

MASTER SERVICES AGREEMENT

THIS AGREEMENT is made the _____ day of _____ 2010.

BETWEEN: **Host Group of Companies Pty Ltd ACN 085 418 159** of 53 Brandl Street, Eight Mile Plains QLD 4113 ("**Company**")

AND: [] of [] ("**Customer**")

PART 1 – STATEMENT OF WORKS (A Summary)

Bound by Agreement	This Agreement (see definitions) may be binding on the Customer even if the Customer does not sign a copy of it. See clause 2 of the Terms and Conditions.
Description of the Services	Subject to the Customer complying with the terms of this Agreement, the Company will provide those Services set out in agreed Service Order Forms from time to time.
Term	The provision of the Services will commence and expire on the dates set out in each relevant agreed Service Order Form. Without limitation, see clause 4 of the Terms and Conditions.
Customer responsibilities	The Customer must comply with the terms of this Agreement at all times. A failure to do so may result in the Company terminating this Agreement.
Payment terms	Fees, invoicing and terms of payment are set out in this Agreement. Without limitation, see clauses 5 to 9 of the Terms and Conditions.
Service Levels	The Company may agree to maintain specified Service Levels in accordance with its relevant Schedule of Services. See clause 15 of the Terms and Conditions.

EXECUTED AS AN AGREEMENT

EXECUTED in accordance with section 127 of the Corporations Act 2001 (Cth) by **HOST GROUP OF COMPANIES PTY LTD ACN 085 418 159**)

Signature of Director

Signature of Secretary/other Director

Name of Director in full

Name of Secretary/other Director in full

[DELETE IF NOT APPLICABLE]

EXECUTED in accordance with section 127 of the Corporations Act 2001 (Cth) by **[INSERT CUSTOMER'S COMPANY NAME AND ACN]**)

Signature of Director

Signature of Secretary/other Director

Name of Director in full

Name of Secretary/other Director in full

[DELETE IF NOT APPLICABLE]

SIGNED for and on behalf of)
[INSERT CUSTOMER'S FULL NAME] in the)
presence of:)

Witness

[DELETE IF NOT APPLICABLE]

SIGNED for and on behalf of)
[INSERT CUSTOMER'S FULL NAME] by its)
Authorised Contact in the presence of:)

Signature of Authorised Contact

Witness

PART 2 - TERMS AND CONDITIONS

1. INTERPRETATION

- 1.1 See clause 37 for definitions & rules of interpretation for this Agreement, including the Schedule of Services.

2. DOCUMENTATION

- 2.1 Submission of a Service Order Form by the Customer to the Company, whether in person, by email, by facsimile, through the Company's website or any other means, constitutes an irrevocable offer to purchase the Services set out in that Service Order Form. By submitting a Service Order Form to the Company, the Customer agrees to be bound by the terms of this Agreement.

- 2.2 The Company will not be bound to provide any Services until it has agreed to do so by confirmation in writing to the Customer. The Company may do so by email or electronic ticketing system.

- 2.3 This Agreement sets out the terms of the provision, receipt and use of the Services by the Company and the Customer and consists of each of the following documents which are to be read and apply collectively:-

- (a) the Statement of Works (Part 1);
- (b) these Terms and Conditions (Part 2);
- (c) each Service Order Form accepted by the Company;
- (d) each Schedule of Services applicable to the Service Order Forms;
- (e) Credit Applications;
- (f) any written notice issued in accordance with this Agreement; and
- (g) any written agreement attached to, or subsequently incorporated into, any of the documents referred to in this clause 2.3.

- 2.4 The Customer's standard terms of engagement do not apply to this Agreement or to the provision of the Services unless otherwise agreed by the Company in writing.

- 2.5 If any of the Customer's Representatives accept, receive or use any of the Services, the Customer will be deemed to have accepted the terms of this Agreement, including liability to pay Fees for those Services, even if the Customer did not authorise the acceptance, receipt or use of the Services.

- 2.6 The Customer must pay all Fees charged for use of the Services by the Customer's Representative regardless of whether such use was authorised by the Customer or not.

- 2.7 The Company may keep electronic copies of this Agreement as its sole record of this Agreement and may use them as evidence, including in a Court of law.

3. THE SUPPLY

- 3.1 The Customer must receive and use, and subject to the Customer complying with the terms of this

Agreement, the Company will supply, the Services in accordance with the terms of this Agreement.

4. TERM

- 4.1 Subject to clauses 2.2 and 4.2, the term of supply for each of the Services is the period set out in each respective Service Order Form to which the Services relate. The Company may specify minimum terms of supply for each Service at its discretion.

- 4.2 At the end of each term for each Supply, the term for each Supply will automatically renew for a further term equal to the initial term for the relevant Supply unless either party gives the other:-

- (a) in respect of Web Hosting Services, not less than 7 days written notice; and
- (b) in respect of all other Services (excluding Web Hosting Services), not less than 30 days written notice,

that the relevant Supply does not automatically renew.

- 4.3 Where a Supply is automatically renewed pursuant to clause 4.2, then in addition to any additional Fees that the Company may charge pursuant to clause 5, the Agreed Fees for that Supply will increase by an amount equal to the CPI.

- 4.4 Unless the contrary intention is stated in this Agreement, this Agreement continues in full force and effect until the earlier of:-

- (a) the date upon which it is terminated in accordance with clause 19; and
- (b) 90 days after all Service Order Forms have expired or been terminated.

5. THE FEES

- 5.1 Fees will be charged in accordance with the Schedule of Fees & Charges unless otherwise agreed in writing by each party (including in Service Order Forms).

- 5.2 Unless otherwise specified, all prices will be exclusive of GST and the Customer must pay an additional amount on account of any applicable GST.

- 5.3 The Schedule of Fees & Charges will be varied (at the Company's sole discretion) and posted on the Company's website from time to time.

- 5.4 Agreed Fees set out in an agreed Service Order Form will not be affected by variations to the Schedule of Fees & Charges unless otherwise agreed by the Customer.

- 5.5 Additional Fees may be charged by the Company, and must be paid by the Customer, for:

- (a) variations made pursuant to clauses 11.1 or 11.2;
- (b) any additional or miscellaneous services or supplies provided by the Company and used or received by the Customer's

Representatives at its request or through necessity, including where the Customer uses more power than has been allocated to it;

- (c) maintenance, repairs and replacements required to the Services as a result of any of the Customer's Representatives' acts or omissions;
 - (d) increases in the cost to the Company of supplying the Services as a consequence of the:
 - (i) Customer providing incorrect information to the Company (whether intentionally or not);
 - (ii) Customer's circumstances, orders or usage of the Services changing after the commencement of any Supply; or
 - (iii) subject to clause 5.7, costs to the Company in providing the Services being increased due to circumstances beyond the Company's reasonable control;
 - (e) any upgrades or changes to the Services by the Company which are requested or required by or as a result of the Customer's Representatives;
 - (f) reconnecting any Services that are suspended pursuant to clauses 6.8(b), 16.1(a), 16.1(c), 16.1(g) or 19; and
 - (g) any other reason permitted under this Agreement.
- 5.6 Additional Fees will be charged at the rates set out in the Schedule of Fees & Charges as at the date the Additional Fees are incurred.
- 5.7 **Subject always to clause 5.8**, if Additional Fees charged pursuant to clause 5.5(d)(iii) amount to more than 20% of the Agreed Fees applicable to the particular Supply to which the Additional Fees relate in any single term of Supply, then within 10 Business Day's after the Company gives notice to the Customer that those Additional Fees will be charged, the Customer may terminate this Agreement by giving not less than 10 Business Day's notice in writing to the Company. If the Customer fails to terminate this Agreement within the specified time, the Customer will be deemed to have agreed to the Additional Fees charged pursuant to clause 5.5(d)(iii). During any termination notice period given by the Customer pursuant to this clause, the Customer must pay the Additional Fees.
- 5.8 Notwithstanding anything to the contrary in this Agreement, where the Company's costs of providing any Services to the Customer are increased as a result of any Law or any Authority imposing any obligation on the Company relating to the environment, or the impact of the Company or the Services on the environment, such as

environmental levies, emission schemes and other environmental imposts, the Customer is fully responsible for paying all of those increased costs and will have no right to terminate under clause 5.7.

