



SERVICE LEVEL AGREEMENT

This Service Level Agreement (the "Agreement") is effective as of the date agreed by both parties (the "Effective Date").

BETWEEN: **Digital Pacific Pty Ltd** (the "Service Provider"), a Company organised and existing under the laws of the NSW of Sydney, Australia with its head office located at:

Suite 1612 World Tower. 87-89 Liverpool st Sydney

AND: **You** (the "Client"), The registered and approved client of Digital Pacific Pty Ltd. You are the Company or Business organised and existing under the laws of the Australia.

RECITALS

This Agreement sets forth the terms and conditions under which Client will provide Service Provider with certain Equipment under bailment and Service Provider will provide certain support services to Client on specified Service Provider premises (hereinafter referred to as the "Service Provider Network Location(s)").

WHEREAS, Service Provider is desirous and capable of providing support services for certain Client-Provided Equipment which interconnects to Service Provider transmission services; and

WHEREAS, Client desires to have the Equipment supported by Service Provider in a designated portion of certain Service Provider Network Location(s), as set forth in Exhibit A of this agreement (hereinafter referred to as the "Location and Equipment Summary"), which is attached hereto and made a part hereof; and

WHEREAS, Client and Service Provider (hereinafter referred to cumulatively as the "Parties" and singularly as the "Party") have agreed on the terms which shall govern the bailment and support of the Equipment as set forth in Exhibit B of this agreement (hereinafter referred to as the "Statement of Work"), which is attached hereto and made a part hereof, and as set forth in Exhibit C of this agreement (hereinafter referred to as the "Non-Recurring and Monthly Recurring Pricing Summary"), which is attached hereto and made a part hereof;

NOW, THEREFORE, in consideration of the mutual agreements and promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. UNDERTAKINGS



- A. Client will provide for the inside delivery of the Equipment at the Service Provider Network Location(s) as specified in the Location and Equipment Summary with proper and timely notification as specified in the Statement of Work.
- B. Client will install the Equipment at the Service Provider Network Location(s) as specified in the Location and Equipment Summary in accordance with Service Provider and Industry standards and practices as specified in the Statement of Work.
- C. Service Provider will connect the Equipment to Service Provider services at the Service Provider Network Location(s) as specified in the Location and Equipment Summary in accordance with Service Provider standards and practices as specified in the Statement of Work.
- D. Service Provider will hold the Equipment in bailment for use only at the Service Provider Network Location(s) as specified in the Location and Equipment Summary and only for the purposes contemplated herein.
- E. During the term of the bailment, Service Provider shall provide space, power, testing, environment and other support services for the Equipment as set forth in the Statement of Work and Service Provider shall have no other responsibility for the Equipment.
- F. Client shall cooperate fully with Service Provider in the provision of these support services and agrees to perform those activities identified as Client Responsibilities in the Statement of Work.

2. TERM AND TERMINATION

- A. The initial term of this Agreement shall commence on the agreed date, shall continue for a period of time until terminated by the Client or Service Provider.
- B. This Agreement is binding when executed by Client and subsequently accepted by Service Provider and once accepted by Service Provider, the rates and charges provided in this Agreement will be effective from the first day of the next billing cycle following Client's signature date (the "Effective Date").
- C. Either Party may terminate this Agreement following the giving of 14 calendar days prior written notice of termination to the other Party.
- D. If Client terminates this Agreement prior to the expiration of the agreed contract term, Client will pay Service Provider, in addition to all other charges due, per Service Provider Network Location, which amount shall represent liquidated damages that Client agrees are reasonable.
- E. Client shall remove its Equipment from the Service Provider Network Location(s) within 14 calendar days of the termination of this Agreement and, if Client fails to do so, Service Provider may itself remove the Equipment and store the same at Client's expense and at Client's sole risk. Any expenditure by Service Provider for the removal and storage of the Equipment shall bear interest at the lesser of [5%] per annum or the maximum rate permitted by law.
- F. The rights and duties in Article D, "Warranty and Liability" shall survive the termination of this Agreement.

