

TRADING TERMS

1. TERMS

- 1.1. These Trading Terms apply to all Service Orders accepted by RightServe Pty Ltd (trading as "RightServ").

2. SERVICE ORDERS FOR SERVICES

- 2.1. The Customer may submit a Service Order requesting that RightServ provide Services in accordance with this Agreement.
- 2.2. Subject to RightServ:
 - 2.2.1 accepting the Service Order with a Service Order Confirmation (which acceptance may be express or implied by conduct); and
 - 2.2.2 receiving any other necessary information substantially in the form prescribed by RightServ, the Services specified in the Service Order will be provided in accordance with these Trading Terms and the applicable Pricing Schedule.
- 2.3. RightServ has no liability for charges, costs or expenses incurred by or on behalf of the Customer to another provider or other third party prior to the applicable Service Start Date.
- 2.4. The Minimum Period for any Services is 12 months from the Service Start Date for the applicable Services or such longer period as specified in the Service Order.
- 2.5. If the Customer does not wish some or all of the Services to continue beyond the Renewal Date for those Services, it must provide notice to RightServ at least 60 days prior to that Renewal Date. If no such notice is given, the Services are automatically renewed as and from that Renewal Date for 12 months.
- 2.6. If the Customer gives notice of cancellation in accordance with clause 16.3, the Service Order will terminate with effect from the Renewal Date and clause 16 (Termination) will apply to the affected Services.
- 2.7. If the Customer cancels any Services after RightServ has accepted the Service Order but prior to the Service Start Date for those Services, clause 16.5 will apply to the affected Services.

3. SUPPLY OF SERVICES

- 3.1. The Customer agrees that RightServ:
 - 3.1.1 has the right to supply the Services (including any Consulting Services), under any accepted Service Orders in accordance with the Agreement;
 - 3.1.2 has the right to decide how the Services are provided and select the Provider(s);
 - 3.1.3 has the right to charge the Customer for all Charges incurred in connection with the installation of the Services or any Equipment;
 - 3.1.4 has the right to carry out any actions necessary or incidental to give effect to this clause (including signing and submitting on the Customer's behalf any necessary authority forms or other details required to provide the Services);
 - 3.1.5 may engage subcontractors or other service providers to supply some or all of the Services.
- 3.2. The Customer must ensure that the Services are used only in accordance with the Agreement.
- 3.3. RightServ may vary the specifications of the Services (including the way in which RightServ delivers the Services to the Customer), at any time without giving the Customer any notice of such variation, provided that such variation has no impact on the reliability or performance of the Services RightServ supplies to the Customer and the Services when varied continue to meet or better any applicable Service Level.

4. SERVICE PROVISIONING

- 4.1. Subject to clause 2.2, RightServ will provision the Services in accordance with the Service Order Confirmation. For new services, a Completion Notice will be issued after the Services have been implemented and the Customer is liable for all Charges for the new services from the date specified in the Completion Notice.

