

**DIGITAL RIVER NETWORKS PTY LTD SERVICE AGREEMENT  
v1.02 (OCTOBER 2007)**



Service information:

<b>Customer Name:</b>	
<b>ABN:</b>	

<b>Customer Contact:</b>	
<b>Address:</b>	
<b>Suburb/State/Postcode:</b>	
<b>Telephone:</b>	
<b>Mobile</b>	
<b>Fax:</b>	
<b>Email:</b>	

<b>Customer Project Manager:</b>	
<b>Address:</b>	
<b>Suburb/State/Postcode:</b>	
<b>Telephone:</b>	
<b>Mobile</b>	
<b>Fax:</b>	

<b>Customer Billing Contact:</b>	
<b>Billing Address:</b>	
<b>Suburb/State/Postcode:</b>	
<b>Mobile</b>	
<b>Fax:</b>	
<b>Email:</b>	

SERVICE DESCRIPTION	

SERVICE LEVELS	
<input type="checkbox"/> <b>STANDARD</b>	<input type="checkbox"/> <b>PREMIUM</b>

CHARGES	TOTAL
Installation Charges	
Monthly Service Charge	
Service Term	
Total monthly charges for the term	
Other Charges (specify)	
Total Charges over Term	
GST	
Total Contract Value*	

\*Subject to other charges as set out in the Service Agreement

IP ADDRESSING REQUIREMENTS			
IP Addressing:		Existing IP Address:	
IP addressing required:		IP address range:	
# of addresses req:		Owner of IP address:	
Existing IP addresses:		Name of provider:	
Need to be re-routed?		New Subnet:	
Re-routed destination:		Own Subnet (specify):	
IP Addressing req:	<input type="checkbox"/> /30 (2)		<input type="checkbox"/> /26 (62)
	<input type="checkbox"/> /29 (6)		<input type="checkbox"/> /25 (126)
	<input type="checkbox"/> /28 (14)		<input type="checkbox"/> /24 (254)
	<input type="checkbox"/> /27 (30)		

INTERCONNECTION OPTIONS			
Service Type:	<input type="checkbox"/> IP	<input type="checkbox"/> Peering	<input type="checkbox"/> Other _____
Interface:	<input type="checkbox"/> Gigabit Ethernet	<input type="checkbox"/> Fast Ethernet	<input type="checkbox"/> ATM
Speed:	<input type="checkbox"/> 1000BaseT	<input type="checkbox"/> 100BaseT	<input type="checkbox"/> Other _____ MB
Routing Details:	<input type="checkbox"/> BGP	<input type="checkbox"/> Static	AS Number _____

CONNECTION POINT	Point A (1)	Point B (2)	Point C (3)
Address			
Suburb			
State & Postcode			
Port Size			
Fibred Building?			
Backbone: Exist or req?			

CO-LOCATION	
Cabinets required:	
Location:	

LINKS	1	2	3
From			
To			
Transmission Rate			
Quality of Service			

## Terms &amp; Conditions:

**1. DEFINITIONS**

In this Agreement, unless the context otherwise requires:

**Act** mean Telecommunications Act 1997 (Commonwealth).

**Acceptable Use Policy** means the policy for the acceptable use of the Services as made available for time to time at [www.digitalriver.com.au](http://www.digitalriver.com.au).

**Agreement** means the agreement for the provision of the Services between DRN and the Customer, comprising in their order of precedence : this Agreement, the Service Level Agreement, the Service Schedule and any other document incorporated by reference or agreed in writing by the parties.

**Business Day** means any day (other than a Saturday or Sunday, or public or banking holiday) that banks are ordinarily open for business in Melbourne, Victoria.

**Carrier** means a telecommunications carrier as defined in the Act.

**Charges** means the charges set out in this Agreement and payable in accordance with clause 5.1 of this Agreement, exclusive of GST.

**Confidential Information** means all information and all other knowledge relating to DRN, its 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 DRN 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 DRN without restriction.

**Customer** means the Company as specified in the Service Information of this Agreement, including its directors, employees, representatives, contractors, agents or persons DRN reasonably believe are part of or under the direction or control of the Customer.

