

# IPv6 Now Pty Ltd

## Service Agreement

**IPv6 Now Pty Ltd**

PO Box 152, Civic Square ACT 2608 Australia  
Telephone: +61 2 6161 6607 Facsimile: +61 2 6262 9938  
Email: [info@ipv6now.com.au](mailto:info@ipv6now.com.au) Web: [www.ipv6now.com.au](http://www.ipv6now.com.au)

# IPv6 Now Pty Ltd Service Agreement

This agreement is made on the                    day of                    ,                    ,

between

IPv6 Now Pty Ltd of 11 Fitzroy Street, Forrest ACT 2603, Australia  
("IPv6 Now")

and

("the Customer").

The parties acknowledge and agree as follows:

## **Definitions**

The "Target Date" means that date given in Item Two of the attached Schedule One.

The "Initial Service Period" means that period given in Item Three of the attached Schedule One.

The "Services" means those services named in Item Five of the attached Schedule One and described in the attached Schedule Two.

The "Service Locations" means those places given in Item Four of the attached Schedule One.

The "Commencement Date" means the date upon which provision of the Services begins.

The "Installation Charge", "Periodic Service Charge" and "Usage Charges" are those specified as such in Item Six of the attached Schedule One.

# 1 The Provision of Services

- 1.1 IPv6 Now Pty Ltd (“IPv6 Now”) agrees to provide the Services to the Customer under the terms and conditions of this Agreement at the Service Locations, on and from the Target Date.
- 1.2 IPv6 Now agrees to use its best endeavours to ensure that the Services are available by the Target Date.
- 1.3 If all the Services cannot be provided by the Target Date or if the Services cannot be provided at all locations by the Target Date, IPv6 Now and the Customer may agree that pending the provisions of all the Services at Service Location that only some of the Services may be provided or that the Services may be provided only at some of the Service Locations. Such agreement may require the Customer to pay a charge for the provision of such interim partial services. Where such agreement is reached and interim partial services are provided, this Agreement shall apply insofar as it is appropriate pending the commencement of all the Services at all Service Locations. However, the Initial Service Period shall not commence until IPv6 Now notifies the Customer that all the Services are available for use by the Customer at all locations. The Customer retains the right to terminate this agreement if the Services are not fully operational within a further 6 weeks of the Target Date (with access to the conditions in clause 5.3).
- 1.4 IPv6 Now reserves the right to vary the method of provision of the Services, the equipment used to provide the Services and the carrier utilised for the Services. However, IPv6 Now promises that any such variation will not impair the provision of the Services to the Customer.
- 1.5 The Customer agrees to pay the Installation Charge, the Periodic Service Charge and the Usage Charges.
- 1.6 The Installation Charge shall fall due on the commencement date.
- 1.7 Periodic Service Charges are payable in advance. The Periodic Service Charge for the first period will fall due on the commencement date. Periodic Service Charges for subsequent periods will fall due on the first business day of each subsequent period.
- 1.8 The Customer is responsible for all Usage Charges in respect to the use of the Services whether or not such usage was authorised except in the case where IPv6 Now has caused the unauthorised access. It is the Customer's responsibility to maintain the security of the means of access to the Services and to ensure unauthorised access does not occur.

## 2 Charges and payment

- 2.1 IPv6 Now will issue to the Customer an invoice for all charges incurred to the date specified, including:
  - (a) The Installation Charge, on the commencement date only (see clause 1.6);
  - (b) The Periodic Service Charge for each period (see clause 1.7).
- 2.2 Payment of any invoice shall be made to IPv6 Now or to IPv6 Now's billing agent as notified by IPv6 Now to the Customer.

- 2.3 All invoices will be payable as set out in clauses 1.6, 1.7 and 2.1.
- 2.4 IPv6 Now's invoice will be conclusive evidence that Services were supplied and that other charges were incurred as set out in that invoice.
- 2.5 IPv6 Now may charge the Customer 10% interest on all overdue payments from the date that they fall due, together with any reasonable expenses and costs incurred by reason of any failure or delay in payment by the Customer.
- 2.6 The Customer agrees to pay any taxes, duties, stamp duties, imposts, levies or other government charges arising out of, or otherwise relating to this Agreement, the provision of the Services and/or the supply of any purchased equipment.