- 4.2. The Customer agrees to provide all necessary assistance, cooperation and information reasonably required by RightServ to implement the Services. RightServ is not liable for any delays or charges arising from a failure of the Customer to comply with this clause.
- 4.3. If the Customer cancels a Service Order after a Service Order Confirmation has been issued, RightServ may impose cancellation charges. The cancellation charges may include, without limit, any third party cancellation costs imposed on RightServ.
5. SERVICE DELIVERY
 - 5.1. The Customer acknowledges that:
 - 5.1.1 the Services may not be free from fault or interruption;
 - 5.1.2 the Services may be unavailable during scheduled or unscheduled maintenance periods;
 - 5.1.3 no warranties or guarantees are given as to the currency, availability, accuracy, security or quality of any information which the Customer receives or can access using the Services;
 - 5.1.4 the Customer is solely responsible for any reliance on or use of the information received or that is accessed when using the Services;
 - 5.2. RightServ is entitled, without incurring any liability to the Customer and without prejudice to its rights under clause 16, to suspend any Services immediately where:
 - 5.2.1 there is a Planned Outage or it is necessary due to a Force Majeure Event;
 - 5.2.2 RightServ considers it is necessary for repair, maintenance or service of any part of a Network, subject to the terms of any applicable Service Level Guarantee;
 - 5.2.3 RightServ suspects that there has been fraudulent or illegal use of the Services;
 - 5.2.4 an Emergency Change Control is required; or
 - 5.2.5 RightServ believes the Customer has breached the Agreement and has not remedied that breach within the period specified in RightServ's notice, and RightServ will end the suspension as soon as reasonably practicable after the event or circumstance requiring the suspension has ceased.
6. CONSULTING SERVICES
 - 6.1. If RightServ has agreed to provide Consulting Services, then at the Customer's request RightServ will provide such Consulting Services at the Charges agreed and on the terms (including any Service Level Guarantees), applicable to those Consulting Services as specified by RightServ from time to time.
 - 6.2. It is the Customer's responsibility to decide whether or not to implement any recommendations made pursuant to the Consulting Services or to act in reliance upon any estimate, opinion, conclusion or other information provided as part of those Services. In providing the Consulting Services, RightServ will rely upon its general telecommunications experience but ultimately will act upon the Customer's written directions.
 - 6.3. RightServ makes no warranty as to the accuracy or reliability of any estimate, opinion, conclusion or recommendation or other information provided as part of the Consulting Services, and to the maximum extent permitted by law, disclaims all liability for any loss or damage that may be suffered by the Customer through relying upon the Consulting Services (or anything omitted from the Consulting Services), even if such loss or damage was reasonably foreseeable.
7. SERVICE LEVEL GUARANTEES
 - 7.1. The Services may be supported by a Service Level Guarantee subject to payment of any applicable Charges. Depending on the Service Level agreed in writing by the parties, the Service Level Guarantee may entitle the Customer to receive a rebate if it is breached.
 - 7.2. RightServ will endeavour to supply the Services in accordance with or in excess of the Service Levels (if any), but a breach of a Service Level is not a breach of the Agreement.
 - 7.3. The Service Level Guarantee will not apply to supply of the Services where:
 - 7.3.1 the interruption is due to a Planned Outage;

- 7.3.2 there is a failure or malfunction with the Customer's property, any Customer owned equipment, computer software or power supply to the customer premises;
 - 7.3.3 the failure is as a result of an act or an omission by the Customer or a person under the Customer's direction or control (other than if the act or omission is at RightServ's direction), including a breach of the Agreement;
 - 7.3.4 the failure is due to a Force Majeure Event;
 - 7.3.5 the Customer fails to notify RightServ of the event(s) giving rise to a claim for any rebate based on an alleged breach of a Service Level Guarantee within 7 days of the event occurring; or
 - 7.3.6 the failure arises by reason of a requirement upon RightServ issued by a Government, statutory or other relevant authority with jurisdiction over the Services.
- 7.4. If a rebate is payable for a failure to meet a Service Level Guarantee:
- 7.4.1 the maximum amount payable for any failure to meet a Service Level Guarantee in any one calendar month cannot exceed the total Charges payable by the Customer in that month for the Service affected by the fault(s) or delay(s) or other circumstance(s) giving rise to the claim. Where necessary, this amount will be calculated on a pro-rata basis;
 - 7.4.2 the Service Level Guarantee may impose a cap on the amount of rebate payable in relation to a single incident;
 - 7.4.3 any rebate payable under the Service Level Guarantee is the Customer's sole and exclusive remedy under the Agreement for that failure;
 - 7.4.4 if an incident occurs in one calendar month and continues into the next calendar month, any rebate will be calculated for the entire period of the outage, but will be subject to the limits of the calendar month in which the incident first occurred; and
 - 7.4.5 if the circumstances of a single event or sequence of events are such that a rebate may be claimed for more than one type of failure to meet a relevant Service Level Guarantee in relation to that incident, the Customer's entitlement to obtain a rebate is limited to receiving only one rebate, being that rebate which RightServ determines (acting in good faith), will provide the greatest benefit to the Customer.

8. CHARGES

- 8.1. The Customer is liable for all Charges incurred by or on behalf of it under any accepted Service Order.
- 8.2. The Charges are calculated in accordance with the Pricing Schedule.
- 8.3. RightServ reserves the right to vary the recurring charges once in every 12 month period of the contract, in accordance with the movement of the CPI index
- 8.4. The Charges:
 - 8.4.1 will be specified in the Pricing Schedule;
 - 8.4.2 apply to the Services from their respective Service Start Dates;
 - 8.4.3 apply until RightServ's receipt of a notice of cancellation of any Service Order.
- 8.5. RightServ may vary:
 - 8.5.1 the Charges at any time by providing 30 days notice to the Customer to reflect any increase or decrease in charges passed on to RightServ by any Provider. Any such variation will take effect from the start of the first billing period 30 days after the notice is given;
 - 8.5.2 the Charges based on the charges for credit card payments at any time, by providing 30 days notice to the Customer. Any such variation will take effect from the start of the first billing period 30 days after the notice is given.
- 8.6. The Charges may also be varied by the written agreement of the parties. Any agreed variation in the Charges will take effect from the start of the first billing period 30 days after the change is agreed.
- 8.7. RightServ may round up any Charge to the nearest cent before GST is applied.

