



ServersAustralia
MANAGED HOSTING SOLUTIONS

COLOCATION MASTER SERVICES AGREEMENT
(MSA)

MASTER SERVICES AGREEMENT

This master service agreement is entered into on _____, 2015 ("MSA Effective Date") between Servers Australia Pty Ltd, CAN 125 037 443 ("Servers Australia Pty Ltd") and the undersigned customer ("Customer") (the "MSA") and includes the Co-Location Facility Policies (the "Policies") and the relevant exhibits attached hereto.

Hereinafter referred to individually as "Party" and collectively as "Parties".

Capitalised terms used herein but not otherwise defined will have the meaning ascribed to them in Section J of the Policies, which can be found at www.serversaustralia.com.au

1. SERVICES

- 1.1 Subject to the terms and conditions set forth in this MSA, Servers Australia Pty Ltd will provide the Services to Customer.
- 1.2 In the event of Servers Australia Pty Ltd not being able to provide services to the end customer, Servers Australia Pty Ltd will nominate a supplier to novate contracts and services to, to prevent service disruption to the end customer.

2. ORDERING

- 2.1 Customer will request for Services by executing a Sales Order which will only be effective when accepted by Servers Australia Pty Ltd, and which will be governed by the terms and conditions of this MSA.

3. PAYMENT TERMS AND TAXES

- 3.1 Service Fees for the Services will begin to accrue on the Installation Date. Servers Australia Pty Ltd will invoice Customer for the Services on a monthly basis (partial months will be billed on a pro-rata basis). Customer will pay in full all invoices from Servers Australia Pty Ltd within 10 days of the date of the invoice. Any amounts which are due but not paid by Customer will accrue interest at the lesser of 1.5% per month or the highest rate permitted by applicable law. All invoices will be paid in the currency stipulated in the Sales Order.
- 3.2 The Service Fees for Services will be listed on the Sales Orders. Customer agrees to pay for the Services from the Installation Date up to the expiration of the Service Term. For each Service, at any time on or after the expiration of the initial Service Term, the rates and fees for Services will be subject to change, at Servers Australia Pty Ltd

reasonable discretion, upon 60 days' prior notice to Customer.

- 3.3 Notwithstanding anything to the contrary in this MSA, the rates and fees for Power Services ordered by Customer will remain in effect for 1 year from the beginning of the Service Term for such Power Services, and thereafter, the rates and fees for the Power Services will be subject to change, at Servers Australia Pty Ltd reasonable discretion, upon 60 days' prior notice to Customer.
- 3.4 Customer will pay all Taxes and third-party charges related to the ownership and operation of Customer's Equipment and the activities of Customer at each Co-location Facility, or attributable to, each Co-location Facility. Without limiting the foregoing, Customer will be responsible for paying any and all Taxes separately imposed, levied or assessed against Customer by, and preparing and filing any necessary return with, any governmental, quasi-governmental or tax authorities by the date such payments and returns are due. In no event will Customer's Equipment be construed to be fixtures.
- 3.5 Service Fees are exclusive of any Taxes. Customer will be responsible for paying, at the same time it pays the Service Fees, any Taxes imposed on Service Fees. Customer will be responsible for timely paying in full all other Taxes. In particular, Customer will be required to pay GST at the time of paying Servers Australia Pty Ltd invoices. Servers Australia Pty Ltd will provide Customer with a tax invoice for this purpose. In this clause, "GST" and "tax invoice" have the same meaning as in the GST law as defined in the A New Tax System (Goods and Services Tax) Act 1999 (Cth).
- 3.6 If Customer is required to make any deduction, withholding or payment on account of any Taxes in any jurisdiction in respect of any amounts payable hereunder by Customer to Servers Australia Pty Ltd, such amounts will be increased to the extent necessary to ensure that after the making of such deduction, withholding or payment, Servers Australia Pty Ltd receives when due and retains (free from any liability in respect of any such deduction, withholding or payment) an amount equal to what would have been received and retained had no such deduction, withholding or payment been required or made.

4. ACCESS AND USE OF THE CO-LOCATION FACILITIES, AND USE OF CUSTOMER'S EQUIPMENT

- 4.1 Customer will have access to the Co-location Facilities, subject to the terms of this MSA.