### **3 Varying the Services**

- 3.1 The Customer may at any time in good faith request IPv6 Now to vary the Services provided by giving IPv6 Now notice of the variations requested.
- 3.2 IPv6 Now will in good faith endeavour to comply with the request for variation of the Services.
- 3.3 In no case will a variation of the Services requested by the Customer result in a reduction of the Charges payable by the Customer unless IPv6 Now in its absolute discretion agrees to such a reduction.
- 3.4 IPv6 Now will within a reasonable time after receiving the request (normally seven days) give the Customer notice confirming the details of the request, specifying a date on which it is proposed the variation of the Services should commence (which shall be not less than seven days ahead), and specifying whether any variations to charges or to other terms of this Agreement will be necessary by reason of the variation of the Services. It shall be exclusively for IPv6 Now in its absolute discretion to determine whether any variation to charges or other terms of this Agreement will be necessary by reason of the variation of the Services.
- 3.5 The variation of the Services will take effect from the date proposed in the notice confirming the request unless the Customer notifies IPv6 Now within seven days of receipt of the notice confirming the request that it withdraws its request for variation to the Services in which case the variation will not take effect.
- 3.6 Upon the variation of the Services taking effect, the variations to the charges and other terms of this Agreement specified in the notice from IPv6 Now confirming the details of the request will take effect and this Agreement shall thereafter have effect as thus modified. If an increase in any Charges is necessary by reason of the variation of the Services, on the date upon which the variation takes effect IPv6 Now will issue an invoice for the increased Charges for the next service period. The invoice will be payable in accordance with clause 2.1.

### **4 Rights to terminate early in the event of default**

- 4.1 In the event that either party fails to comply with any of its obligations under this Agreement, the other party may give the party in default written notice specifying the nature of the default and requiring the party in default to rectify the default within 14 days of receiving the notice.

- 4.2 If the party receiving the notice fails to rectify the default within 14 days of receiving the notice, the other party may by written notice terminate this Agreement forthwith
- 4.3 If for any reason the Services are unavailable for a continuous period greater than two hours on two or more occasions during any 30 day period (either within or following the Initial Service Period), the Customer has the right to terminate the service immediately.

## **5 Effects of termination**

### **5.1 On termination:**

- (a) the Customer's right to use the Services ceases immediately.
- (b) the Customer must immediately cease to make use of IPv6 Now's equipment.
- (c) the Customer must immediately inform IPv6 Now of the specific location of all IPv6 Now's equipment.
- (d) the Customer must permit, or procure permission for, IPv6 Now to access any location at any time or times for the purpose of removing any of IPv6 Now's equipment. The Customer agrees to assist IPv6 Now in doing all things necessary to recover IPv6 Now's equipment.
- (e) the Customer acknowledges that it will not in any circumstances assert any lien over IPv6 Now's equipment or any right or entitlement to such a lien.

5.2 Termination will not affect any rights or liabilities which have already been accepted by either party, nor will it affect any provision which is expressly or by implication intended to operate after termination.

5.3 After the Initial Service Period, the Customer has the option to request that the Service will be provided by the Customer's own facilities. The terms for acceptance by IPv6 Now of such a request are to be negotiated at the time of the request. Suitable terms may include an approximate payment formula consisting of a pro-rata equipment transfer price amortised over a 36 month period. IPv6 Now operator charges will be made at the standard configuration charge rate.

## **6 Liability of IPv6 Now**

6.1 The Customer accepts that circumstances may arise where IPv6 Now is unable to provide the Services under this Agreement to the Customer. IPv6 Now agrees to use its best endeavours to provide all Services in accordance with this Agreement.

6.2 The Customer agrees that except as set out in clause 6.3 IPv6 Now is not liable to the Customer for any loss whether direct or indirect arising out of IPv6 Now's failure to supply any Services.

6.3 In the event that the Services are unavailable for a continuous period in excess of eighteen hours IPv6 Now will allow the Customer a credit equal to twice the unavailable time against the invoice of an amount which reflects the proportion of the Periodic Service Charge attributable to the unavailable Services.

- 6.4 The credit provided for by clause 6.3 shall be calculated in good faith by IPv6 Now with reference to the particular Services which were unavailable, the time during which the Services, or some of them, were unavailable and the number of locations at which the Services, or some of them, were unavailable.
- 6.5 IPv6 Now will not be liable to the Customer for any loss or damage suffered by the Customer as a result of any unauthorised access by any third party to the Customer's corporate system, except in the case where IPv6 Now has caused the unauthorised access.