9. INVOICING and PAYMENT

- 9.1. RightServ will invoice the Customer for the Charges. Invoices may be provided in paper format or electronically. Electronic invoices are subject to any terms and conditions that apply to RightServ's online services from time to time.
- 9.2. The Customer is responsible for taxes, levies and duties charged or payable in respect of the Agreement or any Services, including any goods and services tax applicable to any taxable supplies, subject to RightServ first providing a tax invoice. Any such taxes, levies and duties will be payable by the Customer in accordance with clause 9.3.
- 9.3. The Customer must pay the Charges (other than any disputed amount withheld in accordance with clause 9.6), in full within the Payment Period. Unless otherwise agreed, payment must be by cheque or direct deposit into RightServ's nominated account. A service charge may apply to any payments made by way of a credit card.
- 9.4. No implication arises that the Charges set out in RightServ invoice(s) are not payable in circumstances including, but not limited to, the following:
 - 9.4.1 not all Charges incurred in a billing period are included in the same invoice;
 - 9.4.2 incorrect invoices are issued and amended or additional invoices are subsequently issued.
- 9.5. Subject to clause 9.6, if some or all Charges are not paid within the Payment Period, RightServ may, without prejudice to its rights under clause 16, do any or all of the following:
 - 9.5.1 impose interest on the outstanding amount until it is paid in full at the rate of the ANZ Bank Indicative Lending Rate as published in *The Australian Financial Review* plus 3 per cent per annum;
 - 9.5.2 by seven (7) days notice suspend availability of the Services, without terminating the Agreement, until payment in full (including interest and other charges), is made; and
 - 9.5.3 report the default to a credit reporting agency.
- 9.6. If the Customer in good faith genuinely disputes any invoiced Charges, the Customer may withhold the disputed amount, but only if on or before expiry of the Payment Period:
 - 9.6.1 the undisputed amount of the invoice is paid in full; and
 - 9.6.2 notice is given of the dispute, details of the amount disputed, the reason(s) for the dispute and the basis for calculating the disputed amount. RightServ will investigate the dispute and (if applicable), raise it with the Provider. The Customer acknowledges and agrees that RightServ's decision (or the Provider's decision if applicable), on the disputed amount is final. If the disputed amount is found to be payable (in whole or in part), then the Customer must pay that amount within 14 days of receiving notice of the Provider's decision. Invoiced Charges that are not disputed in good faith within six (6) months of the date of an invoice are deemed to be correct.
- 9.7. RightServ may offset any amounts payable to the Customer against any outstanding Charges.

10. CREDIT ASPECTS

- 10.1. During the term of the Agreement, the Customer consents to RightServ obtaining at any time a credit report from an external credit reporting agency.
- 10.2. If an unfavourable credit report is obtained, RightServ reserves the right to:
 - 10.2.1 require the Customer to provide a Deposit, Security or to increase the amount of any existing Deposit; or
 - 10.2.2 impose a Credit Limit for any Charges that may be incurred under the Agreement.
- 10.3. be able to terminate the services should the above terms not be met within 7 days of notice thereof to the Customer.

11. CUSTOMER OBLIGATIONS

- 11.1. The Customer is responsible for:
 - 11.1.1 controlling access to any passwords provided by RightServ (including but not limited to the Customer's personal identification number(s)); and
 - 11.1.2 all Charges, even if it resells, or distributes any of the Services.

- 11.2. The Customer must comply with any Acceptable Use Policies that are applicable to the Services.
- 11.3. The Customer is solely responsible for ensuring the security of any communications made using the Services or any Customer Equipment connected to the Services. RightServ does not guarantee or warrant the security or privacy of any communications.
- 11.4. The Customer must not knowingly introduce any virus, worm, trojan horse or other malicious code into the Services.