3. FINANCIAL PROVISIONS



- A. Client shall pay Service Provider a non-recurring fee for Site Preparation, Additional AC or DC Power Circuits and Circuit Interconnection at each of the Service Provider Network Location(s) as set forth in the Non-Recurring and Monthly Recurring Pricing Summary.
- B. Client shall pay Service Provider on a monthly recurring basis for Location Management Fee(s), an Uninterruptible Power Supply (UPS) for [240V OR OTHER] AC Power Circuits and for Service Provider First-Level Maintenance Support at each of the Service Provider Network Location(s) as set forth in the Non-Recurring and Monthly Recurring Pricing Summary.
- C. Client shall pay Service Provider a one time charge of (Agreed amount) per circuit when, at the Client's request, Service Provider provided cabling is added, moved or changed after the initial Site Preparation work listed in the Equipment and Location Summary is completed by Service Provider. This charge is in addition to any other charges specified in the applicable tariff or contract from the entity from which the facility or service is obtained.
- D. For equipment moves made pursuant to Client's request, Client shall pay for each unit of Equipment this is moved to a different location within the same Service Provider Network Location after the initial Site Preparation work listed in the Equipment and Location Summary is completed by Service Provider.
- E. Client shall pay directly or reimburse Service Provider, as applicable, for all taxes, duties, and similar liabilities which may result from this Agreement, or any support services specified hereunder, exclusive of taxes based on Service Provider's net income.
- F. All invoices shall be due and payable in AUD within 7 calendar days upon receipt as set forth in the Non-Recurring and Monthly Recurring Pricing Summary.

4. WARRANTY AND LIABILITY

- A. Service Provider warrants that its undertakings hereunder shall be performed in a professional and workmanlike manner and that it will provide Support Services in accordance with this Agreement.

NO OTHER WARRANTIES ARE EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

- B. Client warrants that it has the unrestricted right to place the Equipment at Service Provider's Location(s) listed in the Location and Equipment Summary for the term of this Agreement.
- C. Except as otherwise set forth herein, neither Party shall be deemed negligent, at fault or liable in any respect to the other for any delay, interruption or failure in performance hereunder resulting from fire, flood, water, the elements, explosions, acts of God, war, accidents, labor disputes, strikes, shortages of equipment or suppliers, unavailability of transportation or other cause beyond the reasonable control of the Party delayed or prevented from performing.
- D. Except to the extent the same is caused solely by the gross negligence or willful misconduct of Service Provider, its authorized agents or employees, Client shall indemnify and hold harmless Service Provider, its agents, contractors and employees from and against any and all claims, liability, damage, loss, or expense (including attorney's fees) including injury or death to persons, or damages to property, both real and personal, which may arise out of: (a) the presence of Client's



unit(s) of Equipment, employees, contractors or agents on Service Provider's premises; (b) the installation, operation, maintenance or removal of the Client's unit(s) of Equipment from Service Provider's premises; (c) any inherent defects in the Client's unit(s) of Equipment.