4.2 Customer will operate the Customer Equipment in accordance with the terms of this MSA.

5. INDEMNIFICATION

5.1 Servers Australia Pty Ltd will indemnify and hold harmless the Customer from any and all liability, damages, costs and expenses (including reasonable attorney's fees and expenses) for personal injury or damage to tangible property resulting from the gross negligence or wilful misconduct of Servers Australia Pty Ltd.

5.2 Customer will indemnify and hold harmless Servers Australia Pty Ltd Parties from any and all liability, damages, costs and expenses (including reasonable attorney's fees and expenses) including:

- (i) personal injury or damage to tangible property resulting from the gross negligence or wilful misconduct of Customer;
- (ii) any claim by any of Customer's Authorised Persons, Accompanying Persons or Associated Entities or any employee of Customer other than a claim based on the gross negligence or wilful misconduct of Servers Australia Pty Ltd;
- (iii) any claim by a customer, or end-user of Customer, or a third party (including Sub licensee, customer or end user of Sub licensee), relating to, or arising out of, Customer's or any of its customers', end-users' or Sublicensee's services or the Services provided under this MSA (including claims relating to interruptions, suspensions, failures, defects, delays, impairments or inadequacies in any of the aforementioned services, including the Services from Servers Australia Pty Ltd);
- (iv) any claim that Customer has failed to fulfil a contractual obligation with a third party; and
- (v) any claim resulting from Customer's failure to observe the terms of this MSA or to obtain any consents required under this MSA.

6. WARRANTY DISCLAIMER, LIMITATION OF LIABILITY, CREDITS

6.1 SERVERS AUSTRALIA PTY LTD DOES NOT WARRANT THAT THE SERVICES PROVIDED HEREUNDER WILL BE UNINTERRUPTED, ERROR FREE, OR COMPLETELY SECURE. SERVERS AUSTRALIA PTY LTD DOES NOT MAKE, AND HEREBY DISCLAIMS, ANY AND ALL IMPLIED WARRANTIES, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT. EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS MSA, SERVERS

AUSTRALIA PTY LTD DOES NOT MAKE AND HEREBY DISCLAIMS ALL EXPRESS WARRANTIES. ALL SERVICES PROVIDED PURSUANT TO THIS MSA ARE PROVIDED OR PERFORMED ON AN "AS IS", "AS AVAILABLE" BASIS, AND CUSTOMER'S USE OF THE SERVICES IS SOLELY AT ITS OWN RISK.

6.2 IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, RELIANCE, EXEMPLARY OR PUNITIVE DAMAGES, INCLUDING LOST PROFITS, LOSS OF BUSINESS, LOSS OF REVENUES, LOSS OF DATA, INTERRUPTION OR CORRUPTION OF DATA, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR ANY OTHER TYPE OF DAMAGES OTHER THAN DIRECT DAMAGES.

6.3 SERVERS AUSTRALIA PTY LTD TOTAL LIABILITY TO CUSTOMER IN THE AGGREGATE FOR THE ENTIRE TERM WITH RESPECT TO ALL CLAIMS ARISING FROM OR RELATED TO THIS MSA (INCLUDING ATTORNEY'S FEES) WILL NOT EXCEED THE AMOUNT PAID BY CUSTOMER FOR THE SIX MONTH PERIOD IMMEDIATELY PRECEDING THE MONTH IN WHICH THE FIRST CLAIM AROSE. NOTWITHSTANDING THE FOREGOING, SERVERS AUSTRALIA PTY LTD MAXIMUM LIABILITY FOR ANY CLAIMS RELATING TO SERVICES OFFERED OR PROVIDED BY SERVERS AUSTRALIA PTY LTD (I) FOR A NON-RECURRING CHARGE ONLY OR (II) AS REMOTE HANDS SERVICES SHALL NOT EXCEED THE AMOUNT OF THE SERVICE FEE FOR SUCH SERVICE PROVIDED ON THE OCCASION GIVING RISE TO THE CLAIM.

6.4 THE LIMITATIONS SET FORTH IN SECTIONS 6 (b) - (c) WILL APPLY TO ANY AND ALL CLAIMS AND CAUSES OF ACTION WHATSOEVER, REGARDLESS OF WHETHER IN CONTRACT, TORT, STRICT LIABILITY OR ANY OTHER AREAS OF LAW (INCLUDING BUT NOT LIMITED TO CLAIMS OF NEGLIGENCE).