**Customer Premises** means those premises set out in this Agreement to which **DRN** will supply the Service.

**DRN** means Digital River Networks Pty Ltd (ABN 47 098 597 329) of Suite 12, 228 Clarendon Street, East Melbourne VIC 3002.

**Early Termination Charge** means the amount equal to the net present value of the Charges which are still to fall due during the Service Term, which would, but for termination, have become due under this Agreement as calculated by DRN in its absolute discretion.

**Equipment** means any equipment or infrastructure as supplied or used by DRN to provide the Services as set out in this Agreement or as detailed from time to time.

**Excluded Loss** means any loss or damage suffered by the Customer which is indirect, consequential, or which results from some special circumstance or supervening event (including, without limitation, loss of revenue, profits, goodwill, use or opportunity).

**Fault** means a significant and sustained loss of access to, or use of, the Services experienced by the Customer.

**GST** means the goods and services tax imposed by the GST Law.

**GST Law** has the same meaning as the term “GST Law” in the GST Act.

**GST Act** means A New Tax System (Goods and Services Tax) Act 1999 and all related and auxiliary legislation as amended from time to time.

**Insolvent** means if:

- a) a person is or states that they are unable to pay from their person's own money all the person's debts as and when they become due and payable;
- b) a person is taken or must be presumed to be insolvent or unable to pay its debts under any applicable legislation;
- c) except for the purpose of a solvent reconstruction or amalgamation previously approved by all of its creditors in writing, an application (other than an application which is withdrawn or dismissed within 21 days) or an order is made for the winding up or dissolution or a resolution is passed or any steps are taken to pass a resolution for the winding up or dissolution of that person;
- d) an administrator, provisional liquidator, liquidator or person having a similar or analogous function under the laws of any relevant jurisdiction is appointed in respect of a corporation or any action is taken to appoint any such person;
- e) a receiver or receiver and manager is appointed in respect of any property of a corporation;
- f) a corporation is deregistered under the Corporations Act or notice of its proposed deregistration is given to the corporation;
- g) a person enters into or takes any action to enter into an arrangement (including a scheme of arrangement or deed of company arrangement), composition or compromise with, or assignment for the benefit of, all or any class of the person's creditors or members or a moratorium involving any of them; or
- h) anything analogous to or of a similar effect to anything described above under the law of any relevant jurisdiction occurs in respect of a person.

**Other Supplier** means a Carrier or a supplier of services in the nature of the Services other than DRN.

**Payment Date** means the date specified in each invoice by Digital River, typically 30 days from the date of that invoice.

**Service Information** means the details of the Customer and Service details contained on the cover pages of this Agreement.

**Service Level Agreement** means the agreement which sets out the process to monitor, maintain and restore the Services as published by DRN from time to time and attached to this Agreement or made available from your account manager or [www.digitalriver.com.au](http://www.digitalriver.com.au).

**Service Schedule** means the service specific details of the Service Level Agreement

**Service Access Line** means the dedicated access line or leased line between the Customer Premises and DRN or between two or more Customer Premises as detailed in this Agreement.

**Service Activation Date** means the date on which the majority of the Services are made available to be used by the Customer, as determined by DRN in its sole discretion.

**Service Term** means the term that the Services will be provided to the Customer as specified in the Service Information section of this Agreement.

**Services** means the services provided by DRN to the Customer as set out in the Service Information, or any other services provided as agreed between DRN and the Customer from time to time.

**Termination Event** means any of the following:

- a) the Customer fails to pay any Charges (in whole) or any other amount the Customer may become liable to pay to DRN under this Agreement or otherwise after being provided with 7 days notice from DRN in which to rectify the breach;

- b) the Customer breaches a term of this Agreement (other than an obligation to make payment by the due date which is dealt with in clause a)), and fails to rectify that breach within 7 days of written notice from DRN to do so;
- c) the Customer fails to comply with any licence, permit or authorisation relating to the connection of any equipment to the Service Access Line or any Service;
- d) the Customer breaches the Acceptable Use Policy;
- e) a Service Access Line has been disconnected;
- f) DRN suspects fraud or misuse of the Services by the Customer or any party that the Customers provides access to the Service;
- g) the Customer becomes Insolvent; or
- h) in the case of a partnership, the partnership is dissolved or an application is made for its dissolution.