- E. Client shall indemnify and hold harmless Service Provider, its agents, contractors and employees from and against any and all claims, liability, damage, loss, or expense (including attorney's fees) including injury or death to persons, or damages to property, both real and personal, which may arise out of the negligent or intentional acts or omissions of Client, its agents, employees or contractors.
- F. Service Provider shall not be liable for any damages to the Equipment for any reason, except to the extent the same is caused solely by the gross negligence or willful misconduct of Service Provider, its authorized agents or employees; provided, however, that in the event the Equipment while in the possession and control of Service Provider is either lost or so damaged as the result of Service Provider's gross negligence or willful misconduct, the maximum liability of Service Provider for said Equipment shall not exceed the replacement value of the Equipment in a dismantled state, if repairs are impracticable, or, in the event said Equipment is repairable, the costs to repair damage thereto.
- G. In no event shall either Party be liable to the other for any indirect, incidental, special or consequential damages, including loss of revenue and profits, even if aware of the possibility thereof.
- H. Notwithstanding anything to the contrary in this Agreement, Service Provider's liability to Client for any reason and upon any cause of action or claim in contract or tort, including without limitation breach of this Agreement or any warranty hereunder, regardless of form of action, shall not exceed the lesser of direct damages proved or 2 month's Location Management Fee.
- I. THE LIMITATIONS SET FORTH IN THIS ARTICLE D APPLY TO ALL CAUSES OF ACTIONS OR CLAIMS IN THE AGGREGATE INCLUDING WITHOUT LIMITATION, BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATION AND OTHER TORTS. FURTHER, NO CAUSE OF ACTION WHICH ACCRUED MORE THAN 2 YEARS PRIOR TO THE FILING OF A SUIT ALLEGING SUCH CAUSE OF ACTION MAY BE ASSERTED AGAINST SERVICE PROVIDER. CLIENT AND SERVICE PROVIDER EXPRESSLY ACKNOWLEDGE AND AGREE THAT THE LIMITATIONS AND EXCLUSIONS CONTAINED HEREIN REPRESENT THE PARTIES' AGREEMENT AS TO THE ALLOCATION OF RISK BETWEEN THE PARTIES IN CONNECTION WITH SERVICE PROVIDER'S OBLIGATIONS UNDER THIS AGREEMENT. THE PAYMENTS PAYABLE TO SERVICE PROVIDER IN CONNECTION HERewith REFLECT THIS ALLOCATION OF RISK AND THE EXCLUSION OF CONSEQUENTIAL DAMAGES IN THIS AGREEMENT.

5. ACCESS, TITLE AND INSURANCE

- A. Client, its agents, employees and contractors who, in Service Provider's discretion, do not pose a security risk to Service Provider personnel or property, shall be permitted access to Service Provider Location(s) listed in the Location and Equipment Summary, to be accompanied at all times by an Service Provider escort, during normal business hours for the purpose of installing, operating, maintaining, repairing or removing the unit(s) of Equipment, after giving a reasonable advance notice to Service Provider, provided, however, that Client agrees to comply with Service Provider's security regulations and other local site operating policies and procedures while on the Service Provider Network Location for these express purposes. A reasonable advance notice as referenced above shall be provided as follows: (a) a minimum of no less than 7 calendar days notice for the



purpose of installing, preparing or removing the Equipment; (b) a minimum of 2 hours advance notice for routine preventive maintenance on the Equipment; (c) as soon as possible for the reporting of a network malfunction causing loss of service or a degraded operating condition in the Equipment.

- B. The Parties agree that Client is making the Equipment available hereunder as a bailment and that title to the Equipment will remain with Client or Client's lessor and that Service Provider shall have no right, title or interest therein, except as expressly provided in this Agreement. Service Provider will not impose liens, security interests or encumbrances on the Equipment.
- C. The Parties agree not to move the Equipment to any other location prior to the expiration of this Agreement without the other Party's prior written consent nor to make alterations in or affix attachments to the Equipment, except that Client may make those alterations or affix attachments to the Equipment as necessary for Client's networking requirements, provided Client gives Service Provider advance notice of no less than 4 days before making such changes to the Equipment, and that Service Provider may relocate the Equipment to another Service Provider Location for its convenience due to Service Provider's networking requirements.
- D. In the event of such Equipment relocation for Service Provider's convenience, Service Provider agrees to pay all costs associated with the removal, moving, installation and demarcation of such equipment, other than any direct or indirect costs, of any kind or nature, incurred by Client for its vendors or technicians (whether employees or independent contractors), including without limitation, travel and lodging expenses (if any) and salary or other payments for services rendered. Client understands that during such an Equipment relocation Client will experience a communications service outage while the Equipment is being relocated.
- E. Throughout the term of this Agreement, Client shall obtain, maintain and pay for: (i) all risk property insurance covering the Equipment; (ii) comprehensive general liability (including products and completed operations liability and broad form property damage) insurance covering the Equipment and the contractual liability of Client under this Agreement in form and with insurers reasonably satisfactory to Service Provider and with a minimum limit of \$50,000 per occurrence for personal injury, bodily injury and property damage; (iii) Worker's Compensation with statutory benefits; (iv) Employees Liability with a minimum limit of \$50,000 per occurrence; and (v) automobile liability insurance with a minimum limit of \$50,000 per occurrence for bodily injury and property damage. All insurance policies required to be maintained by Client under this Agreement shall be with insurance companies licensed to do business in the states where the Equipment is located, reasonably satisfactory to Service Provider, and shall name Service Provider as an additional insured. Certificates of such insurance (showing payment of current premiums thereon) shall be delivered to Service Provider a minimum of 2 days prior to Equipment delivery with renewals thereof delivered to Service Provider a minimum of 5 days prior to the expiration of any such policies. Each policy shall contain an agreement by the insurer that such policy shall not be canceled without 5 days prior notice to Service Provider.

