



URSYS

Contract Terms and Conditions

URSYS CONTRACT TERMS AND CONDITIONS

1. Application of the terms and conditions

These URSYS Terms and Conditions ("Terms and Conditions") apply to URSYS Services and Equipment acquired by the Customer from URSYS Pty. Ltd, (ABN 68004011072) 13 Burwood Rd, Burwood NSW 2134 Australia ("URSYS"); under any quotation, proposal or purchase order which is subject to these Terms and Conditions.

PROVISION OF SERVICES

2. URSYS

2.1 Provision of URSYS Services

- (1) URSYS and the Customer agree that the contract under which URSYS Services and Equipment is provided is made up of:
 - a. These URSYS Terms and Conditions and
 - b. the URSYS Service Level Agreement and
 - c. the URSYS Acceptable Use Policy and
 - d. an URSYS Customer Acceptance and Purchase Order (**CAPO**)
- (2) For the purpose of these Terms and Conditions this contract will be termed the "**Purchase Contract**". The **Purchase Contract** is executed by the completion of the **Customer Acceptance and Purchase Order form (CAPO)**
- (3) By providing URSYS a duly executed **CAPO** the Customer agrees to the terms set out in these Terms and Conditions.
- (4) URSYS and the Customer agree that, subject to the payment of all fees and charges that the Customer is obligated to pay under the **CAPO** and the Customer's ongoing compliance with the Terms and Conditions, URSYS will:
 - a. Design, install, commission and deliver shared TDM/TDMA satellite communications bandwidth services, terrestrial bandwidth services, installation, maintenance and support services and access to software applications, or such other services that URSYS may offer from time to time, all of which as specified in the relevant **CAPO** ("**URSYS Services**") and ("**URSYS Equipment**");
 - b. Support and maintain the continued delivery of URSYS Services;
 - c. Fulfil all its obligations under the Purchase Contract

2.2 Extent of URSYS Services

The Customer agrees the URSYS Services and URSYS Equipment do not include any services or systems not expressly detailed in the **PURCHASE CONTRACT** subject to these Terms and Conditions. Unless expressly provided in the **PURCHASE CONTRACT** these Terms and Conditions or the URSYS **SLA**, the Customer is solely responsible for all systems, cabling, hardware, software, infrastructure, buildings, equipment, transport, telecommunications services and facilities.

3. Upgrade

3.1 Customer may Upgrade

The Customer may, at anytime during the Term, upgrade the Bandwidth or the URSYS Service ("**Upgrade**") by notice to URSYS without any obligation to pay the Termination Fee. Such Upgrade will be subject to URSYS's prior written approval.

3.2 Customer requirements

If URSYS approves the Upgrade under clause 3.1:

- (1) the provision of the Upgraded URSYS Service will be subject to the then current Terms and Conditions as applicable to the Upgraded URSYS Service;
- (2) the Upgrade will take effect from the date that URSYS notifies the Customer as the date for commencement of the Upgrade; and
- (3) the Customer must:
 - (a) pay the then current Monthly Service Fee corresponding to the Upgrade; and
 - (b) pay any other fees charged by URSYS for the Upgrade.

4. Customer Obligations

4.1 No Resale

Unless otherwise agreed by URSYS, the Customer agrees that the URSYS Services are to be used solely for the Customer's own

internal business purposes and the Customer is not permitted, unless otherwise approved in writing by URSYS, to resell the URSYS Services to any other person.

4.2 Acceptable Use Policy ("**AUP**")

The Customer agrees that:

- (1) its use of the URSYS Services will be in accordance with any URSYS Acceptable Use Policy ("**AUP**") as amended from time to time as notified to the Customer and which specifies what constitutes the Customer's acceptable use of the URSYS Services;
- (2) the **AUP** and the **CAPO** provides details of, and defines appropriate usage levels for, each URSYS Service Type ("**Usage Levels**") and the Customer agrees to use the URSYS Service in accordance with the Usage Levels corresponding to the URSYS Service Type; and
- (3) where the Customer uses the URSYS Services otherwise than in accordance with the Usage Levels corresponding to the Service Type, URSYS may, in its sole discretion, undertake such steps as it determines are reasonably necessary in relation to such usage, including:
 - (a) upgrading, by giving the Customer 14 days written notice, the Customer's URSYS Service Type or Bandwidth and any corresponding Monthly Services Fee or other fees to ensure that the Customer's usage remains in accordance with the Usage Levels;
 - (b) implement such filtering or throttling mechanisms as required to bring the Customer's usage levels within Usage Capacity. Filtering or throttling may be specifically applied to traffic types which are substantially different to those declared by the Customer as comprising their ordinary commercial use.

