

IP Systems Pty Ltd
ACN 065 092 962

Standard Form of Master Services Agreement



IP Systems Pty Ltd
ABN 79 065 092 962

Level 7, 215 Spring St
Melbourne VIC 3000
Australia

T +61 3 9658 0600
F +61 1300 790 616

info@ipsystems.com.au
www.ipsystems.com.au

Standard Form of Master Services Agreement

This is a legal document that should be read as a whole. It sets out the terms under which your Service is supplied to you. Some of the clauses in this Contract may affect the way you use the Service or the way in which you deal with IP Systems.

CONTACT DETAILS

Telephone	(03) 9658 0600
Address	Level 7, 215 Spring Street Melbourne VIC 3000
Email	support@ipsystems.com.au
Website	www.ipsystems.com.au

The party executing the Service Schedule will be responsible for the Service.

RECITALS

- A IP Systems is engaged in the design, implementation, management, supply and maintenance of telecommunications services, hosting, managed network solutions and other services and applications, which utilise IP networks.
- B the Customer wishes IP Systems to supply it with any or all of the services referred to in Recital A to support its business operations.
- C IP Systems will supply the Customer with the services on the terms and conditions set out in this Master Services Agreement.

GENERAL TERMS

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement, including the Recitals, unless the context otherwise requires:

Adverse Event in relation to a party means any of the following:

- (a) anything that reasonably indicates that there is a significant risk that that party is or will become unable to pay its debts as they fall due. This includes:
 - (i) a meeting of the party's creditors being called or held;
 - (ii) a step being taken to make the party bankrupt or to wind the party up;
 - (iii) the appointment of a controller or administrator as defined in section 9 of the Corporations Act 2001(Cth) and any regulations made under it; or
 - (iv) the party entering into any type of arrangement with, or assignment for the benefit of all or any of its creditors;
- (b) the party being made subject to a deed of company arrangement;
- (c) a step being taken to have a receiver, receiver and manager, liquidator or provisional liquidator appointed to the party or any of its assets; or
- (d) the party ceasing, or indicating that it is about to cease, carrying on business;

Agreement means this Standard Form of Master Services Agreement comprising these terms and conditions, the Service Schedule and, if applicable, a Service Level;

Business Day means a day other than a Saturday, Sunday or gazetted public holiday in Victoria;

Carrier means a carrier as defined in the Telecommunications Laws;

Confidential Information means all information and all other knowledge relating to IP Systems, IP Systems' products or Services or the terms of this Agreement (including pricing) which comes into the possession of the Customer from any source, or information which is treated by IP Systems as confidential regardless of its form, or which is designated by its nature as confidential, but excluding information that is in the public domain or which may be obtained from IP Systems without restriction;

Customer means the person or entity referred to as the Customer in a Service Schedule;

Customer Premises means those premises set out in the Service Schedule at which IP Systems will supply the Services;

Equipment means any equipment supplied by IP Systems to the Customer and required for the supply of the Services and includes costs for configuration, installation, project management and training for the Customer;

GST means tax levied under the A New Tax System (Goods and Services Tax) Act 1999 (Cth) and legislation of a State or Territory that is enacted to replace or supplement that Act;

Minimum Period means the minimum term specified in a Service Schedule;

Other Supplier means a Carrier, a telecommunications carriage service provider or an equipment supplier other than IP Systems;

Regulator means the Minister (or his delegate) responsible for administration of the Telecommunications Laws, the Trade Practices Act 1974 (Cth), the Australian Communications and Media Authority (ACMA) or the Australian Competition and Consumer Commission (ACCC);

Service Access Line means the dedicated access line between the Customer Premises and IP Systems or between two or more Customer Premises, used in connection with the Services;

Service Delivery Point means the point and/or location at the Customer Premises at which the Equipment and/or the Customer's equipment and/or communications network connects to the Services;

Service Level means the service level specified in a Service Schedule (if any);

Services means only the services and functions set out in a Service Schedule;

Service Schedule means the document in the form of document attached as Schedule 1 signed by the Customer and IP Systems describing, inter alia, the Services that the Customer requests IP Systems to provide to it;

Service Start Date means the date that IP Systems starts to provide Services or is deemed to do so; and

Telecommunications Laws means the Telecommunications Act 1997 as amended or varied from time to time and any regulations promulgated or codes of conduct or practice issued pursuant or relating to that Act.