Certificates of insurance should be mailed to:

Digital Pacific Pty Ltd
ATT TO: Legal Dept
Po Box 740
Double Bay, 1360
Sydney, Australia



6. CANCELLATION FOR CAUSE

- A. In addition to any other rights of termination specified herein, either Party may terminate this Agreement upon 14 days prior written notice to the other in the event of:
- i. the other's failure to pay any amounts due hereunder and not duly contested in good faith within 14 days after the receipt of the terminating Party's written notice of default concerning the same; or
 - ii. the other's failure to cure a material breach 14 days after receipt of the terminating Party's written notice of default concerning the same.

7. NON-COMPETITION

A. By Client

The Client covenants and agrees that it will not directly or indirectly for the term of this Agreement and for a period of two years following the termination of this Agreement:

- (i) engage in, continue in or carry on any business which competes with Service Provider in Service Provider's Business (hereunder described) or which is substantially similar thereto.
- (ii) offer employment to a person who is or was employed by Service Provider during the then immediately preceding 3 months, or assist any other person or entity in offering employment to a person who is or was employed by Service Provider, during the then immediately preceding 3 months, without the prior written consent of Service Provider;
- (iii) undertake any business with or solicit the business of any person, firm or company who shall have been a customer of Service Provider and with whom any executive of Service Provider or their subordinates has dealt with during the then immediately preceding 3 months which might adversely affect Service Provider's business relationship with such customer, but only if such solicited business relates to Service Provider's Business;
- (iv) engage in any practice the purpose of which is to evade the provisions of this covenant not to compete.

B. By Service Provider

Service Provider covenants and agrees that it will not directly or indirectly for the term of this agreement and for a period of two years following the termination of this Agreement:

- (i) engage in, continue in or carry on any business which competes with the Client in the Client's Business or which is substantially similar thereto;
- (ii) consult with, advise or assist in any way, whether or not for consideration, any corporation, partnership, firm or other business organization which is now or becomes a Competitor of the Client if the principal purpose of such consultation, advice or assistance is to permit such corporation, partnership, firm or business organization to compete with Client in the Client's Business, including, but not limited to, advertising or otherwise endorsing the products of any Competitor of the Client for such purpose; soliciting customers or otherwise serving as an intermediary for any such Competitor of the Client for such purpose; loaning money or



rendering any other form of financial assistance to or engaging in any form of business transaction with any Competitor of the Client for such purpose;

- (iii) offer employment to a person who is or was employed by the Client during the then immediately preceding 3 months, or assist any other person or entity in offering employment to a person who is or was employed by the Client, during the then immediately preceding 3 months, without the prior written consent of the Client;
- (iv) undertake any business with or solicit the business of any person, firm or company who shall have been a customer of the Client and with whom any executive of the Client or their subordinates has dealt with during the then immediately preceding 3 months which might adversely affect the Client's business relationship with such customer, but only if such solicited business relates to the Client's Business; or
- (v) engage in any practice the purpose of which is to evade the provisions of this covenant not to compete.