4.3 Responsibility for Content and Data

The Customer agrees that:

- (1) it is responsible for the content and data in all its transmissions using the URSYS Service including compliance with all applicable laws and regulations covering such content and data; and
- (2) that all content and data transmitted using the URSYS Services will be in accordance with any requirements specified in the **AUP**.

4.4 Compliance with laws and regulation

The Customer:

- (1) must comply with all applicable laws, regulations or applicable codes relating to the use of the URSYS Services by the Customer;
- (2) warrants that it will not use the URSYS Services in a manner which would breach any law, regulation or applicable code; and
- (3) agrees, and warrants, that it will not use the URSYS Services so as to expose URSYS or any related entities (as defined in the *Corporations Act 2001*):
 - (a) to prosecution or investigation for breach of any law, regulation or applicable code;
 - (b) to any criminal action, civil proceeding or other action; and
 - (c) to any action or investigation that could result in the revocation, suspension or loss of any licence, ability or right of URSYS to provide the URSYS Services to the Customer or any other customers.

4.5 Transmission Requirements

The Customer must:

- (1) comply with any practices and procedures specified by URSYS with respect to transmissions to, or from, any satellite used for the purposes of providing the URSYS Services;
- (2) not use the URSYS Services in a manner which would or could be expected to harm or interfere with the use of, or harm any portion of any satellite or transponder;
- (3) comply with any specifications from URSYS for initiating and terminating any transmissions to any satellite used for the purpose of providing the URSYS Services.

4.6 URSYS Installation

The Customer must:

- (1) provide URSYS with:
 - (a) continuous remote access to the URSYS Equipment for the purposes of maintenance and support;
 - (b) physical access to the URSYS Equipment, together with associated facilities and equipment used by the Customer, upon the provision of reasonable notice by URSYS; and

- (c) URSYS may suspend the URSYS Services in accordance with clause 11 if the Customer does not provide URSYS with the access under clauses 4.6(1)(a) and 4.6(1)(b);
- (2) not modify, or use, the URSYS Equipment or the URSYS Services for any purpose other than those permitted under these Terms and Conditions; and
- (3) must purchase the satellite terminal equipment from URSYS and must not use any other terminal equipment or devices in place of the URSYS Equipment unless the Customer:
 - (a) obtains prior approval from URSYS;
 - (b) warrants that the Customer's equipment and devices comply with any specifications or other requirements notified by URSYS; and
 - (c) agrees to pay any costs incurred by URSYS in providing its approval.

4.7 Responsibility for URSYS Service

The Customer agrees that the use of the URSYS Services is at its own risk and that the Customer is responsible for all activity and usage of the URSYS Services including for payment of all fees related to the usage of URSYS Services or any other service accessed through the URSYS Services and whether provided by URSYS or not.

4.8 Notification

The Customer agrees to notify URSYS immediately if it suspects, or becomes aware, that any person is using the URSYS Services otherwise than in accordance with the requirements in these Terms and Conditions.

5. URSYS's Rights and Obligations

5.1 Modification to URSYS Services

The Customer agrees that URSYS:

- (1) may modify the URSYS Services from time to time as URSYS considers necessary for the continued improvement and enhancement of the URSYS Services;
- (2) may obtain transmission capacity, hosting services and application services from third party service providers to provide the Customer with the URSYS Services;
- (3) may use any of URSYS's affiliates or subcontractors to provide any of the services specified in the CAPO; and
- (4) replace any satellite used to provide the URSYS Services at any time having given notice to the Customer provided that URSYS continues to provide URSYS Services no less favourable than the services provided prior to the replacement of any satellite.

6. IP Addresses

6.1 Registered IP Addresses

Subject to the payment of the IP Address Fees detailed in the CAPO, URSYS will allocate to the Customer the registered IP. The Customer acknowledges and agrees that:

- (1) two of the registered IP Addresses will be made available to for use in the URSYS satellite terminal;
- (2) the registered IP Addresses remain at all times the property of URSYS and nothing in these Terms and Conditions transfers to, or gives, the Customer any rights in relation to any registered IP Address; and
- (3) URSYS reserves the right to renumber a registered IP Address assignment by providing the Customer with reasonable notice.

6.2 Additional IP Addresses

The Customer may at any time request from URSYS additional registered IP Addresses. URSYS may provide such additional IP Addresses subject to the Customer agreeing to:

- (1) pay any additional fees then applicable for the IP Addresses; and
- (2) be bound by the then current Terms and Conditions with respect to the additional IP Addresses.

6.3 Unregistered IP Addresses

The Customer may specify ranges of private, unregistered IP addresses which can be used at no cost where this is consistent with the URSYS Service.