1.2 Interpretation

In this Agreement, unless the context requires otherwise:

- 1.2.1 words importing the singular shall (where appropriate) include the plural and vice versa;
- 1.2.2 words importing any gender shall (where appropriate) include the other genders and vice versa;
- 1.2.3 words importing natural persons shall (where appropriate) include firms, corporations, unincorporated associations, partnerships and any other entities recognised by law and vice versa;
- 1.2.4 headings are included for convenience of reference only and shall not affect the meaning or interpretation of this Agreement;
- 1.2.5 references in this Agreement to any statutory enactment or law shall be construed as references to that enactment or law as amended or modified or re-enacted from time to time and to the corresponding provisions of any similar enactment or law of any other relevant jurisdiction;
- 1.2.6 references in this Agreement to clauses, schedules and parties shall be construed as references to the clauses, schedules and parties of and to this Agreement;
- 1.2.7 a reference to \$ or dollars is a reference to the lawful currency of Australia; and
- 1.2.8 the obligations and liabilities imposed and the rights and benefits conferred on the parties under this Agreement shall be binding upon and enure in favour of the respective parties and each of their respective legal personal representatives, successors in title and permitted assigns.

1.3 Headings

The headings in this Agreement are for the purpose of more convenient reference only and shall not form part of this Agreement or affect its construction or interpretation.

1.4 Business Days

Except where otherwise expressly provided, where under or pursuant to this Agreement the day on or by which any act, matter or thing is to be done is a day other than a Business Day, such act, matter or thing shall be done on the immediately succeeding Business Day.

1.5 Successors and Assigns

The obligations and liabilities imposed and the rights and benefits conferred on the parties under this Agreement will be binding upon and enure in favour of the respective parties and each of their respective successors in title, legal personal representatives and permitted assigns.

2 **THIS AGREEMENT AND ORDER OF PRECEDENCE**

2.1 This Standard Form of Master Service Agreement is made up of:

2.1.1 these terms and conditions; and

2.1.2 the Service Schedule.

2.2 If there is any conflict between these terms and conditions and a Service Schedule, unless otherwise agreed in writing, these terms and conditions prevail to the extent of any conflict or inconsistency.

3 **PROVISION OF SERVICES**

3.1 These terms and conditions apply to all Services provided by IP Systems to the Customer under a Service Schedule.

3.2 Each Service Schedule comprises a separate agreement for the provision of the Services described in a Service Schedule. If there is any inconsistency between these terms and conditions and any Service Schedule, these terms and conditions will prevail to the extent of the inconsistency.

3.3 Subject to this Agreement and in accordance with each Service Schedule accepted by IP Systems, IP Systems shall:

3.3.1 design, engineer, configure, stage, supply, manage and maintain the Services described in a Service Schedule;

3.3.2 procure for, supply to, configure and install the Equipment required for the supply of the Services;

3.3.3 procure, on behalf of and at the cost of the Customer, maintenance contracts (if required) for the Equipment;

3.3.4 supply the Services to the Customer at the Service Delivery Point from the Service Start Date; and

3.3.5 supply the Services to the Customer for the Minimum Period.

3.4 If the Services are to be delivered progressively to several Customer Premises listed in a Service Schedule, then the Service Start Date for each Customer Premises will be the date specified in the relevant Service Schedule or the date on which the Services are first supplied to each Customer Premises.

3.5 IP Systems will use its best endeavours to provide the Service at the agreed Service Level (if any) set out in a Service Schedule. Notwithstanding this clause, IP Systems will not be liable to the Customer if IP Systems' failure to achieve the relevant Service Level is caused directly or indirectly by any act or omission of the Customer, any third party, any Other Supplier or by reason of an event of force majeure.