6.5 EACH PARTY WAIVES ITS RIGHT TO BRING ANY CLAIM AGAINST THE OTHER PARTY ARISING OR IN ANY WAY RELATING TO THIS MSA MORE THAN 1 YEAR AFTER THE DATE OF THIS MSA EXPIRES OR IS EARLIER TERMINATED.

6.6 CUSTOMER WARRANTS THAT IT WILL COMPLY WITH ALL APPLICABLE LAWS AND REGULATIONS IN THE PERFORMANCE OF ITS OBLIGATIONS UNDER THIS MSA, IN RELATION TO BOTH:
(I) CUSTOMER'S USE OF THE SERVICES; OR
(II) WHERE CUSTOMER PROVIDES SERVICES THROUGH THE USE AND/OR OPERATION OF THE SERVICES PROVIDED BY SERVERS AUSTRALIA PTY LTD TO ANY THIRD PARTY. IN RELATION TO (II), SERVERS AUSTRALIA PTY LTD

MAKES NO WARRANTIES AND ASSUMES NO LIABILITY WHATSOEVER.

7. INSURANCE

7.1 Customer agrees to maintain, at its expense, for each Co-Location facility during the entire time this MSA is in effect,

- (i) Commercial General Liability Insurance in an amount not less than \$1,000,000 AUD per occurrence for bodily injury, death and property damage, which policy will include contractual liability coverage related to this MSA;
- (ii) Workers' Compensation and employer's liability insurance in an amount not less than that prescribed by law; and
- (iii) umbrella or excess liability insurance with a combined single limit of no less than \$2,000,000 AUD or the local currency equivalent.

Furthermore, Customer will adhere to the terms relating to insurance as set forth in the Policies.

8. TERM OF MSA, SUSPENSION OF SERVICE, TERMINATION AND REMOVAL OF CUSTOMER'S EQUIPMENT

8.1 This MSA will terminate on the date the last Sales Order then in effect expires or is terminated. For each Service ordered on a Sales Order, the Service Term will commence on the Installation Date and end 1 year thereafter. Unless otherwise stated in the Sales Order, for each Service, upon expiration of the initial or renewed Service Term, the Service Term for such Service will renew automatically for additional terms of 1 year each, unless either Party notifies the other Party in writing at least 90 days prior to the end of the then-current Service Term for such Service that it has elected to terminate the Service Term for such Service.

8.2 Either party may terminate this MSA by giving notice of termination to the other Party if the other party breaches any material term of this MSA and fails to cure such breach within 30 days after receipt of written notice of the same. Notwithstanding the foregoing, except where Customer has failed to timely cure a monetary breach, if a Party fails to timely cure a material breach as to only one Co-location Facility, and Customer has Licensed Space in more than one Co-Location Facility, then the non-breaching Party may only terminate this MSA (and the corresponding Sales Orders) as to the Co-Location Facility where the material breach has not been timely cured, and this MSA will remain in full force and effect as to all other Co-location Facilities.

8.3 Notwithstanding Section 8(b); Servers Australia Pty Ltd may terminate this MSA, suspend the provision of Services (including discontinuing the supply of power) or restrict Customer's access to the Co-location Facility and/or Customer's licensed space, if

- (i) Customer fails to cure any monetary breach of this MSA (e.g fails to pay any amounts owed) within 10 days of notice of the same (5 days in the event Customer's account is past due on 3 or more occasions during a 6 month period);
- (ii) Customer liquidates, ceases to do business, or becomes insolvent or
- (iii) Customer breaches any provision of this MSA that in Servers Australia Pty Ltd reasonable judgment interferes with, or has the potential to interfere with Servers Australia Pty Ltd operation or maintenance of the Co-location Facility or with its other customers' use thereof, and Customer fails to cure such breach within 24 hours of being notified of the same.

If Servers Australia Pty Ltd suspends a Service pursuant to this Section 8(c), Servers Australia Pty Ltd will resume the discontinued Service within 24 hours after it is reasonably satisfied Customer has cured the breach(es) which gave rise to Servers Australia Pty Ltd right to suspend the Service. Servers Australia Pty Ltd may charge a reinstatement fee to resume the discontinued Service.