**Transferred Services** means services in the nature of Services provided by an Other Supplier and which are to be transferred to DRN as contemplated by clause 8.

## **2. SERVICES**

- 2.1** DRN agrees to supply and the Customer agrees to acquire the Services in accordance with the terms of this Agreement.
- 2.2** Customer warrants that it will not use or allow others to use the Services to commit an offence, for any unlawful, immoral or improper purpose or to do any act that may damage DRN's network or systems or cause the quality of the Services to be impaired.
- 2.3** The Customer acknowledges that DRN may provide the Services using a combination of DRN's own facilities, a third party Carrier facilities and or services, or any other person's facilities and or services. If DRN uses the services of another Carrier or Other Supplier in providing the Services, the Customer agrees to fully comply with the relevant Carrier's or Other Supplier's terms and conditions of supply and Acceptable Use Policy applicable to that Service to the extent necessary to avoid causing any breach of those terms and conditions by DRN. For the avoidance of doubt, by complying with this Agreement, the Customer will be complying with the terms of Other Suppliers.
- 2.4** DRN reserves the right to suspend the provision of the Services (or any part thereof), without liability to the Customer, at any time if:
  - (a) a Termination Event occurs;
  - (b) The Customer fails to pay any or all of the Charges by the due date as set out in the DRN issued invoice;
  - (c) In DRN's absolute discretion, to prevent, avoid or minimize damage to property or personal injury;
  - (d) DRN is required to perform maintenance or fault restoration on its network or systems; or
  - (e) DRN is required to comply with a request from a government agency or emergency service organisation.

## **3. TERM**

- 3.1** The Agreement commences on the date that the Agreement is signed by both parties.
- 3.2** The Services are to be provided from for the Service Activation Date for the Service Term and then on a month-to-month basis until terminated in accordance with this Agreement

- 3.3** After the Service Term has expired, DRN reserves the right to alter the Charges for the Services in its absolute discretion.
- 3.4** The Customer may enter into a further service term and should commence discussions and negotiations with the Account Manager regarding this further term prior to expiry of the Service Term.

#### **4. TERMINATION**

- 4.1** DRN may terminate this Agreement (or any part thereof) upon 7 days notice to the Customer if any Termination Event occurs. The Customer must continue to pay any Charges and other amounts as and when they fall due up to the date of termination and then pay the Early Termination Charge.
- 4.2** If the Customer wishes to terminate this Agreement at any time from the commencement of the Agreement until the expiration of the Service Term, it must advise DRN by 90 days notice in writing. The Customer must continue to pay any Charges and other amounts as and when they fall due up to the termination of this Agreement and the Customer must also pay to DRN any reasonable costs incurred in the removal or recovery of any DRN Equipment as well as any Early Termination Charge. This clause survives termination of this Agreement.
- 4.3** After the expiration of the Service Term, either party may terminate this Agreement upon providing the other party with 60 days written notice.
- 4.4** On the date of termination, the Customer must return all Equipment and Confidential Information to DRN or facilitate access for DRN to recover its Equipment and Infrastructure. The Customer must also pay to DRN any reasonable costs incurred in the removal or recovery of any DRN Equipment as well as any Early Termination Charge. This clause survives termination of this Agreement.

#### **5 CREDIT CHECKS**

- 5.1** The Customer agrees that a credit report or other information concerning the creditworthiness of the Customer, which may contain personal information of the Customer, may be given to DRN or its financier by any credit-reporting agency or any person carrying on a business involving the provision of information about the creditworthiness of persons, for the purpose of processing the Customer's application, establishing the Customer's account, the ongoing credit management of the Customer's account and the collection of payments that are overdue.
- 5.2** The Customer agrees and consents to DRN disclosing credit details or information to any credit provider, financier of DRN, or any Other Supplier for the purpose of assessment of the Customer's creditworthiness, or the collection of payments that are overdue.