3.6 The Customer acknowledges that:

3.6.1 IP Systems may provide the Services using a combination of IP Systems' own facilities and the facilities and services of Other Suppliers;

3.6.2 IP Systems does not make any warranty or representation as to the ability of the facilities or services of those Other Suppliers to support the Services; and

3.6.3 IP Systems is not liable for any failure in, fault with or degradation of the Services if that failure, fault or degradation is attributable to or caused by any failure of the facilities or services of those Other Suppliers.

4 USE OF SERVICES

4.1 The Customer is responsible for all use of the Services at the Customer Premises and from the Service Delivery Point, even unauthorised use. This means that if someone uses the Services without the Customer's knowledge or consent, the Customer is liable for all costs arising from that use.

4.2 The Customer must not use the Services and must use its reasonable endeavours to prevent any other person from using the Services:

4.2.1 to break any law or infringe any person's rights;

4.2.2 to transmit, publish or communicate material that is defamatory, offensive, abusive, indecent, menacing or unwanted; or

4.2.3 in any way that damages, interferes with or interrupts the Services or the systems that IP Systems uses to supply the Services.

5 ONLINE ORDERING

5.1 IP Systems may provide the Customer with a login identity and secret password so that the Customer can manage its services or order additional services online.

5.2 The Customer is responsible for maintaining the confidentiality of its password and account information. Furthermore, the Customer is responsible for all activities that occur in its account and the Customer agrees to notify IP Systems immediately of any unauthorised use of its account. IP Systems is not responsible for any loss that the Customer may incur as a result of any unauthorised person using the Customer's account or password.

- 5.3 The Customer will be bound by any online order received by IP Systems that is documented in a Service Schedule and submitted by IP Systems to the Customer.

6 CUSTOMER'S RESPONSIBILITIES

6.1 The Customer must:

- 6.1.1 permit IP Systems' employees, agents or contractors to have reasonable access to the Customer Premises to install the Equipment and the Network Access Line;
- 6.1.2 ensure that IP Systems has full and unhindered access to the Equipment during normal business hours or at such other times as the Customer and IP Systems mutually agree;
- 6.1.3 ensure that any equipment it uses in connection with the Service that is not supplied by IP Systems has all necessary regulatory approvals, is not prohibited by law or any Regulator and is capable of operating with the Service;
- 6.1.4 not cause or permit any Equipment to be altered, repaired, serviced or moved except by service personnel approved by IP Systems;
- 6.1.5 ensure, at its own cost, that the Equipment is protected from power surges and is located in a suitable physical environment for the operation of the Equipment;
- 6.1.6 ensure, at its own cost, that it has all equipment and software necessary (whether by firewall or by any other means) to protect from external attack the security and integrity of its communications or computer systems and/or network and of the configuration of the Equipment; and
- 6.1.7 use all reasonable endeavours to assist IP Systems in any investigation by any government body or Regulator in which IP Systems is involved where the Customer's use of the Services is relevant to the investigation regardless of whether or not the Customer is required by law to assist.

6.2 If, when IP Systems' employees, agents or contractors attend by arrangement at the Customer Premises to:

- 6.2.1 inspect the Customer Premises to establish the method or location of installation of the Equipment or the Network Access Line; or
- 6.2.2 install the Equipment or the Network Access Line,

no provision has been made by the Customer for that inspection or installation and that inspection or installation has to be rescheduled, then the Customer shall pay to IP Systems all costs associated with cancelling, postponing or rescheduling that inspection or installation.

7 FAULT REPORTING

- 7.1 The Customer may report a fault with the Services to IP Systems at any time in accordance with this clause 7.
- 7.2 Prior to reporting a fault, the Customer must investigate and ascertain for itself the cause of the fault and, if required by IP Systems, provide any further information in relation to the fault, including what the Customer has done to satisfy this clause.
- 7.3 Upon being notified of a fault, IP Systems will immediately assign a reference number to the fault and will issue that reference number to the Customer. The Customer must use and quote that reference number in relation to any dealings with IP Systems in respect of that fault.
- 7.4 IP Systems will use all reasonable endeavours to rectify the fault within the time lines set out in any Service Level.
- 7.5 The Customer acknowledges that if a fault has been caused by the services or network of any Other Supplier, IP Systems shall not be liable to the Customer for any failure by that Other Supplier to remedy the fault within the time lines set out in any Service Level.
- 7.6 When IP Systems has remedied the fault, it will notify the Customer that the fault ticket is “closed”.
- 7.7 If IP Systems determines that:
 - 7.7.1 a fault arises out of or in connection with any equipment, facilities, networks or systems of the Customer; or
 - 7.7.2 there is or was no fault,then IP Systems may require the Customer to pay IP Systems’ reasonable costs and expenses (based on IP Systems’ standard rates) in dealing with or remedying a fault, and such cost and expense shall be a debt due and payable by the Customer on demand to IP Systems.