8.4 Servers Australia Pty Ltd may terminate this MSA as to any affected Licensed Space or Co-location Facility if

- (i) Servers Australia Pty Ltd possession is terminated or abated for any reason; or
- (ii) Servers Australia Pty Ltd cannot provide Customer with access to the affected Licensed Space as contemplated herein for a period exceeding 30 days.

8.5 Upon expiration or termination of a Sales Order (or any portion thereof), all other rights of Customer with respect to the Licensed Space on such Sales Order (or the affected portion thereof) ("Terminated Space") will terminate, and Customer, if directed by Servers Australia Pty Ltd will immediately remove all of the Customer's Equipment and other property belonging to Customer or Customer's Authorised Persons, Accompanying Persons and/or Associated Entities, but excluding any wiring, cable or other equipment or property owned, leased or licensed by Servers Australia Pty Ltd, from the Terminated Space. If Customer fails to remove any such property in accordance with this Section 8(e),

Servers Australia Pty Ltd will be entitled to pursue all available legal remedies against Customer, including, without limitation, one or more of the following remedies:

- (i) immediately removing any or all such property and storing it at Customer's expense at an on-site or off-site location,
- (ii) shipping such property to the address set forth at the end of this MSA at Customer's risk and expense, or
- (iii) upon providing 30 days' prior notice to Customer, and if Customer fails to remove such property within such 30 day period, realizing or otherwise disposing of such property in any commercially reasonable manner without prior notice to Customer (whether by way of public or private sale, without any judicial proceedings whatsoever) at such times and price as Servers Australia Pty Ltd deems reasonable in its own discretion, and charging Customer for all costs associated with the realization or disposal (including but not limited to an administration charge solely determined by Servers Australia Pty Ltd), and thereafter hold the balance (if any) to the order of Customer. Customer shall indemnify Servers Australia Pty Ltd against any liability incurred by Servers Australia Pty Ltd in the event such property shall have been sold by Servers Australia Pty Ltd in the bona fide mistaken belief (which shall be presumed unless the contrary be proved) that such property belonged to Customer and was liable to be dealt with as such pursuant to this Section 8(e)
- (iii) Notwithstanding anything in this MSA to the contrary, Customer will not be entitled to remove any Customer's Equipment from a Co-location Facility if Customer's account is past due.

8.6 While Customer has no right to use the Services after the expiration or termination of a Sales Order, if Customer does so, without prejudice to any of Servers Australia Pty Ltd rights under this MSA, Servers Australia Pty Ltd will be entitled to charge Customer (and Customer will be obliged to pay) for the Services at such Service Fees as it deems fit. All other terms and conditions of this MSA and any applicable Sales Orders will continue to apply for as long as the Services are used by Customer. In such event, this MSA and any applicable Sales Orders, will be terminable at will by Servers Australia Pty Ltd effective immediately upon notice to Customer.

8.7 Customer shall provide Servers Australia Pty Ltd

with a security deposit in the amount of 3 month's MRC to secure the performance of Customer's obligations herein ("Security Deposit"). The Security Deposit shall be applied without limitation, in or towards satisfaction of any amounts outstanding hereunder and/or in making good Customer's breach of any term of this MSA (without prejudice to Servers Australia Pty Ltd other rights and remedies contained in this MSA, at law or in equity). If any part of the Security Deposit is so applied or if Servers Australia Pty Ltd deems necessary, Customer shall on demand by Servers Australia Pty Ltd, forthwith furnish a further security deposit for the amount so applied. Upon expiry or termination of this MSA, Servers Australia Pty Ltd shall return any unused portion of the Security Deposit without interest, save where Customer has breached a material term of the MSA, Servers Australia Pty Ltd reserves the right to forfeit the Security Deposit, without prejudice to Servers Australia Pty Ltd other rights and remedies contained in this MSA, at law or in equity.

8.8 Neither Party will be liable to the other Party for properly terminating this MSA in accordance with its terms, but Customer will be liable to Servers Australia Pty Ltd for any amounts due and payable. Where any Sales Order is terminated prior to the expiry of the Service Term

- (i) by Customer (other than for Servers Australia Pty Ltd breach), or
- (ii) by Servers Australia Pty Ltd due to Customer's breach, Customer will be liable to Servers Australia Pty Ltd for all Service Fees which would have been payable by Customer for the remainder of the Service Term had that Sales Order not been prematurely terminated. In addition, where any Sales Order is terminated by Servers Australia Pty Ltd prior to the end of the Service Term due to Customer's breach, Servers Australia Pty Ltd shall be entitled to recover from Customer all damages recoverable under law.