#### **5 CHARGES**

- 5.1** The Charges will be:
- (a) during the Service Term, the amount specified in this Agreement or the Service Level Agreement, which may be increased by DRN on or after the anniversary of this Agreement, by reference to the gazetted CPI adjustment formulae appropriate to the State in which the Services are performed;
  - (b) Any additional charges which the Customer becomes liable to pay and are invoiced by DRN to the customer such as call out charges, no fault fees, reconnection charges after suspension of services, etc; and
  - (c) after the Service Term, at the existing charge for the Service or DRN's revised published rates pursuant to clause 3.3, whichever DRN decides in its absolute discretion.

- 5.2** The Customer must pay (by paying into DRN's bank account as notified by DRN from time to time) (a) all Charges and any applicable GST within 30 days of being invoiced or by the due date as specified in that invoice, and (b) all other amounts the Customer may become liable to pay to DRN under this Agreement or otherwise as and when they fall due. All payments must be made in full and are to be made without set off or deduction.
- 5.3** DRN reserves the right to charge interest on any part of the Charges and any other amounts the Customer may become liable to pay to DRN under this Agreement or otherwise not paid to DRN by the due date. Interest will be charged from the due date until payment at an annual rate equal 3% above the Commonwealth Bank Corporate Overdraft Reference Rate or such other comparable rate chosen by DRN most recently published before that date.
- 5.4** The Customer will be liable to pay DRN for all expenses (including legal costs and expenses and the fees of DRN's debt recovery agents) incurred by DRN in relation to recovering any payments which are not paid by the due date or when due under this Agreement.
- 5.5** If the Customer has any equipment owned by it or by third parties housed in Digital River infrastructure, Digital River may hold that equipment as security for payment and if payment is not made in accordance with this agreement, it may sell any equipment to mitigate any loss, damage, cost or expense incurred by Digital River in accordance with this agreement.
- 5.6** The Customer shall pay, if DRN requests, any current, new, or increase in any GST or any other like tax chargeable or incurred in connection with the Charges or any other payments, the Services, any Equipment or this Agreement
- 5.7** The Customer's obligation to pay the Charges or any other amounts due under this Agreement is absolute and unconditional from the date the Customer executes this Agreement, and is not affected or reduced by (a) any Services not being provided in whole or in part for any reason including, without limitation, any suspension of the Services; (b) any Equipment being damaged, lost, stolen, not working, or otherwise unavailable for any reason; (c) any set-off, counterclaim, deduction or other right the Customer has or claims to have against DRN or any other person; and (d) any termination of this Agreement in whole or part for any reason. The Customer may be entitled to a rebate in accordance with the Service Level Agreement for Services which are not provided in accordance with agreed availability targets.

## **6 FAULTS**

- 6.1** Where the Customer experiences a Fault, the Customer shall take all reasonable steps to ascertain and ensure that the Fault was not the result of any circumstances attributable to the Customer or any equipment in its possession or control, before it reports the Fault to DRN.
- 6.2** After taking the steps required under clause 6.1, the Customer may report the Fault to DRN who may take such steps to investigate and repair any Fault as it sees fit. The process of reporting a fault is set out in the Service Level Agreement. Where requested by DRN, the Customer shall provide reasonable assistance to DRN or any of its representatives to investigate or repair a Fault.
- 6.3** If upon investigating a Fault, DRN determines that the Fault is attributable to the Customer, Customer Equipment, or a breach of this Agreement, then DRN may request the Customer to pay DRN, and the Customer shall pay, an amount for any expense or costs incurred by DRN in investigating or repairing the Fault.
- 6.4** Where DRN has determined a Fault is a result of a negligent act or omission of DRN, the Customer may be entitled, on request, to a rebate as set out in the Service Level Agreement.