7. URSYS Network Operations Centre ("NOC")

7.1 Customer ability to contact NOC

The Customer may, subject to the Customer complying with clause 7.3, having paid all outstanding fees and not being in breach of these Terms and Conditions or any other agreement related to the provision of the URSYS Services, contact URSYS's NOC:

- (1) to report any problems the Customer is experiencing with the URSYS Services, in which case URSYS will respond as specified in the URSYS Service Level Agreement
- (2) for the purposes of the customer making operational inquiries regarding the URSYS Services or URSYS Equipment; and
- (3) requesting that URSYS provide such assistance and support required by the Customer in accordance with procedures set out in the URSYS Service Level Agreement.

7.2 Response by URSYS

The Customer may contact the Network Operations Centre and URSYS will respond according to procedures set out in the URSYS Service Level Agreement. URSYS will use its reasonable efforts to respond to such enquiries within the timeframes specified on the Service Level Agreement. The Customer acknowledges that certain matters, including matters related to the satellite, are outside the control of URSYS and may take some time to resolve.

7.3 Requirements prior to contacting the NOC

The Customer agrees that prior to contacting URSYS's NOC the Customer must:

- (1) undertake all reasonable steps to ensure that the problem does exist in the URSYS Service or Equipment;
- (2) is not as a result of the Customer's equipment or faults in any providers service; and
- (3) undertake any and all procedures or requirements specified, or notified, by URSYS to the Customer.

7.4 Difficulties due to Customer problems

URSYS may charge the Customer additional fees where the Customer contacts the NOC to report a problem with the URSYS Services or Equipment and URSYS determines that:

- (1) there is no problem with the URSYS Services or Equipment; or
- (2) the problem with the URSYS Services or Equipment is a result of any act or omission by the Customer in breach of its obligations under these Terms and Conditions or any instructions provided to the Customer.

8. URSYS Service Level

8.1 Service Level Agreement

An URSYS Service Level Agreement (SLA) forms part of the Purchase Contract. URSYS will at all times provide its best efforts to meet the terms specified in the SLA.

8.2 Modification to URSYS Equipment

Where URSYS does not meet the SLA URSYS may modify the URSYS Equipment to ensure that the URSYS Services meets the SLA.

8.3 Inaccessibility due to interference

The Customer agrees that:

- (1) the SLA for URSYS Services do not apply where the Customer is unable to access the URSYS Services due to any interference with the URSYS Equipment which prevents the URSYS Equipment from:
 - (a) transmitting to, or receiving signals from, any satellite used by URSYS; and
 - (b) which are a result of any changes to the surrounding environment subsequent to the installation of the URSYS Equipment; and
- (2) the Customer must either:
 - (a) take all steps reasonably necessary and within its control to ensure that the interference is removed; or
 - (b) where it is not possible to remove the interference under clause 8.4(2)(a) must engage URSYS to relocate the URSYS Equipment at the Customer's cost.

8.4 Committed Transfer Rate

The Customer agrees that except where the Customer has procured URSYS Services which are specified as having an URSYS Service Type providing a Committed Information Rate ("CIR"), the actual Bandwidth provided will be shared with other customers' services and may at any time be lower than that specified in the CAPO.

9. Term of Agreement

The Term of any Purchase Contract means:

- (1) the period from the execution of the relevant CAPO until the expiration of the Minimum Period, unless the relevant Contract and Order Form is terminated earlier in accordance with clause 10; and
- (2) upon expiry of any Term, perpetual monthly extensions unless the relevant Contract and Order Form is terminated in accordance with the requirements under clause 10.

10. Termination

10.1 Mutual

Either party may terminate a **Purchase Contract**:

- (1) immediately by giving the other party written notice if:
 - (a) the Services suffers an outage for reasons other than specified in clause 7.4 and URSYS does not restore the URSYS Services within 30 days;
 - (b) the satellite used to provide the URSYS Services is removed from commercial operation at its authorised orbital location and URSYS does not, or is unable to, provide the URSYS Services on an alternative satellite within 30 days;
- (2) immediately by giving notice to the other party ("Defaulting Party") if an Insolvency Event occurs; or
- (3) by giving written notice 30 days prior to the date of expiry of the Term or any further Term.

10.2 Termination by URSYS

URSYS may terminate a **Purchase Contract** immediately by giving notice to the Customer if the Customer breaches a term of the Terms and Conditions, the URSYS Acceptable Usage Policy or non-payment of fees as specified in clause 11(3). The Customer will cease using the URSYS Services where requested by URSYS to do so or will allow URSYS to reconfigure the URSYS Equipment to prevent further use.

10.3 Termination by the Customer

The Customer may terminate any **Purchase Contract** prior to the expiration of the Term by giving URSYS written notice 90 days prior to the date of termination.