8 PRICE, INVOICES AND PAYMENT

- 8.1 The price for the Services or components of the Services and the Equipment will be set out in a Service Schedule.
- 8.2 Upon acceptance by IP Systems of a Service Schedule, IP Systems may invoice the Customer for a deposit of 20% of the cost of the Equipment set out in a Service Schedule.
- 8.3 The invoice referred to in clause 8.2 is payable within 14 days after the date of the invoice.
- 8.4 Notwithstanding clause 8.3, IP Systems is under no obligation to procure, configure, deliver or install any Equipment for the Customer unless and until the Customer pays the invoice referred to in clause 8.2 and IP Systems shall not be

liable to the Customer for any loss or damage caused by a delay in the Service Start Date due to the failure of the Customer to pay that invoice by its due date.

- 8.5 The costs of any maintenance contract procured by IP Systems on behalf of the Customer are payable annually in advance.
- 8.6 IP Systems will invoice the Customer for the balance of the cost of the Equipment and any maintenance contract procured by IP Systems on behalf of the Customer upon delivery of the Equipment by IP Systems to the Customer.
- 8.7 The invoice referred to in clause 8.6 is payable within 14 days after the date of the invoice.
- 8.8 IP Systems will invoice the Customer for:
 - 8.8.1 access charges and network service charges monthly in advance;
 - 8.8.2 telephone call charges and data usage charges (if any) monthly in arrears; and
 - 8.8.3 any other Equipment, fees and charges for which you become liable.
- 8.9 The invoice referred to in clause 8.8 is payable within 30 days after the date of the invoice.
- 8.10 Each invoice (irrespective of the nature of the charge specified on it) will be due on and must be paid without set off by the due date for payment set out in an invoice.
- 8.11 If the Customer does not pay an amount specified in an invoice by the due date for payment, then unless the non-payment is due to the Customer disputing that invoice under clause 11, IP Systems may charge the Customer, and the Customer must pay in conjunction with the unpaid amount, interest on the unpaid amount at the rate of the lesser of 1.5% per month or the maximum rate permitted by law, calculated on the daily balance of the unpaid amount from the due date for payment until that unpaid amount (including accrued interest) is paid in full.
- 8.12 The Customer acknowledges that if any Other Supplier on which IP Systems relies to supply the Services or a component of the Services increases the cost to IP Systems for the services supplied by that Other Supplier, IP Systems may increase the price it charges to the Customer by an amount reasonably determined by IP Systems to recover that increase.
- 8.13 The Customer acknowledges that IP Systems may appoint one or more third parties to act as its billing and/or collection agent/s to issue invoices and collect some or all of the charges. The Customer agrees that it will pay any invoices issued by such billing and/or collection agent/s, in the manner(s) directed in such invoices, as if IP Systems issued those invoices under this Agreement.

9 GST

- 9.1 The prices for the Services are exclusive of GST (unless otherwise expressly indicated). The Customer must pay to IP Systems the GST on the Services and any other taxable supply made to the Customer under this Agreement, in addition

to any consideration (excluding GST) for that taxable supply. IP Systems will provide the Customer with a tax invoice complying with any legislation under which GST is imposed.

9.2 The Customer shall pay any new, or any increase in any, tax (including GST), duty or imposts of any kind chargeable in respect of the Services and this Agreement which come into effect after the date of execution of a Service Schedule.

10 CREDIT LIMIT

IP Systems reserves the right to impose a credit limit for the Customer. If the Customer exceeds the credit limit determined by IP Systems, IP Systems may:

10.1 require the Customer to pay in advance for any Services; or

10.2 suspend the Services or any part of the Services (including help desk services) until the Customer's account is brought within the credit limit determined by IP Systems.