## **7 EQUIPMENT & SERVICES**

- 7.1** If DRN provides any item of Equipment to the Customer, then:
- (a) the Equipment always remains the property of DRN unless it has been purchased by the Customer from DRN;
  - (b) the Customer will ensure that it has obtained and maintains all necessary consents and approvals (including, without limitation, landlord, owners corporation or similar approval where applicable) necessary, desirable, or reasonably required by DRN to deliver, install, access, maintain, replace, remove or recover the Equipment at the Customer Premises at all times; and
  - (c) the Customer will not part with possession of the Equipment except to DRN or its nominated representative and will comply with all reasonable directions of DRN in connection with the Equipment; and
  - (d) the Customer will bear all risk in relation to the Equipment located at the Customer's premises; and
  - (e) the Customer undertakes to insure such Equipment; and
  - (f) the Customer will ensure the Equipment is maintained in good working order and condition.
- 7.2** DRN may at any time and from time to time change, modify, maintain, remove or replace the Equipment.
- 7.3** The Customer will allow and will ensure that DRN has full and unhindered access to the Equipment during normal business hours or at such other times as DRN requires. This right of access will not end until the Equipment is returned to DRN even if this Agreement has terminated or expires. This clause survives termination or expiration of this Agreement.
- 7.4** DRN is not responsible or liable for any failure to provide a Service to a Customer where the Customer has not provided sufficient access to DRN to any premises necessary to supply, install, maintain, restore or repair Equipment needed to provide the Services.
- 7.5** The Customer will make certain that the Equipment used in providing Services will not be altered, repaired, serviced or moved except by service personnel approved by DRN.
- 7.6** The Customer will provide a suitable physical environment at the Customer Premises for the storage and operation of the Equipment. This will include ensuring that an adequate power supply and air conditioning for the operation of the equipment used will be available.
- 7.7** The Customer must ensure that any equipment it uses in connection with the Services has all necessary regulatory approvals, is not prohibited by the Australian Communications & Media Authority ("ACMA"), complies with all applicable regulatory standards and is capable of operating with the Services. If there are faults with the equipment causing interference with the Services, DRN may require the Customer to stop using and disconnect the equipment until the fault is fixed.

## **8**

### **9 TRANSFERRING EXISTING CUSTOMER SERVICES**

- 9.1** If the Customer needs to change or transition from an existing supplier, the Customer must make their own arrangements and DRN will assist and facilitate the process where possible.

The Customer consents to the following procedures (if necessary):

- (a) the Customer authorises DRN to advise the Customer's Other Supplier that the Transferred Services are to be provided by DRN in place of the Other Supplier and to sign on the Customer's behalf and in the

Customer's name forms of authority to the Customer's Other Supplier and any other necessary documents to transfer the provision of the Services to DRN;

- (b) If DRN requests, the Customer will give written instructions to the Customer's Other Supplier to transfer the Services from the Customer's name to DRN;
- (c) The Customer will immediately pay to the Other Supplier all amounts owing for the transferred services including alteration of charges which the Other Supplier may demand up to the time of transfer of those accounts;
- (d) The Customer authorises DRN to, (at DRN's discretion), resolve all disputes between the Customer and the Other Supplier about charges owed by the Customer. The Customer will settle all disputes with the Other Supplier in accordance with such resolution and at DRN's discretion, authorises DRN to immediately pay the Other Supplier on the Customer's behalf;
- (e) If DRN pays or credits any amount to the Other Supplier, then, the Customer will indemnify and reimburse DRN for that amount;
- (f) If the Other Supplier credits DRN with any amount concerning the Transferred Services DRN will credit that amount to the Customer.