8.9 Under no circumstances will any Sales Order survive the expiration or earlier termination of this MSA. Servers Australia Pty Ltd will not have any obligation to provide any of its Services after the expiration or earlier termination of this MSA.

9. CONFIDENTIALITY

9.1 Except as expressly permitted in this Section 9, neither Party will, without the prior written consent of the other Party, disclose any Confidential Information of the other Party to any third party. Information will be considered Confidential Information of a Party if either

- (i) it is disclosed by the Party to the other Party in tangible form and is marked "Confidential", "Proprietary" or the like; or
- (ii) it is disclosed by one Party to the other Party in non-tangible form and is identified as confidential at the time of disclosure; or
- (iii) it contains the disclosing Party's customer lists, technical information, pricing information, pricing methodologies, or information regarding the disclosing Party's business planning or business operations. In addition, the design of the Co-location Facilities, the Services provided and equipment used at the Co-location Facilities and the configuration, interconnection, switching and routing of telecommunication cables, networks and services at the Co-location Facilities will be considered Confidential Information of Servers Australia Pty Ltd.

9.2 Information will not be deemed Confidential Information hereunder if such information

- (i) is known to the receiving Party prior to receipt from the disclosing Party directly or indirectly from a source other than the disclosing Party;
- (ii) becomes known to the receiving Party directly or indirectly from a source other than the disclosing Party;
- (iii) becomes publicly known or otherwise ceases to be secret or confidential, except through a breach of this MSA by the receiving Party;
- (iv) is independently developed by the receiving Party; or
- (v) is required by law or a government or a quasi-government regulatory body.

9.3 Each party will secure and protect the Confidential Information of the other Party (including, without limitation, the terms of this MSA) in a manner consistent with the steps taken to protect its own trade secrets and confidential information, but not less than a reasonable degree of care. Each Party may disclose the other Party's Confidential Information where

- (i) the disclosure is required by applicable law or regulation or by an order of a court or other governmental body having jurisdiction; or
- (ii) the disclosure is reasonably necessary for a Party to exercise its rights and perform its obligations under this MSA, so long as in all cases the disclosure is no broader than necessary. Each Party is responsible for ensuring that any Confidential Information of the other Party that the first party discloses pursuant to this Section 9 is kept confidential by the person receiving the disclosure.

9.4 Notwithstanding the restrictions set forth in this

Section 9 or Section 11(k),

- (i) Servers Australia Pty Ltd may issue a press release announcing Customer's entry into the Co-location Facility without obtaining Customer's consent; and
- (ii) either party may publicly refer to the other Party, orally and in writing, as a customer or vendor of services of or to the other Party, as the case may be, without obtaining consent from such Party.

9.5 Each party also agrees to deal with any personal information collected, used or disclosed by it in compliance with the National Privacy Principles in the Privacy Act 1988 (Cth) or any privacy code approved by the Privacy Commissioner under section 18BB of the Privacy Act 1988 (Cth) to which that party is bound.

10. SUBLICENSING

10.1 Customer may sublicense the Sublicensed Space to Sublicenses' provided that

- (i) the terms and conditions of such Sublicense will be no less restrictive than this MSA,
- (ii) Customer will not in its dealing with such Sub licensee act or purport to act on behalf of Servers Australia Pty Ltd or Servers Australia Pty Ltd landlords,
- (iii) Customer will require the Sub licensee to abide by the rules set forth in the Policies, and
- (iv) Customer will cause any Sub licensee to agree in writing that in consideration for the sublicense, Sub licensee waives, to the maximum extent permitted under law, any and all claims of any and all types (including but not limited to claims of negligence) against Servers Australia Pty Ltd and Servers Australia Pty Ltd Landlords, at all times, and that in no event will Servers Australia Pty Ltd or Servers Australia Pty Ltd landlords have any liability to such Sub licensee, including liability to such Sub licensee for any damages whatsoever, including direct damages.