12. RIGHTSERVE EQUIPMENT

- 12.1. The Customer is granted a non-exclusive, non-transferable, restricted license to use the RightServ Equipment in accordance with the Agreement for its business purposes only.
- 12.2. Title to the RightServ Equipment is retained by RightServ and nothing in the Agreement will be construed as conferring ownership upon the Customer.
- 12.3. RightServ reserves all rights in the RightServ Equipment not expressly granted to the Customer.
- 12.4. The Customer agrees to:
 - 12.4.1 operate the RightServ Equipment with due care and skill; and by using appropriately qualified personnel;
 - 12.4.2 comply with all RightServ's reasonable directions in respect of any RightServ equipment;
 - 12.4.3 not allow any RightServ Equipment to be altered, repaired, serviced or moved other than by personnel approved by RightServ;
 - 12.4.4 not transfer, sell, hire or give away any RightServ Equipment or any of its rights in any RightServ Equipment; and
 - 12.4.5 assume risk of loss or damage to any RightServ Equipment while it is in its possession or control (except to the extent of RightServ's negligence).

13. CO-LOCATION SERVICES

- 13.1. Where the Customer has a requirement for placement of Customer Equipment at the data centre Location, RightServ will determine the physical space required for the Customer's Customer Equipment and, subject to the Customer's compliance with this Agreement, agrees to reserve for the Customer's use an agreed physical space (rack units) at the Location
- 13.2. Unless otherwise specified in the Schedule Details, RightServ agrees to provide:
 - 13.2.1 all RightServ Equipment for the Service
 - 13.2.2 Racks that conform with standard 19 inch rack specifications for use in installing and operating the Customer Equipment; and
 - 13.2.3 Adequate shelving, power strips and other required accessories for Customer Equipment and RightServ Equipment
- 13.3. Title to each item of Customer Equipment will remain with the Customer or the Customer's lessor and RightServ will have no right, title or interest in or to the Customer Equipment, except as expressly provided in the Agreement or Service Order; and
- 13.4. The rights provided to the Customer under this clause 13 will not give rise to any right, title or interest on the Customer's part in or to the Location or any RightServ Equipment.
- 13.5. ACCESS TO DATA CENTRE LOCATION
 - 13.5.1 The Customer, or authorised representatives, may, upon reasonable advance notice, access the Location to install, inspect and maintain the Customer Equipment located therein, provided a RightServ employee is present at all times. RightServ has the right to have a representative present at any and all such inspections, and to charge the Customer an access fee at the specified hourly rate in the Service Order;
 - 13.5.2 The Customer must comply with RightServ security and safety requirements and procedures communicated to the Customer by RightServ in relation to any access to the Location by the Customer. The Customer are responsible for ensuring that any authorised representative also complies with the obligations of this Agreement; and

- 13.5.3 RightServ may at any time deny or terminate access where the Customer does not comply with prescribed obligations and procedures.
- 13.6. DELIVERY OF CUSTOMER EQUIPMENT TO THE LOCATION
- 13.7. Where the Customer is providing Customer Equipment to the Location:
- 13.7.1 the Customer will provide RightServ with two weeks written notice prior to delivery of Customer Equipment, except as otherwise agreed in the Service Order;
- 13.7.2 the Customer must make all arrangements for the delivery of Customer Equipment to the Location;
- 13.7.3 the Customer must pay all costs and expenses associated with the delivery of Customer Equipment; and
- 13.7.4 the Customer accepts full responsibility for all equipment delivered to the Location and/or accepted on the Customer behalf by RightServ (including where the material delivered does not conform to the Customer's specifications or is otherwise faulty).
- 13.8. INSTALLATION OF CUSTOMER EQUIPMENT
- 13.8.1 Unless otherwise agreed by the parties, the Customer, or the Customer's authorised representative, are responsible for installing Customer Equipment at the Location.
- 13.9. USER ACCEPTANCE TESTS
- 13.9.1 Upon completion of the installation of the Customer Equipment, the Customer must, at the Customer's own expense:
- 13.9.2 perform tests to assess whether the Customer Equipment performs to the equipment manufacturer's specification; and
- 13.9.3 perform all user acceptance tests ("Tests").
- 13.9.4 RightServ, or RightServ's representative, will have the right to be present during such Tests and, upon request, will assist the Customer in the performance of the Tests at the then current hourly rates for such Services.
- 13.9.5 The Customer must, at the Customer's own expense, make any necessary changes to Customer Equipment that do not satisfy the tests required by this clause.
- 13.10. MAINTENANCE SERVICES
- 13.10.1 Unless otherwise agreed by the parties, the Customer, or the Customer's authorised representative is responsible for all maintenance and operation of the Customer Equipment. This includes supplier hardware maintenance contracts and all costs attached thereto.
- 13.10.2 The Customer warrants that all Customer Equipment have current hardware maintenance contracts, and copies of these contracts may be requested by RightServ for verification
- 13.10.3 The Customer, or authorised representative, must not interfere with or damage any RightServ Equipment (including where that Equipment is contained in the same rack(s) as the Customer Equipment) while accessing the Customer Equipment. The customer indemnify RightServ for any loss incurred (including our reasonable legal expenses) if the Customer breaches this obligation.
- 13.11. CUSTOMER RESPONSIBILITIES FOR CO-LOCATION
- 13.11.1 The Customer will only use and permit authorised third parties to use the Customer Equipment solely as expressly permitted under this Agreement;
- 13.11.2 The Customer will be responsible for communicating with the Customer's own users and for handling all complaints and issue reports made by such users;
- 13.11.3 The Customer must comply with RightServ and authorised representatives security procedures and standards, with respect to Customer's Equipment that interfaces with the RightServ Equipment;
- 13.11.4 The Customer warrants that all operating software and application software is properly licensed. The Customer must provide, upon request by RightServ, confirmation