8. NOT A LEASE OR LICENSE

Client understands and agrees that this Agreement is not intended to and shall not be deemed to grant Client any property rights in any of the Service Provider Network Location(s) listed in the Location and Equipment Summary.

9. INDEPENDENT CONTRACTOR RELATIONSHIP

It is acknowledged and agreed that Service Provider's relationship with the Client is at all times hereunder an independent contractor. The Client shall have no authority over Service Provider's internal business affairs and decisions. Service Provider shall have no authority to act on behalf of, or legally bind the Client, and Service Provider shall not hold itself out as having any such authority. This Agreement shall not be construed as creating a partnership or joint venture.

10. GENERAL

- A. This Agreement sets forth the entire understanding between the Parties with regard to the subject matter hereof and supersedes any prior discussions or representations between them with respect thereto. All amendments to this Agreement shall be in writing and signed by both Parties.
- B. Neither Party may use the name, trademark, service mark or Logo of the other Party in any advertising, news releases or in any other manner without the written consent of such Party.
- C. Client may not assign this Agreement or any of its rights hereunder without written consent by Service Provider, which shall not be unreasonably withheld.
- D. All Equipment provided for Service Provider by Client hereunder for use in connection with Service Provider's communications services shall be deemed to be "Client-Provided Terminal Equipment" within the meaning of Service Provider's Tariff.
- E. The relevant rights and obligations of the parties shall survive the termination of this Agreement.
- F. All notices, requests, demands or communications required or permitted hereunder shall be in writing, delivered personally or by telex, telegram, Service Provider Mail, or certified, registered, or



express mail at the respective addresses set forth below (or at such other addresses as shall be given in writing by either Party to the other). All notices, requests, demands or communications shall be deemed effective upon personal delivery or on the calendar day following the date of the telex, telegram, or Service Provider Mail, or when received if sent by registered certified or express mail.

11. GOVERNING LAW

This Agreement, and any dispute arising from the relationship between the parties to this Agreement, shall be governed by the law of the NSW of Sydney, Australia excluding any laws that direct the application of another jurisdiction's laws.



12. ATTORNEY FEES PROVISION

In any litigation, arbitration, or other proceeding by which one party either seeks to enforce its rights under this Agreement (whether in contract, tort, or both) or seeks a declaration of any rights or obligations under this Agreement, the prevailing party shall be awarded its reasonable attorney fees, and costs and expenses incurred.



EXHIBIT A
LOCATION AND EQUIPMENT SUMMARY

This will be made available on request



EXHIBIT B
STATEMENT OF WORK

SERVICE PROVIDER RESPONSIBILITIES:

- A. Furnish and install, as part of the Site Preparation, such equipment rack(s), signal cabling, demarcation panel(s). AC power and DC power as requested by the Client to support the installation of the Equipment at the Service Provider Network Location(s) specified in Exhibit A.
- B. Upon completion of Site Preparation, perform testing as Service Provider deems appropriate to verify proper operation of Service Provider provided signal cabling, associated demarcation panel(s) and AC power and DC power at the Service Provider Network Location(s) specified in Exhibit A.
- C. Provide a central telephone number of the Service Provider Network Management Center (MNMC) to be used by Client to report all troubles, schedule routine maintenance visits, request First Level Maintenance and to request Service Provider technical support, should the Service Provider Network Location be unmanned at time of Client's request.
- D. Service Provider will perform "First Level Maintenance" on the Equipment only at the direction of Client or its designated vendor at the Service Provider Network Location(s) specified in Exhibit A.