5.9 The Customer is responsible for the costs of and incidental to refilling any gas bottles, and repairing or replacing any equipment, forming part of the Company's fire safety system which is deployed or damaged due to any act or omission of the Customer's Representatives or which is caused by the Customer's Equipment.

5.10 The Customer is responsible for any loss or damage caused to any party or a party's equipment as a result of the deployment of the Company's fire safety system to the extent that it was caused or contributed to by the act or omission of the Customer's Representatives or by the Customer's Equipment.

6. INVOICES & PAYMENTS

6.1 Fees will be payable in any manner directed by the Company but failing direction, monthly in advance by direct debit to the Customer's nominated credit card.

6.2 Subject to any applicable Law to the contrary which cannot be lawfully excluded, all payments made by the Customer for Services are non-refundable.

6.3 The Company will issue GST compliant invoices for Fees to the Customer monthly:-

- (a) in arrears for Usage Charges;
- (b) in advance for all installation, setup, recurring and other predictable charges; and
- (c) at the Company's discretion for any other charge.

6.4 The Customer must pay all invoices within 7 days of the date of the invoice and without demand, deduction, withholding, set-off or counterclaim.

6.5 All queries regarding an invoice must be raised by the Customer with the Company within 7 days of the date of the invoice. If the Customer does not query the invoice within that time, the Customer will be deemed to have agreed to the invoice.

6.6 If the Customer disputes an invoice, it must cooperate with the Company in its enquiries into the dispute. The Company will act reasonably in determining whether the disputed invoice should be revised. If the Company determines that the invoice is correct, the Company will give notice to the Customer. The Customer must pay the invoice within 7 days of the Company's notice.

6.7 The Customer acknowledges that invoices issued by the Company will include an amount which the Customer must pay for the GST in accordance with the terms of the invoice.

6.8 In addition to any other right the Company has under this Agreement:-

- (a) where any invoice remains unpaid after its due date, the Customer must pay 15% per annum interest on the outstanding amount, calculated and capitalised on a daily basis from the date payment became due until the Company has received full payment of the overdue amount together with all accrued interest; and
- (b) where any invoice remains unpaid for 14 days after the due date, the Company may, at its sole discretion, suspend or terminate the provision of Services and any other supplies or services to the Customer under this Agreement and without incurring any liability to the Customer for doing so under any circumstances.

7. COSTS

- 7.1 Except as otherwise set out in this Agreement, each party must pay its own costs in relation to preparing, seeking advice on and executing this Agreement and any document or action related to this Agreement.
- 7.2 Where the Customer requires any amendments to this Agreement, either before or after this Agreement becomes binding, the Customer is responsible for the Company's costs on a full indemnity basis, including legal costs on a solicitor and own client basis, in relation to the negotiation and variation of this Agreement.
- 7.3 The Customer will be fully liable for:-
 - (a) the Company's reasonable costs and expenses incurred in connection with:-
 - (i) anything the Company does to enforce this Agreement or because the Customer breaches this Agreement; and
 - (ii) the consideration and/or approval of anything requiring the Company's consent under this Agreement; and
 - (b) stamp duty payable in respect of this Agreement, if any.

8. SECURITY FOR PERFORMANCE

- 8.1 The Company may at its discretion require the Customer to:
 - (a) prepay Fees;
 - (b) pay a deposit;
 - (c) provide a bank guarantee;
 - (d) provide credit card details (with authority to charge to it); and
 - (e) put in place other credit and security arrangements at the Company's discretion, such as automatic direct debiting from the Customer's debit, credit or other account.

8.2 The Customer grants to the Company a lien over the Customer's Equipment which is in the custody, possession or control of the Company for any unpaid Fees and accrued interest payable by the Customer. Where Fees and interest remain overdue for sixty (60) days or more, the Customer authorises the Company to sell any or all of the Customer's Equipment to recover all or any such Fees, accrued interest, the costs of selling the Customer's Equipment and other expenses incurred by the Company as a result of the Customer's failure to pay.

8.3 Where the right to sell pursuant to clause 8.2 is not exercised, the Company will release all of the Customer's Equipment to the Customer for the Customer to remove from the Facilities at the Customer's cost when:-

- (a) the Services which are provided to the Customer in connection with the Customer's Equipment over which the lien is held expire or are terminated; and
- (b) the Customer has paid all monies payable under this Agreement in full.

9. CREDIT APPROVAL

- 9.1 Provision of the Services is subject to the Company being satisfied at all times that the Customer can and will pay the Fees.
- 9.2 The Customer must provide the Company with all information the Company reasonably requires for the purpose of assessing the Customer's credit rating.
- 9.3 The Customer consents to the Company obtaining from a credit reporting agency a credit report containing personal credit information about the Customer and to the Company providing personal information about the Customer to a credit reporting agency for this purpose.
- 9.4 The Company may revoke any credit granted by it at any time by giving reasonable notice.

10. OBLIGATIONS REGARDING USE OF SERVICES

- 10.1 In receiving, possessing and using the Services, the Customer agrees that it must (where applicable to the particular Services received from the Company):
 - (a) hold and comply with all relevant Authorities, licences, permits or authorisations it holds or is required to hold in order to receive or use the Services;
 - (b) take good and proper care of the Services including keeping them safe, secure and in suitable environmental conditions;
 - (c) not engage in any illegal or unauthorised conduct, including interfering with any other party's property;
 - (d) use the Services in accordance with:

- (i) the terms and conditions of this Agreement;
 - (ii) industry standards applicable at the time of the Supply;
 - (iii) all Laws;
 - (iv) any directions or conditions of any Authority, licence, permit or authorisation it holds or is required to hold in order to receive and use the Services;
 - (v) proper purposes; and
 - (vi) the Company's directions including security regulations and operating policies and procedures;
- (e) maintain suitable insurance policies in accordance with clause 12;
- (f) not, or attempt to, part with possession of, sell, transfer, grant a mortgage or any other security interest (including any lien) over, any part of the Services;
- (g) not, or attempt to, move, rearrange, disconnect, remove, repair or otherwise deal with the Services without the prior written consent of the Company;
- (h) not, or attempt to, remove, vary, disguise, damage or obscure any marks on the Services which identify them as being the property of the Company or any other party;
- (i) not do, or attempt to do, anything which is intended to or might prevent the Company from performing its obligations or exercising a right granted to it under this Agreement;
- (j) provide the Company, and any Authority, with full access to the Services at all reasonable times, during and after the term of this Agreement, for the purpose of:
- (i) inspecting the Services and the premises in which they are being supplied or held, to ensure that the Customer is complying with its obligations under this Agreement;
 - (ii) installing, removing, conducting repairs or maintaining the Services; and
 - (iii) complying with any Law or direction of any Authority;
- (k) immediately return the Services to the Company upon request, so far as this is possible;
- (l) not do, or permit to be done, any act which may or does damage the Company's reputation; and
- (m) ensure that the Customer's Representatives comply with all of the Customer's obligations under this Agreement.
- 10.2 The Customer acknowledges and agrees that:
- (a) the Services may not be free from fault or interruption;
 - (b) the Services may be unavailable during Permitted Down Times;
 - (c) the Company gives no warranties or guarantees as to the currency, availability, accuracy, security or quality of any information, equipment or third party service that the Customer accesses or receives using the Services;
 - (d) the Company remains the legal and equitable owner of the Services at all times (so far as reasonably possible and except to the extent that a third party owns any part of the Services);
 - (e) regardless of whether the Company is the legal and equitable owner of the Services, the Customer is not, and does not become, entitled to any interest in any part of the Services except to the extent set out in this Agreement;
 - (f) the Customer bears full risk:-
 - (i) associated with the receipt and use of the Services pursuant to this Agreement; and
 - (ii) of loss or damage to the Services from the time they are supplied or delivered to the Customer until they are safely returned to the Company (where applicable) in accordance with this Agreement, and the Customer fully indemnifies the Company in respect of any such loss or damage,
 except to the extent that any loss or damage is caused by any negligence of the Company;
 - (g) the Customer is fully responsible for selecting, specifying and ordering the Services required by it and the Company will not under any circumstances be liable for the Customer's failure to properly and sufficiently select, specify or order Services;
 - (h) the Customer is fully liable for all acts and omissions of the Customer's Representatives whether done with the authority of the Customer or not;
 - (i) the Company may do anything which the Customer is required to do under this Agreement but has failed to do, or has failed to do to the reasonable satisfaction of the Company, and any costs incurred by the Company in taking such action shall be

recoverable from the Customer as a liquidated debt due and owing; and

- (j) complaints of violation of any of the Company' rules, policies and procedures by any party may be made to the Company by the Customer.

11. VARIATIONS

11.1 **By Agreement** – The Customer and the Company may vary the Services from time to time by agreement in writing.

11.2 **By the Company** – The Company may vary the Services, any of its rules, policies and procedures and the terms of this Agreement from time to time at its sole discretion by giving the Customer 10 Business Days' notice in writing and the Customer agrees to be bound by any such variations.

11.3 If variations made pursuant to clause 11.2:

- (a) materially and adversely change the Services ordered by the Customer;
- (b) materially and adversely affect the Customer's rights under this Agreement; or
- (c) subject to the Company's right to charge Additional Fees pursuant to clause 5.5(d)(iii) and 5.8, increase the Fees payable by the Customer for the varied Services by more than 10% in any single term of Supply;

the Customer may terminate this Agreement by notice in writing to the Company within 10 Business Days of being notified of the variation pursuant to clause 11.2. If the Customer does not terminate this Agreement within the specified time, the Customer will be deemed to have agreed to the variation.

12. INSURANCES

12.1 The Customer must maintain at its own expense all insurance policies with respect to the receipt, use and on-supply (if applicable) of the Services, the Customer's Data, the Customer's Equipment, the Customer's Representatives and third parties as required by Law and which a prudent person engaging in business or activities in which the Customer engages in connection with this Agreement for the risks and limits of cover associated with the Services specified in each Service Order Form including policies covering:-

- (a) commercial and product liability;
- (b) public risk;
- (c) property, casualty, third party property;
- (d) business interruption; and
- (e) loss of utility, rent and profit.

12.2 In respect of all policies of insurance which the Customer must maintain under this Agreement, the Customer must obtain those policies with an insurer approved by the Company (such approval will not be unreasonably withheld):

- (a) for amounts;
- (b) to cover risks;
- (c) with only those conditions, endorsements and exclusions,

reasonably acceptable to or required by the Company from time to time and the Customer must give the Company satisfactory evidence of compliance with its obligations under this Clause 12, when asked to do so.

12.3 The Customer must not do anything that may affect rights under any insurance policy or which may increase an insurance premium payable in connection with the Facilities or any property in them which may be maintained by the Company.

12.4 The Customer must pay to its insurer all premiums and charges payable in respect of any insurance policy effected by the Customer pursuant to this Agreement on or before the due date for payment.

12.5 The Customer must pay to the Company on demand all extra or excess premiums and other charges for insurances in connection with the Facilities, or any property in the Facilities, which the Company becomes liable to pay to the Company's insurer on account of extra risk caused by any act or omission of the Customer's Representatives, or by reason of the Customer's default under the provisions of this Agreement.

12.6 The Customer will not have any interest in or be entitled to any benefit under any insurance policy effected by the Company unless the Customer is expressly named in such policy.

13. AUTHORISED CONTACT

13.1 The Customer must appoint an Authorised Contact, or more than one, by notice in writing to the Company. The Authorised Contact will be the Customer's primary point of contact for dealings with the Company under this Agreement.

13.2 The Authorised Contact acts as the Customer's agent and is hereby irrevocably authorised to enter into binding agreements and act for and on behalf of the Customer.

13.3 Any direction, instruction, notice, approval or other communication made or given to or by an Authorised Contact to or by the Company will be deemed to have been made by or given to or by the Customer, as the case may be.

13.4 The Customer is fully responsible for all acts, omissions and defaults of the Authorised Contact.

13.5 The initial Authorised Contact will be the person named as the contact in the relevant Service Order Form.

13.6 The Customer must notify the Company in writing of any changes to the contact details of the Authorised Contact and may replace an Authorised Contact from time to time by notice in writing to the Company by setting out full contact details of the

new Authorised Contact. The Company may provide an online facility which enables the Customer to update the Authorised Contact information pursuant to this clause.

13.7 The Company will not be responsible to the Customer under any circumstances for complying with directions, instructions, notices, approvals or other communications made by a notified Authorised Contact, including in the event that:-

- (a) the Authorised Contact ceases to be authorised by the Customer to make those directions, instructions, notices, approvals or other communications; and
- (b) the Customer fails to notify the Company in writing of the change of authorisation of the relevant Authorised Contact pursuant to clause 13.6.

14. INTELLECTUAL PROPERTY

14.1 The Customer acknowledges and agrees that:-

- (a) it acquires no right, title or interest in any Intellectual Property owned or licensed by the Company, or used or supplied by the Company to the Customer or any other party during the operation of this Agreement, at any time regardless of whether the Intellectual Property was created prior to or during the term of this Agreement;
- (b) nothing in this Agreement has the effect of granting, transferring to or vesting in the Customer any right, title or interest in such Intellectual Property;
- (c) it must do all things reasonably required by the Company, and to procure that the Customer's Representatives do so also, to enable the Company to obtain, defend and enforce its rights in the Intellectual Property; and
- (d) it must not do or fail to do any act or thing which would or might prejudice the Company's rights under this clause.