10.2 For the avoidance of doubt, Customer will be responsible to Servers Australia Pty Ltd for the performance of Customer's obligations under this MSA. No sub licensee agreement or arrangement between Customer and any Sub licensee or end-user will relieve Customer from any liability under this MSA. Customer is responsible for paying the Service Fees for all of the Licensed Space (including Sublicensed Space) and the charges for Services for, or relating to, any or all of the Licensed Space (including Sublicensed Space). In no event will Servers Australia Pty Ltd be deemed to be providing any Services to Sub licensee for, or

relating to, the Sublicensed Space, as the provision of any such Services will be deemed to be to Customer for all purposes under this MSA.

- 10.3** Customer must ensure that each and every sublicense agreement or other sublicense arrangement that Customer has with a Sub licensee does not have any terms and conditions that
- (i) are inconsistent with this MSA, or
 - (ii) seek to provide the Sub licensee with rights that Customer does not have under this MSA. No Sub licensee will have any right to use its Sublicensed Space in any manner that Customer is not permitted to use the Licensed Space.
- 10.4** Sublicenses' do not have any rights, separate and apart from Customer's rights, to access their Sublicensed Space accordingly, only Customer's Authorised Persons at a Co-location Facility may access the Sublicensed Space of Sublicenses' at such Co-Location Facilities.
- 10.5** Customer will ensure that the Sub licensee will not sublicense, delegate, assign or otherwise transfer its rights to use the Sublicensed Space to any other person or entity without Servers Australia Pty Ltd consent, which consent may be withheld for any reason whatsoever or no reason.
- 10.6** If the Parties agree, Servers Australia Pty Ltd and Customer will participate in a joint press announcement to announce a Sub licensee's entry into a Co-location facility.
- 11. MISCELLANEOUS**
- 11.1** Except where otherwise expressly stated in this MSA, all notices, consents, or approvals required by this MSA will only be effective if in writing and sent by
- (i) certified or registered air mail, postage prepaid,
 - (ii) overnight delivery requiring a signature upon receipt,
 - (iii) delivery by hand or
 - (iv) facsimile or electronic mail to the Parties at the respective street addresses, facsimile numbers, or electronic mail addresses set forth at the end of this MSA or such other addresses or facsimile numbers as may be designated in writing by the respective Parties. Notices, consents and approvals will be deemed effective on the date of receipt.
- 11.2** This MSA will be governed in all respects by the laws of New South Wales, Australia without regard to its conflict of laws provisions. The parties agree to the exclusive jurisdiction of the courts of New South Wales, Australia.

- 11.3** Neither Party's directors, officers or employees will have any liability to the other Party with respect to this MSA. Except as may be specifically otherwise consented to by an Affiliate of a Party, neither Party's Affiliates will have any liability to the other Party with respect to this MSA.
- 11.4** This MSA and all Sales Orders constitute the complete and entire agreement between the Parties with respect to the subject matter hereof, and supersede and replace any and all prior or contemporaneous discussions, negotiations, proposals, understandings and agreements, written and oral, regarding such subject matter, as well as any industry custom. This MSA may be executed in two or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. Save for the Policies which may be amended by Servers Australia Pty Ltd from time to time, this MSA may be amended only in writing by an instrument signed by all Parties.
- 11.5** No waiver of any breach of any provision of this MSA will constitute a waiver of any prior, concurrent or subsequent breach of the same or any other provisions hereof, and no waiver will be effective unless made in writing and signed by an authorized representative of the waiving Party.
- 11.6** If Customer and Servers Australia Pty Ltd execute multiple Sales Orders, each additional Sales Order will supplement rather than replace the prior Sales Orders, unless otherwise stated by the Parties in writing. Notwithstanding anything in this MSA to the contrary Servers Australia Pty Ltd has no obligation to execute any Sales Order with Customer.
- 11.7** If any provision of this MSA, as applied to either Party or to any circumstance, is adjudged by a court to be invalid, illegal or unenforceable, the same will not affect the validity, legality or enforceability of the portion of the provision, if any, that is not invalid, illegal or unenforceable, the application of such provision in any other circumstances, or the validity, legality, or enforceability of any other provision of this MSA.
- 11.8** Obligations of Customer incurred prior to the expiration or termination of this MSA will survive the expiry or termination of this MSA.
- 11.9** Except where otherwise expressly stated herein, and subject to the limitations set forth in Section 6, the rights and remedies provided for herein and cumulative and not exclusive of any rights or remedies that a Party would otherwise have.
- 11.10** Servers Australia Pty Ltd and Customer are independent contractors and this MSA will not establish any relationship or partnership, joint

venture, employment, franchise or agency between Servers Australia Pty Ltd and Customer. Neither Servers Australia Pty Ltd nor Customer will have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent. Subject to Section 9(d) neither Customer nor Servers Australia Pty Ltd grants the other the right to use its trademarks, service marks, logos, copyrights, or other intellectual property rights without the prior written consent of the other Party.