10.4 Consequences of Termination

Where the URSYS Services are terminated in accordance with this clause 10, the Customer must:

- (1) pay all outstanding Fees;
- (2) cease using the URSYS Services, including transmitting to any satellite used to provide the URSYS Services;
- (3) return all Confidential Information to URSYS;
- (4) cease using any Registered IP Addresses provided to the Customer and undertake all steps required to return unencumbered control of the IP Addresses to URSYS; and
- (5) if a **Purchase Contract** is terminated in accordance with clauses 10.2 or 10.3 the Customer must pay to URSYS the fee calculated by multiplying the remaining months in the Term by the Monthly Services Fee ("**Termination Fee**"). The Customer and URSYS acknowledge that the amount of the Termination Fee is a genuine pre-estimate of the loss or damage that will be suffered by URSYS as a result of the early termination of the relevant Contract and Order Form by the Customer and that the Termination Fee does not represent a penalty.

10.5 Failure to receive URSYS Services

In the event that the Customer is unable to receive the URSYS Services within 21 days after the installation of the URSYS Equipment for reasons other than specified in clause 4.6:

- (1) either party may terminate any relevant Contract and Order Form by giving the other notice of termination; and
- (2) URSYS will refund the URSYS Equipment Fee upon return of the URSYS Equipment to URSYS by the Customer.

10.6 Meaning of 'Insolvency Event'

For the purposes of clause 10.1, Insolvency Event means:

- (1) where the Defaulting Party is a body corporate:
 - (a) the Defaulting Party becomes an externally-administered body corporate under the *Corporations Act 2001*;
 - (b) a controller (as defined in section 9 of the *Corporations Act 2001*) is appointed to any of the property of the Defaulting Party or any steps are taken for the appointment of a controller;
 - (c) the Defaulting Party is taken to have failed to comply with a statutory demand within the meaning of section 459F of the *Corporations Act 2001*; or
 - (d) a resolution is passed for the reduction of capital of the Defaulting Party or notice of intention to propose such a resolution is given, without the prior written consent of the other party; or
- (2) where the Defaulting Party is a natural person:
 - (a) the Defaulting Party authorises a registered trustee or solicitor to call a meeting of his or her creditors or proposes or enters into a deed of assignment or deed of arrangement or a composition with any of his or her creditors;
 - (b) a person holding a security interest in assets of the Defaulting Party enters into possession of or takes

control of any of those assets or takes any steps to enter into possession of or take control of any of those assets; or

- (c) the Defaulting Party commits an act of bankruptcy;
- (3) where the Defaulting Party is a Partnership, the Partnership is dissolved.

11. Suspension

Notwithstanding and without prejudice to the rights in clauses 10.1 and 10.2, URSYS may suspend the provision of the URSYS Services immediately and without notice to the Customer:

- (1) if the Customer breaches a term of these Terms and Conditions;
- (2) if the Customer breaches any of the usage restrictions in clause 4; and
- (3) if the Customer breaches payment terms by any invoice to the Customer remaining outstanding after 30 days from the date of invoice,

in which case the Customer remains liable to pay the Monthly Service Fee and any other fees. URSYS will cease such suspension upon the Customer remedying any breach specified in this clause 11 to the satisfaction of URSYS.

12. URSYS Equipment

12.1 Sale and Purchase

Subject to the payment of the URSYS Equipment Fee, URSYS will provide the Customer with the equipment specified in the **CAPO ("URSYS Equipment")**. Ownership of the URSYS Equipment does not pass to the Customer until payment of the URSYS Equipment Fee, however, all risk in the URSYS Equipment passes to the Customer upon delivery.

12.2 Customer Obligations

The Customer agrees:

- (1) to obtain and maintain, at the Customer's expense, any and all permits, licences, approvals, authorisations, including local council planning approval required for the installation and operation of the URSYS Equipment;
- (2) not to connect, or arrange for the connection of, any equipment other than the URSYS Equipment to any outlet installed for the URSYS Services unless authorised by URSYS to do so; and
- (3) not to modify the URSYS Equipment except as instructed by URSYS, or any of URSYS's authorised representatives or agents.

13. Installation

13.1 URSYS Installation

Subject to provisions of clauses 13.1 and 13.2 URSYS will install and configure the URSYS Equipment at the Customer's Premises including making any necessary minor physical modifications deemed necessary by URSYS to Customer's Premises in order to install the URSYS Equipment. The Customer is responsible for all other things not included within the installation. Installation will occur on a date mutually agreed by URSYS and the Customer.