14.2 Exclusive ownership of and title to any new Intellectual Property created by a party during the operation of this Agreement will immediately and directly vest in the party who created it upon its coming into existence.

14.3 Where any Intellectual Property provided or accessed as part of the Services is not owned by the Company, the Company will use best endeavours to ensure that it or the Customer is sufficiently licensed to use such Intellectual Property.

15. SERVICE LEVELS & REBATES

15.1 Subject to clause 15.2 and anything to the contrary in an applicable Schedule of Services, the Company agrees to meet the Service Levels when providing the Services.

15.2 Notwithstanding anything to the contrary in this Agreement, Service Levels do not apply where:-

- (a) the Customer has provided incorrect information to the Company, or fails to notify the Company of any changes to relevant information about the operating environment, system configuration or any other assumption or information set out in the relevant Service Order Form which is reasonably capable of affecting the Company's ability to achieve the Service Levels;
- (b) there is a failure, breakdown, interruption, defect or fault to or in any equipment, telecommunications network or system, infrastructure, cabling or other service which is caused or contributed to by the Customer's Representatives or an event which is not reasonably within the Company's control;
- (c) the Customer has failed to substantially comply with its obligations under this Agreement;
- (d) an invoice issued to the Customer by the Company under this Agreement is unpaid and overdue;
- (e) they are not achieved due to a Permitted Down Time; or
- (f) a provision of this Agreement so provides.

15.3 If the Company fails to meet an applicable Service Level then subject to clause 15.5, the Company will provide the Customer with a Service Rebate which will be calculated in accordance with the formula set out in the applicable Schedule of Services.

15.4 For the purpose of determining whether Service Levels have been met, temperature, humidity and power will only be measured by operating sensors installed by the Company throughout the Facilities.

15.5 If the Customer considers that it is entitled to a Service Rebate, it must, within 10 days of the date on which the failure to meet the Service Levels occurred, or is said to have occurred, request the Service Rebate in writing from the Company. Such request must set out the reasons for requesting the Service Rebate.

15.6 If the Customer fails to request the Service Rebate within 10 days as required by clause 15.5, the Customer will be deemed to have waived its right to the Service Rebate without further notice by the Company.

15.7 Upon receipt of a request from the Customer to provide a Service Rebate pursuant to clause 15.5 then subject to:-

- (a) Any provision in this Agreement which provides that the Service Level is not applicable, or that the Service Rebate is not payable; and

- (b) confirmation by the Company (in accordance with clause 15.4 & acting in good faith) that the reasons set out by the Customer under clause 15.5 entitle the Customer to a Service Rebate,

the Company will credit the Service Rebate to the Customer's account.

15.8 Service Rebates will not be given by the Company as cash and are not redeemable for cash.

15.9 For the avoidance of doubt, a failure to meet a Service Level is not a breach of this Agreement.

15.10 Subject to any applicable Laws to the contrary which cannot be excluded, the provision of Service Rebates is:-

- (a) the Company's only liability to the Customer; and
- (b) the Customer's sole and exclusive remedy,

in respect of any failure by the Company to meet the Service Levels.

15.11 If a Service Rebate is applicable then:-

- (a) the Service Rebate will be proportionate to the extent that the relevant Supply fails to meet the Service Levels;
- (b) the Service Rebate will not exceed in any calendar month 50% of the total monthly Fees payable in that month for the particular Services to which the Service Rebate is applicable;
- (c) if an incident occurs in a calendar month and continues into the next calendar month, the Service Rebate will be calculated for the whole period in which in the Service Levels are not maintained but will be subject to the limits of the calendar month in which the incident first occurred as set out in clause 15.11(b); and
- (d) if an event or series of events give rise to the ability to claim more than one Service Rebate for the failure to meet more than one Service Level, the Customer's entitlement to the Service Rebates is limited to receiving only one Service Rebate.

16. PERMITTED DOWN TIMES

16.1 The Company may suspend or interrupt any of the Services, and will not be liable to any extent (including Service Rebates) if:

- (a) the suspension or interruption is caused by any act or omission of the Customer's Representatives or the Customer's Equipment (including where a circuit breaker is activated);
- (b) the suspension or interruption is caused by any act or omission of any third party, or any event, which is out of the reasonable control of the Company including any ISP or local

problems (such as Browser or DNS caching), DoS, DDoS attacks, exploits or hacking;

- (c) the Company is prevented from reinstating the Services due to any act or omission of the Customer's Representatives or any third party whom is out of the reasonable control of the Company;
- (d) the interruption continues for five (5) minutes or less in any calendar month period;
- (e) the suspension or interruption is an agreed period of shut-down or outage;
- (f) the interruption is due to any requirement of any Authority with jurisdiction over the Services or an event described in clause 28; or
- (g) a period of shut-down, including any refusal, suspension or termination of the Supply, pursuant to and notified in accordance with, the terms of this Agreement.

16.2 Without limiting the generality of clause 16.1 and for the avoidance of doubt, clause 16.1 applies to interruptions to the Services caused by power, temperature and humidity control interruptions and failures.

17. REGULATORY MATTERS

17.1 The Customer:-

- (a) irrevocably consents to the Company disclosing information about the Customer's account to the extent required by an Authority without notifying the Customer;
- (b) acknowledges that the Company may be required by Law to intercept various communications made by or to the Customer's Representatives through the Services and may monitor communications and usage of the Services as required by Law; and
- (c) must promptly comply with any directions of any Authority in connection with the Services.

18. ASSIGNMENT BY THE COMPANY

18.1 If the Company sells or transfers its business or any of the Services during the term of this Agreement, the Company may assign its right, title and interest in this Agreement to the purchaser or transferee by giving written notice to the Customer and the Customer agrees that in such case, the Customer continues to be fully bound by this Agreement.

19. SUSPENSION & TERMINATION

19.1 The Company may in its sole discretion refuse, suspend or terminate the provision of Services and or this Agreement (at the Company's discretion) by giving reasonable notice to the Customer in writing if:

- (a) the Customer fails, refuses or is unable to comply with any of its obligations under this Agreement;
- (b) the Customer or any of the Customer's Representatives encourage, assist, abet or incite any other party to breach any of the Customer's obligations under this Agreement;
- (c) in relation to the Customer, there is an Adverse Event;
- (d) the Company is unable to provide the Services in accordance with a Service Order Form or this Agreement for reasons beyond the Company's reasonable control;
- (e) the Company considers it necessary in the circumstances provided that it is acting in good faith; or
- (f) the Customer fails to pay an invoice within 14 days of its due date.
- 19.2 The Company will give as much notice to the Customer as is reasonable in the circumstances of any suspension to or termination pursuant to clause 19.1 and will endeavour to minimise any suspension as it considers appropriate in the circumstances.
- 19.3 Either party may terminate this Agreement or a Supply by agreement in writing, or immediately by written notice to the other if:
- (a) the other party commits a material breach of its obligations under this Agreement, or breaches an essential term of this Agreement, which is not capable of being remedied or if able to be remedied, which that party fails to remedy within 14 days of receiving notice in writing from the party not in breach specifying the breach and requiring it to be remedied;
- (b) if clause 28.2 so provides;
- (c) the other party is the subject of an Adverse Event; or
- (d) Subject to clause 19.4, destruction or damage to the Services renders the Services unusable or inoperable for more than 7 consecutive days.
- 19.4 Clause 19.3(d) does not apply where the damage or destruction was caused by a Force Majeure (see clause 28) or it is the Customer who wishes to terminate and the damage or destructions was caused or contributed to by the Customer.
- 19.5 For the purposes of clause 19.3(a), a breach of clause 2.6, 6.4, 7.3, 10.1, 12.1, 12.2, 12.3 or 22 constitutes a material breach of this Agreement.
- 19.6 Expiry or termination of this Agreement or a Supply will be without prejudice to any rights either party has which accrued prior to the date of expiry or termination.
- 19.7 The Company will not be liable for, or in relation to, any loss or damage incurred by the Customer in relation to the suspension or termination of this Agreement or the Services by the Company in accordance with this Agreement.
- 20. OBLIGATIONS UPON EXPIRY OR TERMINATION**
- 20.1 Upon expiry or termination of this Agreement or a Supply, unless otherwise agreed in writing, each party must, at its own expense, return each of the following to the rightful owner, or destroy them in accordance with instructions given by the owner:-
- (a) any Intellectual Property;
- (b) any Confidential Information;
- (c) any Personal Information; and
- (d) subject to any lien pursuant to clause 8.2, any equipment or tools,
- in their possession or control as at the date of expiry or termination.
- 20.2 Upon expiry or termination of this Agreement or a Supply, the Company may, in addition to any other rights it has under this Agreement:
- (a) issue a final invoice for all supplies made by the Company to the Customer for Services which have not been invoiced for or paid;
- (b) demand immediate payment of:-
- (i) any outstanding Fees; and
- (ii) the balance Fees payable for the entire term of the relevant Service Order Form;
- (c) charge the Customer a termination fee;
- (d) retain a pro rated portion of any moneys paid to it in advance by the Customer to pay for supplies made to the Customer, or which would have been supplied to the Customer had the Supply or this Agreement not been terminated, prior to the expiry or termination;
- (e) enter the Customer's Premises on reasonable notice and take possession of and/or retrieve any of the Services that are in the possession, custody or control of the Customer and the Customer must provide reasonable access to the Company to the Customer's Premises for such purpose; and
- (f) take any legal action against the Customer which it is entitled to take,
- and the Customer hereby irrevocably authorises the Company to do so.
- 21. COMPLAINTS**
- 21.1 If the Customer wishes to make a formal complaint about a Service, the Company, the Company's supplier or any of the Company's customers, the Customer may lodge a complaint to the Company in

writing and in accordance with any complaints policy that the Company has from time to time. The Company may require evidence from the Customer, in a form satisfactory to the Company at its sole discretion, to substantiate any claims made by the Customer. The Company may deal with any complaints made pursuant to this clause 21 in any manner it determines in its sole discretion.

22. CONFIDENTIALITY

22.1 Each party acknowledges that in the course of performing its obligations under this Agreement it may receive Confidential Information. Each party agrees not to use or disclose any Confidential Information except:

- (a) with the consent of the party to whom the Confidential Information belongs or relates;
- (b) in the proper performance of its obligations under this Agreement
- (c) where required by Law or to obtain professional advice in relation to this Agreement; or
- (d) where the Confidential Information enters the public domain (other than by a breach of this clause 22 by the other party or a third party holding the Confidential Information discloses it without authority to do so).

22.2 The Customer acknowledges that the contents of this Agreement and the Schedule of Fees & Charges constitute commercially sensitive and confidential information. Except to the extent that any part of this Agreement and the Schedule of Fees & Charges are available to the public on the Company's website, the Customer agrees that it must not disclose the contents of this Agreement or the Schedule of Fees & Charges to any party without the Company's prior written consent, unless legally compelled to do so, and then only after notifying the Company of that legal requirement.

22.3 Each party must ensure that its employees, subcontractors, agents and representatives comply with its obligations under this clause 22.

22.4 The Customer acknowledges that a breach of this clause 22 may cause the Company irreparable damage for which monetary damages would not be an adequate remedy. Accordingly, in addition to any other remedies available at law or in equity, the Company may seek specific performance or injunctive relief against any breach or threatened breach by the Customer's Representatives.

22.5 This clause 22 continues in full force and effect after the expiry or earlier termination of this Agreement or a Supply.

23. WARRANTIES

23.1 Each party warrants and represents to the other on a continuing basis that:

- (a) it has full legal capacity, power and authority, and has taken all necessary action, to enter into this Agreement;
- (b) it is able and willing to perform the obligations and complete the transactions contemplated by this Agreement;
- (c) subject to clauses 2.1 and 2.5, upon the written acceptance by the Company of a Service Order Form submitted by the Customer, the obligations under this Agreement will be valid, binding and enforceable; and
- (d) unless otherwise stated, it enters into this Agreement on its own behalf and not as trustee of any trust or as an attorney.

24. INDEMNITY

24.1 The Customer fully indemnifies the Company, and keeps the Company fully indemnified, from and against any losses, damages, costs and/or expenses (including legal costs assessed on a solicitor and own client basis), claims, demands, actions, suits, proceedings and liabilities which the Company, and any other party, may suffer or incur arising out of or in connection with the Customer's Representatives':

- (a) receipt or use of the Services;
- (b) receipt or use of the Customer's Equipment;
- (c) acts and omissions in connection with the Services or this Agreement;
- (d) breach of warranties contained in this Agreement; and
- (e) breach of any of the terms and conditions of this Agreement.

25. LIMITED LIABILITY

25.1 Subject to clauses 15.10 and 25.3, the maximum aggregate liability of the Company to the Customer in respect of:

- (a) any one claim or series of connected claims in respect of a Service Order Form is limited to the Agreed Fees paid or payable pursuant to the relevant Service Order Form in the six (6) months preceding the occurrence of the event giving rise to such claim or series of connected claims; and
- (b) all claims made in any twelve month period in respect of a Service Order Form, is limited to half of the Agreed Fees paid or payable pursuant to the relevant Service Order Form in the twelve (12) months prior to the occurrence of the last event giving rise to such claim.

These limitations are to be read and construed independently of one another and if, on application of the limitations, any ambiguity exists, the limitation

resulting in the lesser liability for the Company applies.

25.2 The Company will not be liable under or in connection with this Agreement for any loss of income, loss of actual or anticipated profits, loss of business, loss of anticipated savings, loss of damage to or corruption of data, loss of goodwill, loss of reputation or for any special indirect, incidental or consequential loss or damage of any kind in each case howsoever arising, whether such loss or damage was foreseeable in the contemplation of the parties and whether arising in or for breach of contract, tort (including negligence), breach of statutory duty, indemnity or otherwise.

25.3 Nothing in this clause 25 excludes or in any way limits the liability of the Company to the Customer to the extent that same may not be excluded or limited as a matter of Law.