acceptable to RightServ, that all operating software and application software running on the Customer Equipment and RightServ equipment is properly licensed.

13.12. NETWORK CONNECTIVITY

13.12.1 RightServ will connect the Customer Equipment to the Internet (Internet Access) using a shared Ethernet network segment;

13.12.2 RightServ will connect the Customer Equipment to the Data Network using a shared Ethernet port.

13.13. ADDITIONAL EQUIPMENT

13.13.1 The Customer may request approval from time to time for the installation of additional Customer Equipment at the Location by submitting a written Service Order. If RightServ accept such a Service Order, it will be incorporated into this Agreement and the Customer must comply with all terms as varied from time to time.

13.14. RELOCATION

13.14.1 Subject to this clause, RightServ may at any time, on 2 weeks prior written notice to the Customer, require the Customer Equipment to be moved to another site within the Location. RightServ will pay the reasonable costs of any such relocation.

13.14.2 If RightServ agrees to provide additional rack space for the Customer's use, RightServ may relocate all the Customer Equipment to enable all such equipment to be in the same area of the Location. All costs and expenses arising in connection with such relocation must be paid by the Customer unless otherwise agreed in the Service Order.

13.15. REMOVAL OF CUSTOMER EQUIPMENT

13.15.1 Unless otherwise agreed by the parties, the Customer will, at the Customer's own expense, remove all Customer Equipment from the Location within 14 days after the date of expiration or Termination of this Agreement for any reason.

13.15.2 The customer will reimburse RightServ for all reasonable expenses that RightServ incur in assisting the Customer in removing the Customer Equipment from the Location.

13.15.3 If the Customer fail to remove the Customer Equipment as provided above, RightServ may, with 10 Business Days notice to the Customer, remove and store the Customer Equipment at the Customer's expense.

13.15.4 Unless otherwise agreed by us, title to and all ownership rights in the Customer Equipment will transfer to RightServ at no charge if the Customer Equipment is not removed by the Customer within 30 days after the termination of this Agreement.

14. INFORMATION DISCLOSURE

14.1. Subject to the Privacy Act 1988 (Privacy Act) and except in relation to the Customer Content, the Customer:

14.1.1 will promptly provide RightServ with all information that RightServ (including RightServ's contractors and agents), may reasonably require in order to fulfill RightServ's obligations under the Agreement and any of RightServ's contractual obligations to any Provider or other supplier;

14.1.2 authorises RightServ to obtain from or give to any credit providers named in a credit report and/or Reporting Agency, information about the Customer's credit arrangements which may include any information as to the Customer's creditworthiness, credit standing, credit history or credit capacity that credit providers and/or Reporting Agencies are allowed to give or receive under the Privacy Act.

14.2. The Customer consents to RightServ collecting and authorises RightServ to use, exchange or disclose any information provided by the Customer (other than Customer Content), with RightServ's Providers, contractors and agents to the extent necessary to install and supply the Services.