- (1) URSYS will require the Customer to undertake an assessment of the Customer's Premises to ensure that URSYS is able to install the URSYS Equipment at the Customer's Premises and to determine the actual cost for installation;
- (2) where, URSYS reasonably determines the requirements for installation exceeds reasonable expectations for any Installation Fee quoted or agreed with the Customer, URSYS will not be bound to provide the installation at the Installation Fee previously quoted or agreed and the parties agree to discuss and use their respective reasonable endeavours to agree a new Installation Fee; and
- (3) URSYS reserves the right to undertake a site inspection at Customers expense to verify the requirements and cost of installation.

13.2 Customer Requirements

The Customer must:

- (1) not install, or attempt to install, the URSYS Equipment, unless otherwise agreed by URSYS;
- (2) provide a secure location for the URSYS Equipment, including a suitable point for mounting the external dish without obstructions;
- (3) provide all relevant facilities for the location of the URSYS Equipment at the Customer's Premises;

- (4) provide URSYS with access to all relevant personnel including the Customer's technical and other personnel;
- (5) prepare the Customer's Premises for the installation of the URSYS Equipment, including undertaking any thing required by URSYS to ensure that the Customer's Premises meets URSYS's requirements for installation, including complying with any instructions provided by URSYS;
- (6) provide URSYS's representatives or agents with safe access to the Customer's Premises for the purposes of conducting installation; and
- (7) if the Customer does not own the Premises notify the relevant owner and/or lessor and obtain the owner's and/or lessor's permission for URSYS and its representatives and agents:
 - (a) to enter the Premises; and
 - (b) install the URSYS Equipment, including making any minor physical modifications contemplated in clause 13.1,

for the purposes of providing the URSYS Services. The Customer warrants to URSYS that at the date of installation it will have notified the relevant party and obtained all relevant consents and the Customer indemnifies URSYS against any claim made against URSYS, or loss incurred (including legal costs on a full indemnity basis), by another person in connection with such entry and installation.

13.3 Customer Installation Warranties

The Customer warrants that:

- (1) the Customer has a clear and uninterrupted view of the satellite used in the provision of the URSYS Services from the Customer's Premises and the actual location of the URSYS Equipment;
- (2) the Customer is able to provide suitable 240V/50Hz power; and
- (3) that the Customer's Premises are suitable to support the URSYS Equipment, including specifically the dish and outdoor unit using standard installation practices and the indoor unit using acceptable electronic equipment housing.

14. Relocation of Premises

14.1 Notification by Customer

URSYS may, upon request from the Customer, allow the Customer to move the URSYS Equipment from the Premises to new premises ("**New Premises**") during the Term so that the Customer can continue using the URSYS Services at the New Premises, subject to:

- (1) URSYS being able to provide the URSYS Services at the New Premises;
- (2) the Customer agreeing that the Terms and Conditions apply to the provision of the URSYS Services at the New Premises; and
- (3) the Customer paying all fees levied by URSYS as a result of the Customer having the URSYS Equipment moved.

15. Fees and Payment

15.1 Payment of Fees

The Customer must pay all fees and charges incurred in using the URSYS Services in respect of each Contract and Order Form, including the Monthly Service Fee, Support and Maintenance Fee, the Usage Fee, URSYS Equipment Charge, Installation Charge, IP Address Fee and Termination Fee ("**Fees**") within 30 days of the date of invoice in the manner detailed in clause 15.2 or as otherwise specified by URSYS.

15.2 Payment Deposit

The Customer must unless otherwise agreed in writing:

- (1) make all payments to URSYS in respect of amounts owed by the Customer to URSYS pursuant to the relevant Contract and Order Form and these Terms and Conditions by means of direct deposit into a bank account nominated by URSYS and must prior to the Start Date sign all necessary Contracts and consents relevant to provision of the URSYS Services and Equipment;
- (2) ensure that there are sufficient funds in or available to Customer's bank account to pay the Fees to URSYS in the amount and in the manner specified in these Terms and Conditions; and
- (3) where the Customer is unable to complete any direct deposit or funds transfer the Customer will pay any outstanding amounts immediately upon demand by any practical means.

15.3 Interest on Late Payments

URSYS may charge the Customer interest on any overdue amount, from the invoice due date until the date of payment at the rate which exceeds by 1.0% the rate for the time being charged by URSYS's bankers in respect of loans of \$100,000 to prime corporate clients.

15.4 Administration Fee on Late Payments

In addition to any interest payable under clause 15.3, the Customer agrees to pay to URSYS \$10.00 (or such other amount as notified by URSYS from time to time) for each Customer contact required as a result of any overdue amount.