25.4 The Company has no liability to the Customer, the Customer's Representatives or any other person, for:

- (a) acts and omissions of, or any faults or defect in the Services caused by any third party;
- (b) faults or defects in Services which are caused by the Customer's Representatives including any failure to comply with the Customer's obligations under this Agreement; and
- (c) faults or defects that arise in telecommunication systems or other services provided to the Customer by a third party (even if they are connected and used by the Company during the operation of this Agreement with the Company's consent).

25.5 The Customer is fully liable to and indemnifies the Company against all Loss, including as a result of any third party claims against the Company, arising out of:-

- (a) the use or attempted use of the Services or any equipment connected to the Services (whether legally or not) by the Customer's Representatives or any other person;
- (b) any data, information or other materials transmitted, downloaded or stored by the Customer's Representatives using the Services; and
- (c) the Customer's Equipment or any acts, omissions or breaches of this Agreement by the Customer's Representatives.

26. EXCLUSIONS

26.1 All terms implied in or incorporated into this Agreement, whether by statute, common law or otherwise, are hereby excluded to the maximum extent permitted by law, including without limitation any condition, warranty or other term in relation to merchantability and fitness for a particular purpose.

26.2 The Customer is solely responsible for ensuring, and must satisfy itself, that the Services selected and ordered by it meet their needs. The Company does not select or order Services on behalf of the Customer and does not warrant that any of the Services ordered by the Customer will be suitable for the purpose for which the Customer intends to use them or that the Services will be uninterrupted, un-delayed, without faults or error-free.

26.3 Where any Law implies into this Agreement any condition or warranty which cannot be excluded, the Company's liability for any breach of the condition or warranty is limited to the following (at the Company's option):

- (a) In relation to the supply of services:
 - (i) the resupply of the services; or
 - (ii) the reasonable cost of having the services resupplied; or
- (b) In the case of the supply of goods:
 - (i) the replacement of the goods or the supply of equivalent goods;
 - (ii) the repair of any defect in the goods; or
 - (iii) the reasonable cost of replacement of the goods,

and the Company's liability will be reduced to the extent that it arises as a result of the wilful or negligent acts and omissions of the Customer's Representatives and or any breach of the Customer's obligations under this Agreement by the Customer's Representatives.

27. DISPUTE RESOLUTION

27.1 In the event of a dispute between the parties about anything under this Agreement, the complainant must notify the other party of the dispute by giving the other party written notice specifying:

- (a) the nature of the dispute;
- (b) the outcome required by the complainant; and
- (c) the action the complainant believes will resolve the dispute.

27.2 The parties must attempt to resolve the dispute by mutual negotiation acting in good faith.

27.3 In the event that the parties are unable to reach a resolution of the dispute within 10 Business Days after the date of the complainant's notice, the parties may seek to resolve the dispute through any avenue available at law.

27.4 During a dispute, each party must continue to perform its obligations under this Agreement.

27.5 Nothing in clause 27 restricts or limits the right of either party to obtain interlocutory relief or to immediately terminate this Agreement where this Agreement provides such a right.

28. FORCE MAJEURE

- 28.1 Each party hereby releases the other from any claim, liability or responsibility concerning a party's failure to perform any obligations under this Agreement where such failure is due to a Force Majeure.
- 28.2 Where a party is prevented from performing its obligations under this Agreement for 60 continuous days, either party may terminate this Agreement by notice in writing to the other party.

29. TARIFFS

- 29.1 The Company may elect, or be required by Law, to file or comply with any tariffs, imposts, rules or regulations established by an Authority regarding supplies made by the Company under this Agreement. In the event that such tariffs, imposts, rules or regulations are established then the terms set forth in the applicable tariffs, imposts, rules or regulations will govern the Company's delivery of, and the Customer's receipt, consumption and use of, the Services.

30. PRIVACY

- 30.1 Each party warrants to the other that any Personal Information it has provided which is relevant to entering into this Agreement has been collected and provided in accordance with the *Privacy Act 1998* (Cth);
- 30.2 In relation to any Personal Information disclosed by a party, the recipient must comply with all privacy laws in relation to the use, storage and disclosure of that Personal Information.
- 30.3 The Customer acknowledges that it has read and understands the Company's Privacy Policy and agrees that it must comply with it.

31. NOTICES

- 31.1 Any notice to be given under this Agreement must be in writing and must be delivered or sent by post, facsimile or email to the registered office of the party to whom it is sent, the Authorised Contact or such other addresses, facsimile numbers and email addresses as notified in writing.
- 31.2 The party to whom a notice is sent will be deemed to have received the notice:
- (a) if it is delivered, when it is left at the relevant address;
 - (b) if sent by post, 2 business days after it has been posted;
 - (c) if sent by facsimile, upon the sender receiving a transmission report from its fax machine indicating that the fax was sent successfully; or
 - (d) if sent by email, either:-
 - (i) twenty-four (24) hours after the sender sends the email if no bounce or failure

delivery report is received by the sender from the email program; or

- (ii) when the sender receives a receipt notification if one is sent by the receiver.

- 31.3 If a party gives the other party 3 Business Days' notice in writing of a change of its address, fax number or email address, then any notice, consent, information, application or request is only given or made to that other party if it is delivered, posted, faxed or emailed to the notified address, fax number or email address, as the case may be.

32. Entire Agreement

- 32.1 This Agreement constitutes the full and complete understanding between the parties with respect to the subject matter of this Agreement. There is no other oral understanding, agreement, warranty or representation whether express or implied in any way extending, defining or otherwise relating to the provisions of this Agreement binding on the parties with respect to any of the matters set out in, or which induced them to enter into, this Agreement.

- 32.2 Clause 32.1 operates and remains in full force and effect, except in the case of fraud by another party to this Agreement. No other fact, matter or circumstance including breach of the provisions of Part 5 of the *Trade Practices Act 1974* by a party to this Agreement interferes with or in any way derogates from the operation and effect of clause 32.1.

- 32.3 Where there is any doubt as to the meaning of an expression or provision in this Agreement, the parties agree, and it is their intention that, the interpretation intended by parties is the interpretation which favours the Company and in the event of a dispute, the interpretation that favours the Company applies.

33. IP ADDRESSES

- 33.1 The Company may provide the Customer with IP Addresses during a Supply. Any IP Addresses that are provided to the Customer are licensed to the Customer and remain the Company's property at all times both during and after the expiration or termination of the Supply.
- 33.2 At the expiration or termination of the relevant Supply, the Customer must cease using IP Addresses provided pursuant to this Agreement and will have no entitlement to take or use same.

34. MISCELLANEOUS

- 34.1 The Customer may not without the Company' prior written consent (which will not be unreasonably withheld or delayed) transfer, novate, assign or sub-license this Agreement or any rights, interest or obligations contained in it.
- 34.2 This Agreement, and any part of it, may be executed in 2 or more counterparts, each of which

will be deemed an original, and all of which together will constitute one and the same document.