## 10 LIABILITY

- 10.1 The Customer is liable and indemnifies Digital River for any direct or indirect loss, cost, liability, expense or damage (including, without limitation, reasonable legal fees) for any act, omission or breach of this Agreement by the Customer and or any of its agents, employees, contractors or representatives without limitation.
- 10.2 To the extent permitted by law, DRN excludes all express or implied terms, conditions and warranties other than those set out in this Agreement, and the liability in damages of DRN in connection with any breach by DRN of its obligations under this Agreement or otherwise shall not include liability for any Excluded Loss.
- 10.3 To the extent permitted by law, DRN will not be liable for any loss, cost, liability or damage (including, without limitation, reasonable legal fees) incurred by the Customer or any third party arising as a result of any person being injured or killed or any property or any equipment in the possession or control of the Customer (including without limitation, any data or software) being lost or damaged in connection with the Services.
- 10.4 The Customer hereby releases and shall compensate DRN on request for any loss, cost, liability or damage (including, without limitation, reasonable legal fees) DRN incurs as a result of any person being injured or killed or any property or any equipment in the possession or control of the Customer (including, without limitation, any data or software) being lost or damaged in connection with the Services. If any negligent act or omission of DRN has contributed to any such loss, cost, liability or damage, the liability of the Customer under this clause shall be reduced to the extent of the contribution by DRN.
- 10.5 Where the liability of DRN cannot be excluded in accordance with clauses [10.19-4](#) or [10.39-2](#) for any reason, to the extent permitted by law, the total liability of DRN for any loss, cost, liability or damage (including, without limitation, reasonable legal fees) is limited to the aggregate of the Monthly Service Charges paid by the Customer under this Agreement. For the avoidance of doubt, this liability excludes any installation charge or other charges invoiced to the Customer throughout the Contract Term.

## 11 CONFIDENTIALITY

- 11.1 The Customer will keep all Confidential Information confidential and will not allow any documentation to be recorded or copied in any way. The Customer will not use Confidential Information which the Customer acquires from DRN for any purpose, other than as necessary for the receipt of and reasonable use of the

Services, nor in any manner which may cause DRN to suffer any loss, damage, cost, expense, action, demand or claim of any kind including, without limitation, damage to DRN's reputation.

## **12 FORCE MAJEURE**

**12.1** DRN is not liable for any failure to perform, or for any delay in performing, any of its obligations under this Agreement where such failure or delay is occasioned by strike or other industrial action; shortage of labour; fibre faults caused by failure or delays by Other Suppliers, third parties or contractors; legislative, governmental or other prohibitions or restrictions; fire, flood, war or other causes whatsoever beyond DRN's reasonable control.

## **13 ASSIGNMENT**

**13.1** The Customer may not assign or otherwise deal with the Customer's rights under this Agreement. DRN may, without the Customer's consent, assign, novate, transfer, grant an encumbrance or otherwise deal with any of its rights and obligations under, and interests in, this Agreement or any Equipment in connection with any Services or this Agreement.

## **14 GENERAL**

**14.1** If a date for payment of money or the return of Equipment under this Agreement is not a Business Day, then the money must be paid or the return of Equipment must be undertaken on the next Business Day.

**14.2** This Agreement shall be governed by and construed in accordance with the law of Victoria and the parties submit to the jurisdiction of the Courts of Victoria and any court hearing appeals from those Courts.

**14.3** This Agreement contains the whole understanding of the parties to the exclusion of any prior Agreement, representation or understanding relating to the Services or any Equipment.

**14.4** If any part of this Agreement is found to be void or unenforceable by a court of competent jurisdiction, that part shall be severed and the rest of the Agreement remain in force.

**14.5** Except where the parties have otherwise agreed in this Agreement, the rights, remedies and powers conferred by this Agreement upon each party are cumulative and in addition to all other rights, remedies and powers available to that party by statute, or by general law.

**14.6** Any clause which requires the Customer to perform any obligation after the termination or expiration of the Agreement survives the termination or expiration of this Agreement.

Execution:

Executed as an agreement by:

**The Customer:**

<b>CUSTOMER by an authorized representative:</b>	
<b>Signature:</b>	
<b>Name:</b>	
<b>Title:</b>	
<b>Date:</b>	

<b>CUSTOMER'S signature witnessed by:</b>	
<b>Signature:</b>	
<b>Name:</b>	
<b>Date:</b>	

**Digital River Networks:**

<b>DIGITAL RIVER NETWORKS PTY LTD by an authorized representative:</b>	
<b>Signature</b>	
<b>Name</b>	
<b>Title</b>	
<b>Date</b>	

<b>DIGITAL RIVER'S signature witnessed by:</b>	
<b>Signature:</b>	
<b>Name:</b>	
<b>Date:</b>	