11 DISPUTES

11.1 The Customer may dispute an amount invoiced by IP Systems but only if done so in accordance with this clause 11.

11.2 Except to the extent the Customer disputes a particular charge in an invoice and raises a valid billing dispute, the Customer agrees that the invoice is valid and payable (and the Customer must pay any undisputed amount included in the invoice in accordance with clauses 8.3, 8.7 or 8.9).

11.3 To raise a valid billing dispute, the Customer must do so:

11.3.1 in accordance with the IP Systems service provider billing dispute process from time to time; and

11.3.2 before the due date for the relevant IP Systems invoice, if the Customer proposes to withhold any amount from that invoice; or

11.3.3 within six months after the date of the relevant IP Systems invoice if the Customer has paid an amount on that invoice which it later wishes to dispute.

11.4 The Customer may only make a claim or commence proceedings alleging that any charge or invoice is incorrect if the Customer has complied with clause 11.3 and legal proceedings have been properly issued and served on IP Systems within 12 months of the date of the relevant invoice.

11.5 If, after a billing dispute has been concluded:

11.5.1 the Customer is to pay an amount to IP Systems then that payment must be made within five Business Days after the conclusion of the dispute; or

11.5.2 IP Systems is to pay an amount to the Customer then:

11.5.2.1 if this Agreement is still in force, that amount will be credited to the Customer's account in the next invoice cycle or cycles until the full amount has been credited; or

11.5.2.2 if this Agreement has been terminated, IP Systems will pay that amount to the Customer within five Business Days after the conclusion of the dispute.

12 DELIVERY, TITLE AND RISK OF LOSS

12.1 IP Systems will use reasonable efforts to meet the Customer's requested delivery schedules for the Equipment and the Service, but IP Systems reserves the right to refuse, cancel or delay shipment or installation of any Equipment if:

12.1.1 the Customer's credit is impaired;

12.1.2 the Customer is in arrears in payments to IP Systems or fails to meet other credit or financial requirements reasonably required by IP Systems; or

12.1.3 the Customer has otherwise failed to perform its obligations under this Agreement.

12.2 IP Systems will deliver all Equipment and other components of the Service to the Customer according to the Service Schedule. IP Systems will select the mode of shipment and the carrier. IP Systems will invoice the Customer for freight, shipping and any insurance charges.

12.3 Delivery takes place when the Equipment is delivered by IP Systems to the carrier.

12.4 All risk of loss or damage to the Equipment passes to the Customer upon delivery to the carrier.

12.5 Title to the Equipment passes to the Customer upon payment in full to IP Systems in cleared funds of the invoice referred to in clause 8.6.

13 LIMITATION OF LIABILITY

13.1 IP Systems is not liable to the Customer in contract, tort (including negligence) or otherwise for any loss or damage the Customer suffers (including lost profits, lost business or consequential loss), but IP Systems does not exclude liability to the extent that its negligence causes personal injury or death.

13.2 IP Systems makes no warranty in relation to the Services or Equipment other than as contained in this Agreement or as prescribed by a law which cannot be excluded, or in the case of Equipment, as provided by the respective manufacturers of the Equipment.

13.3 IP Systems will not be liable to the Customer for any interference with the Service caused by a fault in the Customer's equipment or if that equipment does not have all necessary regulatory approvals.

13.4 In the case of Services or Equipment supplied by IP Systems not of a kind ordinarily acquired for personal, domestic or household use or consumption, IP System's liability for a breach of any condition or warranty implied by statute is limited to, at IP Systems' option:

13.4.1 in the case of Services:

13.4.1.1 to the re-supply of the Services, or

13.4.1.2 to the payment of the cost of having the Services re-supplied, and

13.4.2 in the case of equipment if the Trade Practices Act 1974 (Cth) applies:

13.4.2.1 to the replacement of the Equipment or the supply of equivalent equipment;

13.4.2.2 the repair of the Equipment;

13.4.2.3 the payment of the cost of replacing the Equipment or acquiring equivalent equipment; or

13.4.2.4 the payment of the cost of having the equipment replaced.