## **7 Indemnity**

- 7.1 The Customer agrees to indemnify IPv6 Now against any claims arising from:
- (a) The use of the Services by the Customer, its servants or agents;
  - (b) Any use of the Services for which the Customer is responsible (by reason of clause 7.3 or otherwise); or
  - (c) Any other act or omission of the Customer, its servants or agents relating to the installation, use or maintenance of IPv6 Now equipment.
- 7.2 Clause 7.1 applies to all claims brought against IPv6 Now whether those claims arise from the nature of the material transmitted through the use of the Services or otherwise, and whether those claims relate to loss suffered by any person, infringement of the rights of any person or any other entitlement claimed by any person.
- 7.3 The Customer shall fully indemnify IPv6 Now against any action, claim or demand costs or expenses arising from, or incurred by reason of any infringement of letters, patent, design, trademark or name copyright or other protected rights in respect to the use of the Services in any way or form. IPv6 Now shall provide written advice to the Customer if any claim or potential claim is made by a third party against IPv6 Now, and the Customer shall be entitled to assume full carriage of any legal action commenced against IPv6 Now.

## **8 Use of the Service**

- 8.1 The Customer shall not use, nor permit any person to use the Service for sending to any person any message, electronic mail or any other form of communication which is offensive, abusive or of an indecent, obscene or menacing character, or to persistently send messages without reasonable cause, intentionally causing annoyance, inconvenience or needless anxiety to any person.
- 8.2 The Customer acknowledges that third party information providers may impose additional terms and conditions governing the provision of their information or services and that any such terms and conditions may include a disclaimer absolving such third parties from liability regarding information and services provided by that third party.
- 8.3 If the Customer's use of any service causes undue performance loss, or impairs or threatens to impair the continued proper functioning of IPv6 Now's equipment or software or that of any of IPv6 Now's suppliers, the service may be suspended

without notice. If any service is suspended for these reasons, every effort will be made to contact the Customer to discuss the matter, with a view to restoring the service as soon as possible.

## **9 Delays due to Unexpected Circumstances**

9.1 The Customer will not hold IPv6 Now responsible for any delay or disruption in the provision of the Services in accordance with this Agreement due to circumstances beyond the control of IPv6 Now. Examples of such circumstances may include but not necessarily be limited to the following:

- (a) government directions;
- (b) acts of God;
- (c) unavailability or suspension by the Carriers;
- (d) acts or omissions by third parties.

## **10 Notices**

10.1 All notices under this Agreement must be in writing and forwarded to the current address of the other party. Notices may be delivered to a party by hand, by security post, or by facsimile to that party's current address. IPv6 Now's current address at the date of entry into this Agreement is that stated in Item Seven of Schedule One. The Customer's current address at the date of entry into this Agreement is that stated in Item One of Schedule One. Either party may change its current address by giving notice to the other party.

10.2 A notice will be taken to be duly given and received:

- (a) if delivered by hand when delivered, provided delivery takes place on a business day.
- (b) if delivered by security post, on the second business day after posting;
- (c) if delivered by facsimile, upon completion of transmission and receipt by the sender of an appropriate transmission report, on the same day if sent before 5 p.m. on a business day, on the next business day if sent after 5 p.m. or on a day that is not a business day.

## **11 General**

11.1 IPv6 Now may appoint sub-contractors to carry out any of its obligations under this Agreement.

11.2 The Customer must not assign, mortgage, charge or sublicense any of its rights, or sub-contract or otherwise delegate any of its obligations under this Agreement without IPv6 Now's written consent which will not be unreasonably withheld

11.3 IPv6 Now may assign or otherwise delegate all or any of its rights and obligations under this Agreement to a related corporation or person.

- 11.4 The Customer must not assert or exercise any right of set off against money payable by the Customer to IPv6 Now under this Agreement.
- 11.5 If any provision of this Agreement is found to be unlawful, invalid or unenforceable for any reason, this Agreement will remain in force apart from that provision which is to be deleted.
- 11.6 This Agreement shall be deemed to have been made in Sydney, Australia and it shall be governed and interpreted according to the laws, including conflict of laws, applicable in the State of New South Wales. Each of the parties submits to the jurisdiction of the Courts of New South Wales.
- 11.7 This Agreement may be executed in any number of counterpart copies, each of which shall be deemed to be an original if originally executed, all of which shall constitute one and the same Agreement.