16. Goods and Services Tax ("GST")

16.1 GST on supply made to Customer

Except where express provision is made to the contrary, and subject to this clause, any amount that may be payable under these Terms and Conditions and any Contract and Order Form is exclusive of any GST. If the *Supplier* makes a *Taxable Supply* in connection with this Agreement for a *Consideration* which represents its *Value*, then the *Recipient* of the *Taxable Supply* must also pay, at the same time and in the same manner as payment for the *Taxable Supply* is required to be made in accordance with these Terms and Conditions and any Contract and Order Form, the amount of any GST payable in respect of the *Taxable Supply*.

16.2 Tax Invoices

A party's right to payment under any relevant Contract and Order Form or these Terms and Conditions for any *Taxable Supply* is subject to a valid *Tax Invoice* being delivered to the party liable to pay for the *Taxable Supply*.

16.3 GST Definitions

For the purposes of this clause 16:

- (1) expressions in italics in this clause 16 bear the same meaning as those expressions in the GST Act;
- (2) "GST" means GST as defined in the GST Act; and
- (3) "GST Act" means A New Tax System (Goods and Services Tax) Act 1999.

17. Intellectual Property

17.1 Generally

All intellectual property rights including copyright, trade mark, design, patent and semiconductor or circuit layout rights ("**Intellectual Property Rights**") in the URSYS Services, URSYS Equipment or any content provided by URSYS as part of the URSYS Services are owned by URSYS or other third parties and nothing in these Terms and Conditions grant the Customer any rights in relation to, or transfers any title to, such Intellectual Property Rights.

17.2 URSYS Equipment Software Terms

Upon payment of the URSYS Equipment Fee, URSYS grants to the customer an individual, nonexclusive, non-transferable, licence to any software program whether in object code or executable form, including any modifications, updates or additions which may be supplied to the Customer by URSYS, contained in, or for use with, the URSYS Equipment ("**Software**") for the purpose of operating the URSYS Equipment. The Customer:

- (1) must not modify the Software or any notices included with the Software;
- (2) must not reverse engineer, decompile or reverse assemble the Software except as permitted by any law;
- (3) acknowledges that the Software is, and remains, the property of URSYS or other third parties and nothing in these Terms and Conditions gives the Customer any right or title to the Software;
- (4) agrees to maintain the security of the Software and will take all steps reasonably necessary to protect the Software from unauthorised disclosure and release; and
- (5) must not sublicense the Software to any other person without the prior written consent of URSYS.

18. Confidentiality

18.1 Generally

For the purposes of this Agreement:

- (1) The term "Confidential Information" shall mean any and all information and/or data which is obtained, whether in writing, pictorially, in machine readable form, orally or by observation during visits, including but not limited to, financial information, know-how, processes, trade secrets, schematics, technology, customer information, supplier information, sales statistics, pricing information, market intelligence, marketing and other business strategies and the existence of this Agreement.

- (2) The "Purpose" of disclosure of Confidential Information is solely for the provision of URSYS services and equipment to the Customer
- (3) The Party disclosing information shall hereinafter be referred to as the "Disclosing Party" and the Party receiving such information shall be referred to as the "Receiving Party".
- (4) The term "Representatives" shall mean in respect of each Party its controlled affiliates, and its directors, officers, employees, attorneys, consultants, and other agents and advisors or of its controlled affiliates. Each party shall take all reasonably necessary measures to restrain its Representatives from the unauthorized disclosure or use of Confidential Information.

18.2 Exclusions

Notwithstanding any other provision of this Agreement, the Parties acknowledge that Confidential Information shall not include any information that:

- (1) is or becomes publicly available without breach of this Agreement;
- (2) becomes lawfully available to either Party from a third party free from any confidentiality restriction;
- (3) is required to be disclosed under any relevant law, regulation or order of court, provided the effected Party is given prompt notice of such requirement or such order and (where possible) provided the opportunity to contest it, and the scope of such disclosure is limited to the extent possible; or
- (4) was previously in the possession of the Receiving Party and which was not acquired directly or indirectly from the Disclosing Party as evidenced by written records.