13.5 IP Systems will not provide claimed warranty services for defects or deficiencies in Equipment or Services which are caused by:

13.5.1 external causes including natural disaster, fire, accident, neglect, misuse, vandalism, water, lightning, power surge or spike;

13.5.2 the use of any Equipment for other than its intended purpose;

13.5.3 the use with or connection of any Equipment to items not approved by IP Systems;

13.5.4 the performance of maintenance or attempted repair by persons other than IP Systems or as authorised by IP Systems;

13.5.5 changes made to the deliverables created by performance of the Services or to the operating environment;

13.5.6 the relocation of Equipment by the Customer; or

13.5.7 any configuration or reconfiguration by the Customer of the Equipment.

14 INDEMNITY

The Customer indemnifies IP Systems against any loss (including any liability, cost expense, legal costs on a full indemnity basis) or damage suffered by the Customer or IP Systems or a claim made by any person against the customer or IP Systems:

14.1 relating to the use or attempted use of the Services or the Equipment (including unauthorised use); or

14.2 caused by the Customer's wrongful acts, omissions, negligence or breach of this Agreement.

15 SUSPENSION OF A SERVICE OR PART OF A SERVICE

15.1 IP Systems may, upon written notice to the Customer, suspend the provision of a Service or part of a Service (including help desk services), without liability to the Customer, if:

15.1.1 the Customer is in default of any payment or other obligation under this Agreement;

15.1.2 an Other Supplier performs emergency or scheduled maintenance or other scheduled service work in connection with the Service Access Line or its network or systems; or

15.1.3 IP Systems is required to do so by law or to comply with a request from a Regulator or emergency service organisation.

15.2 If IP Systems suspends the provision of the Service pursuant to clause 15.1.2, the Customer may claim a pro-rata rebate of the monthly service fee for the Service for the period of suspension.

16 SOFTWARE LICENCE

16.1 IP Systems warrants to the Customer that it owns or has the right to grant sub-licences of the software required to support the Services described in a Service Schedule.

16.2 IP Systems grants to the Customer, for use in the Customer's own business and on the Equipment, a non-exclusive, personal and non-transferable licence, without right to sub-licence, to use the software required to support the Services described in a Service Schedule.

16.3 Subject to this Agreement, the licence to use the software pursuant to clause 16.1 will continue for the Minimum Period.

16.4 The Customer must:

16.4.1 treat the software as Confidential Information under clause 17 of this Agreement;

16.4.2 use the software or any portions or aspects thereof (including any methods or concepts utilized therein) solely on the Equipment;

16.4.3 return to IP Systems all memory media, documentation and/or other material that has been modified, updated or replaced;

16.4.4 not modify, disassemble or decompile the software, or reverse engineer any part of the software or permit others to do so; and

16.4.5 not reproduce or copy the software in whole or in part except for backup and archive purposes.

17 CONFIDENTIALITY

17.1 For the purposes of this clause “Confidential Information” means all technical information, documentation, software and other proprietary information supplied by IP Systems to the Customer, or vice versa, under this Agreement, but excludes information that is already be in the public domain.

17.2 A party (‘Recipient’) who receives Confidential Information of the other party (‘Discloser’) under this Agreement has these mutual obligations and must:

17.2.1 keep the Confidential Information confidential;

17.2.2 not use, disclose or reproduce any Confidential Information for any purpose other than the purposes of this Agreement;

17.2.3 not, without the prior written consent of the Discloser, disclose Confidential Information to any person other than its employees and subcontractors who need the information for the purposes of this Agreement;

17.2.4 establish and maintain effective security measures to safeguard the Confidential Information from unauthorised access, use, copying or disclosure;

17.2.5 ensure that Confidential Information is treated as confidential and proprietary information of Discloser;

17.2.6 immediately upon request by the Discloser return all copies of the Confidential Information in its possession or under its control or destroy all copies of the Confidential Information and certify to the Discloser that it has been so destroyed.

18 PUBLICITY AND SITE REFERENCE

18.1 Neither party shall make any public announcement about this Agreement without the prior written consent of the other party, which consent shall not to be unreasonably withheld or delayed.

