authority as the person who signed this agreement on behalf of that Party.

#### **Waiver**

- 1.120 The failure of a Party to require performance of any obligation under this agreement is not a waiver of that Party's right:
- a) to insist on performance of, or claim damages for breach of, that obligation unless that Party acknowledges in writing that the failure is a waiver; and
- b) at any other time to require performance of that or any other obligation under this agreement.

#### **Further Assurances**

- 1.121 Each Party must do all things and execute all further documents necessary to give full effect to this agreement.

#### **Survival of Agreement**

- 1.122 Subject to any provision to the contrary, this agreement will survive to the benefit of and be binding upon the Parties and their successors, trustees, permitted assigns or receivers.



## Execution Page

Executed as A Deed

THIS DEED is made the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

BETWEEN:

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AND

ZettaNet Pty Ltd ACN 066 394 509 of Level 1, 140 William Street, Perth, Western Australia ("Zetta").

### Signed by "Partner":

Executed by \_\_\_\_\_  
Company Name

by authority of its directors in  
accordance with section 127 of the  
Corporations Act 2001 \_\_\_\_\_  
Company ACN

\_\_\_\_\_  
Executed by Director

\_\_\_\_\_  
Full Name

### Signed by "ZettaNet":

Executed by \_\_\_\_\_  
ZettaNet Pty Ltd Executed by Director / Secretary

\_\_\_\_\_  
Full Name

ACN 066 394 509  
by authority of its directors in  
accordance with section 127 of the  
Corporations Act 2001

## Appendix A - Qualifying Services

Service	Commission
VoIP Calls	See Partner Pricing Schedule
DiDs	See Partner Pricing Schedule
VoIP Hardware	See Partner Pricing Schedule
Ethernet (Fibre/Midband)	Custom
Hosting (Web/Email)	10%