- 34.3 Each party must from time to time at its own cost and expense do all things necessary to give effect to the transactions or agreements contemplated by this Agreement.
- 34.4 This Agreement is governed by the laws of Queensland and the parties irrevocably submit to the non-exclusive jurisdiction of the Queensland courts. The parties will not object to the exercise of jurisdiction by those Courts on any basis.
- 34.5 If a provision (or part) of this Agreement can be read in more than one way, then subject to clause 32.3, it must be read in the way which makes it legal, valid and enforceable. If any provision (or part) is illegal, unenforceable or invalid, that provision (or part) is to be treated as removed from this document and the remaining legal, enforceable and valid provisions are not affected.
- 34.6 Provisions of this Agreement which are expressed to survive the expiry or termination of this Agreement or the nature or context of the provisions contemplate that they are to survive such expiry or termination, remain in full force and effect after the expiry or termination.
- 34.7 The parties acknowledge and agree that nothing in this Agreement creates or is intended to create any fiduciary relationship between the parties. No form of joint venture, agency, partnership, trust or other comparable relationship of trust is created between the parties as a result of this Agreement or the acts contemplated under it.
- 34.8 Nothing in this Agreement creates a relationship of landlord and tenant, between the Company and the Customer, nor does it confer upon the Customer any right or interest in the land by way of occupation rights, licence, easement, rights of way or otherwise except expressly provided in this Agreement.
- 34.9 No variation of this Agreement will be of any force or effect unless it is in writing and signed by the parties to this Agreement.
- 34.10 A party's failure or delay to pursue remedies for a default by the other party does not amount to a waiver of any obligation of, or breach of obligation by, another party. A waiver by a party is only effective if it is in writing and only applies in respect of the particular obligation or breach which is specified in it.

35. SUPERIOR RIGHTS

- 35.1 This Agreement is subject to the terms and conditions of any underlying ground or facilities lease or licence or other superior rights under which the Company has acquired an interest in the Facilities or any of the Company's Equipment. The Company may terminate this Agreement if the Company ceases to have a right to use the Facilities.

- 35.2 The Customer's rights are conditional upon the owner of the relevant Facilities (if not the Company) giving and continuing its consent, if required, to the grant and continuation of the Customer's rights under this Agreement.

36. NON-SOLICITATION

- 36.1 Neither party will solicit or entice away the other's employees during the term of this Agreement or employ or seek to employ them within 3 months after the expiry or termination of this Agreement or of a Supply, whichever is the later.

37. DEFINITIONS – GLOSSARY OF TERMS

When used in this Agreement the following terms have the meanings beside them (unless the context otherwise requires):

ACMA means the Australian Communications and Media Authority or any successor.

Additional Fees means fees in addition to the Agreed Fees which the Company may charge the Customer to cover miscellaneous, additional, increased, unusual or unexpected costs incurred by the Company in supplying the Services or any other service to the Customer.

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

- (a) a liquidator, provisional liquidator, receiver, manager, receiver and manager, administrator, controller (as defined in the *Corporations Act* 2001 (Cth)) or similar officer or trustee in bankruptcy is appointed in respect of that party or any of its assets or that party is otherwise unable to pay its debts when they fall due;
- (b) enters or proposes to enter into any form of agreement, composition, arrangement with or assignment for the benefit of any of its creditors without the consent of the other party;
- (c) A notice under section 601AB(3) of the *Corporations Act* 2001 (Cth) is given in respect of the party;
- (d) ceasing, or indicating that it is about to cease, carrying on its business;
- (e) anything happening under any Law or in any jurisdiction that is similar to, or has a similar effect to, any of the events listed above;
- (f) engages in fraudulent, misleading and deceptive or illegal conduct;
- (g) engages in inappropriate use or supply of the Services;
- (h) breaches any applicable Law, licence, permit, authorisation or directive of any competent authority relating to the use or supply of the Services;

- (i) any applicable Authority, Laws, rules, regulations, authorities or decision of a court prohibits the use or provision of the Services;
- (j) any consent or permit required for the use or provision of the Services is rejected or cancelled, lapses or is otherwise terminated and no further replacement, consent or permit is obtained within 7 days;
- (k) the cancellation, termination or expiration of any lease or licence of premises from or in which the Services are supplied, used or located and no alternative premises can be secured within 7 days of the cancellation, termination or expiration; and
- (l) materially exceeds its agreed credit limit in relation to this Agreement.

A Feed means a primary power supply.

Agreed Fees means the fees and charges which the Company and the Customer have agreed upon in writing for the provision of the Services.

Agreement means collectively all of the following:

- (a) the Statement of Works;
- (b) the Terms and Conditions;
- (c) each Service Order Forms;
- (d) the Schedule of Services;
- (e) Credit Applications;
- (f) any written notice issued in accordance with the Terms and Conditions and
- (g) any written agreement attached to, or subsequently incorporated into, any of the documents referred to above;

Authority means each government, statutory or regulatory authority (whether local, state or federal) having any authority or jurisdiction in relation to the Services, the Company or the Customer including, but not limited to, fire departments, police and emergency services authorities.

Authorised Contact means a representative or a number of representatives appointed by the Customer from time to time to be a primary and authorised point of contact to act on behalf of the Customer in connection with this Agreement.

B Feed means a secondary power supply for redundant purposes only.

Business Day means a day on which banks (as defined in the *Banking Act 1959* (Cth)) are open for general banking business in Brisbane, Queensland, excluding Saturdays, Sundays and Public Holidays.

Cabinet means a full cabinet within the Facility in which information technology equipment may be

installed and operated, typically this is 42RU high by 600mm wide.

Carrier has the meaning given to that term in the *Telecommunications Act, 1997* (Cth).

Co-Location Space means a designated space or area in the Facilities which the Company may grant to customers from time to time for various uses, and may include Cabinets, Half-Cabinets and Rack Units.

Company means *Host Group of Companies Pty Ltd ACN 085 418 159* of 53 Brandl Street, Eight Mile Plains QLD 4113 and all of its successors in title and permitted assigns.

Company's Equipment means the equipment owned by the Company or which the Company is legally entitled to lease, license, lend, hire or otherwise provide to the Customer for use in connection with this Agreement.

Company's Network means the Company's internal network infrastructure and its chosen carrier(s) for internet connections.

Confidential Information means all information of any kind which is confidential in nature concerning a party, a party's business, any related entity, any product, item or service or product supplied by those parties or information which is not or is not permitted to be in the public domain, whether written or oral, recorded, stored or transmitted by electronic, magnetic, electromagnetic or other form, means or process, and whether translated from the original form, copied, modified, updated, recompiled or otherwise altered.

CPI means for a particular date, the percentage increase in the Brisbane (All Groups) consumer price index (or the index officially substituted for it) for the period from the last quarter published before the later of:-

- (a) the date of this Agreement; or
- (b) the commencement date of the most recent term of Supply in respect of which the Fees are being increased,

to the last quarter published before the particular date.

Credit Application means a credit application form which the Company requires the Customer to complete setting out information about the Customer relevant to the Company establishing the Customer's credit rating.

Customer's Clients means parties to whom the Customer may supply goods or services in the course of any business operation owned or operated by the Customer.

Customer's Data means information, records, data, whether electronic, written or otherwise

which is owned, in possession or control of the Customer from time to time.

Customer's Premises means any premises owned, leased, licensed or otherwise used or in the possession or control of the Customer.