18.3 Maintenance of Confidentiality

- (1) The Receiving Party shall hold and keep in strictest confidence any and all Confidential Information and shall treat the Confidential Information with at least the same degree of care and protection as it would treat its own Confidential Information.
- (2) The Receiving Party shall use the Confidential Information only for the Purpose and not disclose any of the Confidential Information to any third party without the Disclosing Party's prior written consent except to those Representatives that have a need to know for the Purpose and have agreed to be bound by the terms of this Agreement prior to the disclosure of any Confidential Information;
- (3) The Receiving Party shall not copy or reproduce in any way (including without limitation, store in any computer or electronic system) any Confidential Information or any documents containing Confidential Information without the Disclosing Party's prior written consent;
- (4) The Receiving Party shall immediately upon request by the Disclosing Party deliver to the Disclosing Party all Confidential Information disclosed to the Receiving Party, including all copies (if any) made;
- (5) The Receiving Party shall not use the Confidential Information to procure a commercial advantage over the Disclosing Party;
- (6) The Receiving Party acknowledges that damages are not a sufficient remedy for the Disclosing Party for any breach of any of the Receiving Party's undertakings herein provided and the Receiving Party further acknowledges that the Disclosing Party is entitled to specific performance or injunctive relief (as appropriate) as a remedy for any breach or threatened breach of those undertakings by the Receiving Party, in addition to any other remedies available to the Disclosing Party in law or in equity.
- (7) The Receiving Party does not acquire any intellectual property rights under this Agreement or through any disclosure hereunder, except the limited right to use such Confidential Information in accordance with the Purpose under this Agreement.
- (8) No warranties of any kind are given with respect to the Confidential Information disclosed under this Agreement or any use thereof, except as may be otherwise agreed to in writing.
- (9) No failure or delay by either Party in exercising or enforcing any right, remedy or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise or enforcement of any right, remedy or power preclude any further exercise or enforcement thereof or

the exercise or enforcement of any other right, remedy or power.

18.4 Survivability

- (1) All obligations respecting the Confidential Information already provided hereunder shall survive any termination of this Agreement for a period of three (3) years after the date that the specific Confidential Information was first disclosed.
- (2) This Agreement is valid and binding on the successors-in-title and permitted assigns of the respective Parties.

18.5 Restraint on the Receiving Party

The Receiving Party must not use the Confidential Information:

- (1) for the benefit of any competitors of the Disclosing Party or any Related Entity; or
- (2) to produce products or services the same as or similar to services and equipment provided by URSYS.

19. Customer Warranties

The Customer warrants that:

- (1) the Customer has received and read these Terms and Conditions prior to execution of any relevant Contract and Order Form;
- (2) the Customer is legally capable of entering into these Terms and Conditions and any relevant Contract and Order Form and that the person or persons executing any relevant Contract and Order Form on behalf of the Customer have the power and authority to do so;
- (3) all information provided by the Customer in any relevant Contract and Order Form is true and correct to the best of the Customer's knowledge and belief; and
- (4) they are or will obtain all necessary licences, permits or authorisations pursuant to any law, regulation or code in respect of the operation of the URSYS Equipment and the Customer's receipt of the URSYS Services.

20. Warranties

20.1 Service Warranty

URSYS:

- (1) subject to clause 20.1(2), warrants that the Service as provided will conform to the published specifications for a period of 90 days from the date of installation; and
- (2) does not warrant that the functions contained in the Service will meet the Customer's requirements, or that the operation of the Service will be uninterrupted or error-free.

20.2 URSYS Equipment Warranty

URSYS:

- (1) subject to clause 20.2(2), warrants the URSYS Equipment to conform to the published specifications for a period of 12 months; and
- (2) to the extent that URSYS is entitled to, grants to the Customer the benefits of any warranties on the URSYS Equipment or any part of the URSYS Equipment, which are provided by the provider and/or manufacturer of the URSYS Equipment or any part of the URSYS Equipment. Such warranties are limited to the terms provided by the provider and/or manufacturer and must be exercised in accordance with the rights and obligations imposed by that manufacturer.

20.3 Warranty

Except for the warranties provided under clauses 20.1 and 20.2 all statutory or implied conditions and warranties are excluded to the fullest extent permitted by law.

20.4 Exclusion of Warranties

To the extent permitted by law, liability under clauses 20.1 and 20.2 and any condition or warranty, which cannot legally be excluded, is limited to, at the option of URSYS:

- (1) in the case of goods:
 - (a) the replacement of the goods or the supply of equivalent goods;
 - (b) the repair of the goods;
 - (c) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
 - (d) the payment of the cost of having the goods repaired; and
- (2) in the case of services:
 - (a) supplying the services again; or
 - (b) paying the cost of having the services supplied again.

21. Liability

21.1 Limitation on Liability

Except to the extent provided in clause 20, URSYS has no liability (including liability for negligence) to the Customer, its related entities (as defined in the *Corporations Act 2001*) and their employees, officers and agents ("**Related Parties**") for any loss or damage consequential or otherwise suffered or incurred by the Customer or its Related Parties, including any loss of profits, income, interest or future business caused by or resulting directly or indirectly from the URSYS Services or URSYS Equipment.

21.2 Third Parties

The Customer acknowledges and agrees that the Customer has no claim against URSYS or any third party service provider for loss or damage arising from the provision or failure to provide the URSYS Services in connection with the Terms and Conditions or any relevant Contract and Order Form.