11.11 This MSA and the rights of Customer hereunder, are subject to the leases for the Co-location Facilities and all superior instruments to such leases (including, without limitation, mortgages or ground leases for the Co-location Facilities). This MSA is a services agreement and is not intended to and will not constitute a lease of any real or personal property. Customer acknowledges and agrees that

- (i) it has been granted only a license ("License") to use the Licensed Space in accordance with this MSA;
- (ii) Customer has not been granted any real property interest under this MSA; and
- (iii) Customer has no rights as a tenant or otherwise under any real property or landlord/tenant laws, regulations or ordinances.

Servers Australia Pty Ltd hereby reserves, with respect to the Co-Location Facilities, all rights not specifically granted to Customer in this MSA, including, without limitation, the right

- (i) of access to and use of the Co-Location Facilities for its own use or the use of others;
- (ii) to grant additional licenses to other persons or co-location customers for the use of portions of the Co-Location Facilities; and
- (iii) to exercise or grant other rights not inconsistent with the rights granted in this MSA.

11.12 Servers Australia Pty Ltd may assign, delegate or transfer its rights and obligations under this MSA to a Servers Australia Pty Ltd affiliate, or to a party acquiring all or substantially all of Servers Australia Pty Ltd business or assets, including through merger. Customer may only assign this MSA with Servers Australia Pty Ltd prior written consent.

11.13 Servers Australia Pty Ltd will not be responsible or in any way liable, and Customer will not have any termination or other rights, for any injury, damage or loss arising out of or relating to any failure by Servers Australia Pty Ltd to perform or any hindrance in the performance of its obligations under this MSA if such failure or hindrance is

caused by events or circumstances beyond Servers Australia Pty Ltd control, including acts of God, war, labor strike, terrorist act, fire, flood, earthquake, any law, order, regulation or other action of any governing authority or agency thereof, or failure of the Internet.

11.14 All Sales Orders are subject to all of the terms and conditions of this MSA. In the event of ambiguity, conflict or inconsistency among the documents comprising this MSA, the documents shall be given a descending order of precedence as follows:

- (i) The Sales Order;
- (ii) The Exhibits;
- (iii) The Policies; and
- (iv) The terms and conditions herein.

11.15 Unless otherwise expressly agreed to by the Parties in writing, Servers Australia Pty Ltd will retain title to all parts and materials used or provided by Servers Australia Pty Ltd or third parties acting on its behalf in the performance of the Services.

11.16 Servers Australia Pty Ltd and Customer agree that, with the exception of Servers Australia Pty Ltd landlords, there will be no third party beneficiaries to this MSA, including, but not limited to, any Sub licensee, end user or Customer or the insurance providers for either Party.

11.17 The parties specifically exclude application of the United Nations Convention on Contracts for the International Sale of Goods in this MSA.

Servers Australia Pty Ltd Colocation Master Services Agreement (MSA)

This MSA has been entered into between the Parties as of the MSA Effective Date.

Customer to Complete

The person signing below hereby warrants and represents that he or she has full authority to execute this MSA for the Party on whose behalf he or she is signing.

Customer Name: _____

Authorised Signature: _____

Printed Name: _____

Title: _____

Street Address for Notices: _____

Phone: _____

Fax: _____

Email: _____

Servers Australia Pty Ltd to Complete

The person signing below hereby warrants and represents that he or she has full authority to execute this MSA for the Party on whose behalf he or she is signing.

SERVERS AUSTRALIA PTY LTD

ACN 125 037 443

Authorised Signature: _____

Printed Name: _____

Title: _____

Street Address for Notices:

Servers Australia Pty Ltd
11/6 Reliance Drive, Tuggerah NSW 2259
PO Box 3187, Tuggerah NSW 2259

Phone: (02) 8115 8888

Fax: N/A

Email: billing@serversaustralia.com.au