Customer's Representatives means the Customer and any of its employees, agents, representatives, contractors, associates, invitees, the Customer's Clients, Licensees, the Authorised Contact and any other person who acts for or on behalf of the Customer, who accepts, receives or uses the Services or any part of the Services regardless of whether or not they do so with the consent of the Customer.

Dedicated Server Services means the provision of a server owned, leased, licensed by or otherwise in the possession and control of the Company and which the Company may grant use of to a customer, and which is not shared with any other customer, for the customer's own purposes on the terms and conditions of this Agreement.

Equipment means all hardware, software, accessories, tools and other information technology and telecommunications equipment owned, leased or licensed, controlled or otherwise used by or in the possession of a party from time to time.

Facilities means any facility, leased or licensed space, premises, site or location or any part thereof wheresoever situated which may be owned, leased, licensed, in possession of or under the control of the Company, including Co-Location Space.

Fees means Agreed Fees and Additional Fees which the Customer must pay for the provision, receipt and use of the Services and any other services or supplies provided pursuant to this Agreement.

Force Majeure means in relation to a person, a strike, lock out, riot, industrial action, fire, storm, tempest, act of God, material shortage, government, Law, regulation, direction of any Authority or requirement or any other similar cause beyond the reasonable control of the relevant person.

Half Cabinets means a Cabinet which is divided into 2 equal parts and typically 20 to 22 RU (Rack Unit) high.

Installation Charges means Fees in respect of installing any item, including Services and installations which are required to enable the Customer to properly receive or use the Services.

Intellectual Property means all intellectual property of any nature including, without limitation, all documents, data, drawings, specifications, articles, computer programs, object code, source code, network designs, notes, sketches, drawings, reports, inventions, improvements, modification,

discoveries, tools, scripts, trademarks, patents, copyrights, ideas, strategies, methodologies processes, manuals, concepts, policies or other items relating thereto, whether oral or written, whether contained in memoranda, correspondence or otherwise and including reports, advices and other materials.

Internet means a global system of computer networks which are interconnected and which can be used by persons, including privately and publicly, for information transferring and sharing among other things.

Internet Connection means the part of the Company's Network that is connected to the internet

IP Addresses means a unique identifying number that is assigned to devices participating in a network utilising the Internet Protocol for communication between its nodes. Refer to RFC-791 for IPv4 and RFC-2460 for IPv6 for further definitions

Law means the provisions of any statute, rule, regulation, proclamation, ordinance or by-law, present or future, whether state, federal or otherwise.

Licensee means a third party to whom the Customer resells, supplies, contracts to supply or sublicenses any Services pursuant a right in this Agreement.

Loss means costs, loss, claims, damage, liability or expenses (including all legal costs on a full indemnity basis, fees and expenses).

Network Services means the provision of a physical connection to the Company's Network including but not limited to the internet, cross-connections, interconnections and other services relating to the provision of such connection.

Permitted Down Time means a period of time where an interruption or suspension of a Supply is permitted under clause 16.

Personal Information means information (including information forming part of a database), whether true or not, and whether recorded in writing or spoken, about an individual whose identity is apparent, or can reasonably be ascertained from the information.

Private Suites means private, non-shared Co-Location Spaces into which access (physical and visual) is limited to authorised persons only.

Rack Units means single racks in Cabinets or Half Cabinets.

Remote Admin means services that the Company may provide (at its absolute discretion) in accordance with the Schedule of Services which are more advance, technical and specialised services than Remote Hands services.

Remote Hands means the minor technical services that the Company may provide (at its absolute discretion) in accordance with the Schedule of Services.

Resellers Services means the provision of certain rights to use the Company's servers for the purpose of enabling the Customer to resell portions of the servers' resources to the Customer's Clients.

Schedule of Fees & Charges means the Company's standard Schedule of Fees & Charges as amended from time to time setting out its standard fees for Services.

Schedule of Services means each Schedule of Service attached to each Service Order Form which sets out terms applicable to the provision, receipt and use of certain Services in addition to these Terms & Conditions including:-

- (a) Web Hosting Services;
- (b) Resellers Services;
- (c) Dedicated Servers;
- (d) Co-Location Space and Co-Location Services; and
- (e) the Network Services,

and which form part of this Agreement.

Secured Cage Area means an area in the Facilities in which Cabinets, and their contents, are isolated from, and kept inaccessible to, the Company's customers and any other party and which is surrounded by a secure fence, cage or similar with locked entry.

Service Levels means the different levels of service agreed by the Company as being applicable to the provision of particular Services and which, if applicable, are set out in the each Schedule of Services.

Service Order Forms means order forms completed by the Customer and submitted to the Company from time to time setting out the Customer's requirements for the Services whether in hard copy, electronic copy or an online application.

Service Rebates means credits allocated to the Customer's account in accordance with clause 15 as a result of the Company failing to meet Service Levels.

Services means the provision of the Company's Equipment, Facilities, Network, Co-Location Space, Co-Location Services, Dedicated Servers, Web Hosting Services, Dedicated Server Services and/or Reseller Services which the Company supplies to the Customer's Representatives from time to time pursuant to this Agreement and any part of those supplies including, but not limited to, power, storage, memory allocations, temperature and humidity control, as set out in each Service

Order Form, and other related supplies or services which the Company may offer from time to time.

Statement of Works means the brief summary of some of the terms of this Agreement on page 1 of this Agreement.

Sublicense means a supply, contract to supply or a sublicense consented to by the Company pursuant to this Agreement.

Supply means a supply of a Service or Services by the Company pursuant to this Agreement.

Terms & Conditions means general terms and conditions of this Agreement which apply to all of the Company's customers, regardless of which Services they seek or receive, and which form Part 2 titled Terms & Conditions, commencing on page 3 of this Agreement.

Usage Charges means Fees in respect of consumable supplies including the consumption of power, water and air-conditioning services but excluding installation, set-up and recurring charges.

Web Hosting Services means the provision of discrete portions of shared servers, owned, leased, licensed by or otherwise in the possession and control of the Company, for the purpose of hosting web sites.

38. INTERPRETATION

In this Agreement, headings are for convenience only and do not affect its interpretation. Except to the extent that the context otherwise requires:

- (a) reference to any statute or statutory provision shall include any modification or re-enactment of, or any legislative provisions substituted for, and all legislation and statutory instruments issued under such legislation or such power;
- (b) words denoting the singular shall include the plural and vice versa;
- (c) words denoting individuals shall include corporations, associations, trustees, instrumentalities and partnerships and vice versa;
- (d) references to parts, clauses, parties, annexures and schedules are references to parts, clauses, parties, annexures and schedules to this Agreement as modified or varied from time to time;
- (e) words denoting any gender shall include all genders;
- (f) references to any document, deed or agreement shall include references to such document, deed or agreement as amended, novated, supplemented, varied or replaced from time to time;
- (g) references to any party to this Agreement or any other document, deed or agreement

- shall include its successors or permitted assigns;
- (h) all references to dates and times are to Queensland, Australia time;
 - (i) all references to "\$" and "dollars" are to the lawful currency of Australia;
 - (j) terms used in this Agreement and which are defined in the Corporations Act 2001 (Cth) have the meanings given to those terms in the Corporations Act 2001 (Cth); and
 - (k) where anything is required to be done on a day which is not a Business Day, that thing must be done on the immediately preceding Business Day.