Service Provider performed "First Level Maintenance" on the Equipment is defined as follows:

- a. At the direction of the Client or its designated vendor report any visual or audio alarms on the Equipment at the Service Provider Network Location(s) specified in Exhibit A.
 - b. At the direction of the Client or its designated vendor, rebooting and/or restarting the Equipment at the Service Provider Network Location(s) specified in Exhibit A by pressing of readily accessible buttons or switches.
 - c. At the direction of the Client or its designated vendor, replace Equipment modules and/or cards with on site Client provided spare modules and/or cards at the Service Provider Network Location(s) specified in Exhibit A.
- E. Order, maintain and provide routine and emergency maintenance on Service Provider services up to the designated Service Provider demarcation point located in the Equipment at the Service Provider Network Location(s) specified in Exhibit A.
 - F. Provide the necessary facilities to provide Client with the proper transmission quality as stated in the Service Provider Tariff and/or other agreements by and between the Parties at the Service Provider Network Location(s) specified in Exhibit A.
 - G. Install, cable, power up, and test Equipment during such hours as determined by the Site Manager of the Service Provider Network Location(s) specified in Exhibit A to determine proper operating performance before the acceptance of Service Provider transmission services at the Service Provider provided demarcation in the Equipment and ensure that the Equipment provides the proper transmission quality to Service Provider.
 - H. Provide routine preventive and emergency maintenance for the Equipment at the Service Provider Network Location(s) specified in Exhibit A.



- I. Provide overall network management and monitoring of the Equipment at the Service Provider Network Location(s) specified in Exhibit A.



CLIENT RESPONSIBILITIES:

- A. Properly stage all Equipment prior to shipment to the Service Provider Network Location(s) specified in Exhibit A.
- B. Arrange for inside delivery of Equipment with all labor, tools, and test equipment necessary to completely install and test the Equipment at the Service Provider Network Location(s) specified in Exhibit A.
- C. Provide Service Provider with 1 week(s) prior notice of Equipment delivery at the Service Provider Network Location(s) specified in Exhibit A.
- D. Report all troubles, schedule routine maintenance visits, request First Level Maintenance and request Service Provider technical support, should the Service Provider Network Location be unmanned at time of Client's request, through the Service Provider Network Management Center (MNMCC) for the Equipment at the Service Provider Network Location(s) specified in Exhibit A.
- E. Retain spares as Client or its designated vendor deem necessary within the Equipment at the Service Provider Network Location(s) specified in Exhibit A.
- F. Maintain an accurate accounting of Equipment installed and spares at the Service Provider Network Location(s) specified in Exhibit A.
- G. Provide a receipt to Service Provider for all spares or Equipment removed from any of the Service Provider Network Location(s) specified in Exhibit A.
- H. Provide an accurate accounting all circuits installed to the Equipment at the Service Provider Network Location(s) specified in Exhibit A. including circuit type, city pairs and signaling levels for each circuit installed.
- I. Provide Service Provider with a Client contact list including names, home and office phone numbers and pager numbers of key contacts and designated vendor(s) for the routine maintenance and emergency repair of the Equipment at the Service Provider Network Location(s) specified in Exhibit A.
- J. Make necessary arrangements to work cooperatively with Service Provider in the isolation of troubles, including but not limited to, the provisioning of loopbacks and cooperative bit error rate testing at the Equipment at the Service Provider Network Location(s) specified in Exhibit A.
- K. Client or its designated vendor shall not rearrange, disconnect, relocate, remove, modify or attempt to repair the signal cabling, demarcation panel(s), AC power and DC power provided by Service Provider, or permit others to do so, without prior approval of Service Provider at the Service Provider Network Location(s) specified in Exhibit A.
- L. Bear all costs associated with third party vendor efforts in disaster recovery of the Equipment at the Service Provider Network Location(s) specified in Exhibit A.
- M. Provide Service Provider with any necessary agency authorization as may be required for Service Provider to fulfill its obligations under this Support Services Agreement and the Exhibits attached hereto and made a part hereof this Agreement.



EXHIBIT C
NON-RECURRING AND MONTHLY RECURRING PRICING SUMMARY

This will be made available on request