18.2 IP Systems may seek to use the Customer as a site reference providing information to prospective customers of IP Systems. IP Systems shall seek the consent of the Customer before doing so.

19 FORCE MAJEURE

IP Systems shall not be liable for any failure to provide the Service or to perform any obligation under this Agreement where such inability is caused by force majeure. For the purposes of this clause, force majeure will include acts of G-d, war, civil unrest,

acts of government, acts of terrorism, fire, floods, explosions, the elements, epidemics, quarantine, restrictions, the failure in the services or networks of Other Suppliers, strikes, lock-outs, plant shutdown, material shortages, or delays in transportation or delays of suppliers or subcontractors for like cause. If the force majeure event is due to the failure of the network of an Other Supplier, IP Systems will use its reasonable endeavours to procure the necessary services from an alternative Other Supplier.

20 TERMINATION

20.1 The Customer may without liability terminate this Agreement or any Service Schedule with immediate effect from the date of service of a written notice if:

20.1.1 IP Systems breaches a material obligation under this agreement, which breach is not capable of remedy; or

20.1.2 IP Systems breaches a material obligation under this agreement, which breach is capable of remedy, but fails to remedy that breach within 20 Business Days of receipt of a notice requiring it to do so.

20.2 IP Systems may, at any time, terminate this Agreement immediately by notice without any liability to the Customer, if:

20.2.1 an Adverse Event occurs in relation to the Customer;

20.2.2 notwithstanding clause 15.1.1, the Customer fails to pay any amount due under a Service Schedule to IP Systems within 10 Business Days after IP Systems gives the Customer written notice requesting payment;

20.2.3 notwithstanding clause 15.1.1, the Customer is in material breach of any non-monetary term, condition, or provision of this Agreement, which breach is not capable of remedy or if it is capable of remedy, is not remedied within 15 Business Days after IP Systems gives the Customer written notice requiring it to do so; or

20.2.4 any Other Supplier on which IP Systems relies to supply the Services or any part of the Services:

20.2.4.1 varies the terms and conditions, including terms relating to price, upon which it provides its services or facilities to IP Systems, or is incapable of providing its services or facilities to IP Systems;

20.2.4.2 that variation or any act or omission of the Other Supplier materially effects either IP Systems' ability to provide, or the cost of IP Systems providing, the Services to the Customer; and

20.2.4.3 the parties are unable to agree a corresponding variation to this Agreement.

20.3 If the Customer terminates this Agreement or a Service Schedule other than pursuant to clause 20.1 or IP Systems terminates this Agreement pursuant to clause 20.2 with a date of termination to occur:

20.3.1 before the end of the Minimum Period, the Customer must immediately pay to IP Systems:

20.3.1.1 by way of liquidated damages, an amount calculated by multiplying the minimum monthly charge, payable by the Customer under the relevant Service Schedule(s), by the number of months (or part thereof) to the end of the Minimum Period;

20.3.1.2 any reasonable costs incurred in the removal of IP Systems' equipment, if any; and

20.3.1.3 any other amounts owing by the Customer to IP Systems under this Agreement or otherwise as at the date of termination; or

20.3.2 after the expiry of the Minimum Period, the Customer must pay to IP Systems all fees for the Services for the month in which the date of termination occurs and any other amounts owing by the Customer to IP Systems under this Agreement or otherwise as at the date of termination.

20.4 If IP Systems terminates this Agreement pursuant to clause 20.2, each Service Schedule will be deemed to be terminated at the same time and the provisions of clause 20.3 will apply.

20.5 If a force majeure event prevents IP Systems from supplying the Services for a period of more than three months, either party may, without liability to the other, terminate this Agreement by giving 10 Business Days notice to the other.