21.3 Installation etc

Whilst URSYS will take reasonable care not to cause any damage, the Customer acknowledges that URSYS's installation or support (if any) may cause damage to the Customer's Premises or equipment. URSYS will not, except as specified in clause 20.4, accept any liability for loss or damage of any kind in connection with URSYS's installation or support (if any), even if the loss or damage is caused by our negligence or breach of these Terms and Conditions or any relevant Contract and Order Form.

22. Indemnity

22.1 By the Customer

The Customer indemnifies URSYS and its Representatives against:

- (1) all losses incurred by URSYS and its Representatives;
- (2) all liabilities incurred by URSYS and its Representatives; and
- (3) all costs actually payable by URSYS its Representatives to their own legal representatives (whether or not under a costs agreement) and other expenses incurred by URSYS and its Representatives in connection with a demand, action, arbitration or other proceeding (including mediation, compromise, out of court settlement or appeal);

arising directly or indirectly as a result of or in connection with the Customers:

- (4) use of the URSYS Services;
- (5) negligent act or omission or wilful misuse of the URSYS Services or URSYS Equipment;
- (6) any unauthorised use of the URSYS Services by the Customer or its employees or agents;
- (7) any content or data transmitted using the URSYS Services;
- (8) use of the URSYS Equipment or URSYS Services otherwise than in accordance with these Terms and Conditions, any relevant Contract and Order Form or any practices or procedures notified by URSYS; or
- (9) breach of these Terms and Conditions or any relevant Contract and Order Form.

22.2 Definitions

For the purposes of this clause 22, "**Representative**" means:

- (1) any related entities (as defined in the *Corporations Act 2001*) of URSYS; and
- (2) any officers, agents, employees and representatives of URSYS.

23. Unforeseen Events

23.1 No liability

URSYS is not liable for any delay or failure to perform an obligation under these Terms and Conditions caused by technical difficulties or acts, omissions or requirements of any third party beyond URSYS's reasonable control or other matters beyond URSYS's reasonable control including, but not limited to, acts of god, war, riot, insurrection, vandalism or sabotage; strike, lockout, ban, limitation of work or other industrial disturbance; or law, rule or regulation of any government or governmental agency or executive or administrative order or act of general or particular application within or of any jurisdiction ("**Unforeseen Event**").

23.2 Notification

URSYS will notify the Customer as soon as practical of any anticipated delay or failure caused by an Unforeseen Event. The performance of URSYS's obligations is then suspended for the period of delay caused by the Unforeseen Event.

23.3 Termination

If:

- (1) performance of an obligation is permanently prevented by an Unforeseen Event; or
 - (2) a delay caused by the Unforeseen Event exceeds 14 days,
- URSYS may terminate the Terms and Conditions or any applicable Contract and Order Form at the expiration of not less than 14 days'

written notice to the Customer. In that case no Termination Fee is payable by the Customer and no loss, liability or claim will be payable by URSYS.

24. General

24.1 Assignment

The Customer must not assign or transfer any relevant Contract and Order Form except with URSYS's prior written consent, such consent not to be unreasonably withheld. URSYS will not assign any relevant Contract and Order Form without notice to the Customer.

24.2 Notice

Any notice given by URSYS to the Customer in connection with these Terms and Conditions may be given by any method URSYS chooses to deliver such notice to the nominated contact in the relevant Contract and Order Form.

24.3 Waiver

Notwithstanding any delay, URSYS does not waive its rights under the Terms and Conditions unless the waiver is in writing and signed by URSYS's authorised representative.

24.4 Severability

If anything in the Terms and Conditions is unenforceable, illegal or void then it is severed and the rest of the Terms and Conditions remains in force.

24.5 Inconsistency

Unless otherwise expressly stated in writing in any relevant Contract and Order Form or any other agreement with URSYS, the terms in these Terms and Conditions prevail to the extent of any inconsistency between the Terms and Conditions and the relevant Contract and Order Form or any other agreement with URSYS.

24.6 Entire Agreement

These Terms and Conditions and any relevant Contract and Order Form are the entire agreement and understanding between URSYS and the Customer on everything connected with the URSYS Service.

24.7 Governing Law

The law of New South Wales governs the Terms and Conditions and the parties submit to the non-exclusive jurisdiction of the courts of New South Wales and of the Commonwealth of Australia.

24.8 Interpretation

- (1) In the Terms and Conditions references to the singular includes the plural and the plural includes the singular.
- (2) Headings are for convenience only and do not form part of these Terms and Conditions or affect its interpretation.
- (3) A provision in these Terms and Conditions must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of the Terms and Conditions or the inclusion in the provision of the Terms and Conditions.
- (4) Terms that appear in capitals but are not defined in the Terms and Conditions have the meaning given in, or references to terms in, the relevant Contract and Order form.