21 CONSEQUENCES OF TERMINATION

If this Agreement is terminated:

21.1 the Customer must:

21.1.1 at its own cost immediately return to IP Systems all Confidential Information and equipment, reports or any other information (including any copies made) reasonably required by IP Systems; and

21.1.2 provide such access to the Customer Premises as may be required to remove any equipment of IP Systems or any Other Supplier;

21.2 it does not affect any rights or remedies either party may have against the other arising out of or in connection with this Agreement prior to termination;

21.3 and clause 20.3 applies the Customer must pay to IP Systems any costs and expenses incurred or suffered by IP Systems in connection with providing the Services and removing any equipment of IP Systems or any Other Supplier pursuant to clause 21.1.2; and

21.4 clauses 8.10, 8.11, 12.4, 12.5, 13, 14, 16.4, 17 and 20.3 survive the termination of this Agreement.

22 WARRANTIES

22.1 Each party represents and warrants that:

22.1.1 at the date of this Agreement, it has full corporate power to enter into and give effect to this Agreement and to complete the transactions contemplated by this Agreement;

22.1.2 it has taken all necessary action to authorise the execution of a Service Schedule and the delivery and performance of this Agreement and the Service Schedule; and

22.1.3 at the date of a Service Schedule, the execution of the Service Schedule and the delivery and performance of this Agreement and the Service Schedule by it does not contravene any contractual, legal or other obligations that apply to it.

22.2 Each party represents and warrants to the other that it has not relied on the other's skill or judgement in relation to its decision to enter into this Agreement and that it has relied on its judgement and its own independent investigations about the suitability of arrangements set out in this Agreement.

23 GENERAL

23.1 All notices, invoices or other documents required to be given to or served upon either party pursuant to or in connection with this Agreement shall be in writing in the English language and shall be deemed to be duly given or served when delivered (in the case of facsimile, provided confirmation of transmission has been received) to the party to which such notice is given. All notices to the Customer shall be sent to the address of the Customer set out in the Service Schedule and all notices to IP Systems shall be sent to:

Level 7, 215 Spring St
Victoria 3000, Australia
Attention: Chief Executive Officer
Fax: +61 3 9662 9820

or at such other address as the parties may hereafter specify for such purpose to the other party by notice in writing. A written notice includes a notice by facsimile or e-mail. Any notice given by facsimile or e-mail on a day that is not a Business Day shall be deemed despatched on the next succeeding Business Day. Any such notice may be given or signed on behalf of the party giving or serving the same by a director, secretary or other duly authorised person, whose authority need not be established.

23.2 This Agreement shall be construed in accordance with and governed by the laws of the State of Victoria and each of the parties hereby irrevocably submits to the jurisdiction of courts of that State and the appellate courts therefrom.

- 23.3 The waiver by either party of a breach or default by the other party of any of the provisions of this Agreement shall not be construed as a waiver of any succeeding breach or default of the same or any other provision of this Agreement and shall not impair the exercise of any rights accruing to it under this Agreement thereafter.
- 23.4 No delay or omission on the part of either of the parties to exercise or avail itself of any rights accruing to it under this Agreement shall operate as a waiver of those rights.
- 23.5 If any provision of this Agreement or its application to any person or circumstance is or is found to be invalid or unenforceable the invalidity or unenforceability of such provision shall not affect the validity or enforceability of the other provisions to any person or circumstance and the said other provisions shall remain in full force and effect.
- 23.6 This Agreement contains the entire agreement and understanding of the parties with respect to the subject matter to which this Agreement relates and, other than a Service Schedule, there are no other prior or subsequent agreements, understandings, terms, conditions, warranties, representations, covenants, inducements, promises, arrangements or undertakings oral or written, whether express or implied, between the parties extending, defining or otherwise relating to the provisions of this Agreement or binding on the parties with respect to the subject matter to which this Agreement relates.
- 23.7 No modification to or amendment of any of the provisions of this Agreement shall be binding upon either of the parties unless and until the same has been made in writing and duly executed by all of the parties.
- 23.8 Each party will bear its own costs and expenses in relation to the negotiation, preparation and carrying into effect of this Agreement. The Customer shall pay stamp duty (if any) on this Agreement.
- 23.9 No provision of this Agreement may be interpreted against any party because that party or its legal representative drafted the provision.
- 23.10 The Customer may not assign its rights or obligations under this Agreement without the prior written consent of IP Systems, which consent shall not be unreasonably withheld.
- 23.11 This Agreement does not create a partnership, joint venture or relationship of principal and agent between the parties.