14.3. In addition, the Customer:

14.3.1 consents to RightServ disclosing any information in relation to the Customer's services or account to the extent required by any law enforcement agency by prior written notification to the Customer of the request;

- 14.3.2 will co-operate with RightServ if RightServ is required to comply with any such direction (which may include suspending Services); and
- 14.3.3 will provide reasonable assistance in any investigation by a regulatory authority in connection with the supply of the Services in which RightServ is involved, whether or not required by law to do so.

15. CONFIDENTIALITY

- 15.1. The Customer acknowledges that the contents of the Agreement and any pricing or product information provided by RightServ (including in any proposal), constitutes commercially sensitive and confidential information, except to the extent that it is published publicly.
- 15.2. The Customer agrees not to disclose that information to any third party without RightServ's prior written consent, unless legally compelled to do so, and then only after providing notice to RightServ in writing.
- 15.3. RightServ acknowledges that the information supplied by the Customer or received by RightServ from a Provider in relation to the Services is commercially sensitive and may contain confidential information. Subject to its rights under clause 14, RightServ agrees not to disclose to any third party any information provided by the Customer and that the Customer asserts is confidential information without the Customer's prior written consent, unless RightServ is legally compelled to do so, and then only after providing notice to the Customer of the making of that order.

16. TERMINATION

- 16.1. RightServ is entitled to terminate the Agreement or any Services with immediate effect without notice to the Customer if:
 - 16.1.1 the Customer fails to pay in full the Charges due under an accepted Purchase Order within 14 days of the end of the Payment Period;
 - 16.1.2 the Customer breaches the Agreement;
 - 16.1.3 the Customer is subject to an Insolvency Event; or
 - 16.1.4 the Customer breaches any license, permit, authorisation or law relating to the use of any of the Services;
- 16.2. The Customer is entitled to cancel any Services with immediate effect on giving notice to RightServ if RightServ is subject to an Insolvency Event.
- 16.3. Subject to clause 16.4, either party is entitled to cancel any Service without reason by providing 60 days prior notice.
- 16.4. On cancellation or termination of Services for any reason:
 - 16.4.1 RightServ may cease providing the Services with immediate effect;
 - 16.4.2 all Charges and any other amounts owing by the Customer for those Services, including the amounts calculated in accordance with clause 16.5, are immediately due and payable;
 - 16.4.3 the Customer must, in relation to the cancelled Service Order, immediately return to RightServ or permit RightServ to take possession of all RightServ Equipment.
- 16.5. If the Customer cancels some or all of the Services other than in accordance with clauses 2.6 or 2.7 of these Trading Terms, or RightServ terminates the Agreement or any Services in accordance with clause 16.1, the Customer will pay to RightServ, the following amount:
 - 16.5.1 if less than 12 months has expired from the Service Start Date, the Minimum Charges, less any amounts already paid by the Customer in this regard;
 - 16.5.2 if the date of termination or cancellation is more than 12 months after the Service Start Date but before 75% of the Minimum Period has expired, 75% of the Minimum Charges plus a pro rata amount of any waived installation charges to allow for the remainder of the Term from the date of termination or cancellation, less any amounts already paid by the Customer in this regard; or
 - 16.5.3 if the date of termination or cancellation is more than 12 months after the Service Start Date and after 75% of the Minimum Period has expired, nil.

- 16.6. The Customer accepts that under no circumstances will pre-paid amounts for Services made by the Customer prior to the termination date, be refunded by RightServ.
 - 16.7. The Customer acknowledges that, termination or cancellation of the Agreement or a Service Order (other than for the Customer's default), does not mean that the Services will automatically cease to be supplied. In addition to terminating or canceling the Agreement, the relevant Service must be either:
 - 16.7.1 be transferred to a new service provider; and/or
 - 16.7.2 be cancelled on the Customer's written direction and the Customer remains liable for all Charges incurred in relation to the Services until they are either cancelled, or transferred to the new service provider, notwithstanding any termination of the Agreement.
 - 16.8. The Customer acknowledges it is the responsibility of the new service provider to arrange and complete the transfer.
 - 16.9. The Agreement continues, unless earlier terminated, until all Services have been cancelled or transferred.
17. LIMITATION OF LIABILITY
- 17.1. To the extent permitted by law, RightServ is not liable to the Customer (or any party claiming through the Customer), contract or otherwise for any loss of profits, data, goodwill, business or anticipated savings or any other indirect or consequential damage, even if such loss or damage was reasonably foreseeable.
 - 17.2. To the extent permitted by law, RightServ's liability to the Customer in relation to the Services and this Agreement is limited (at RightServ's option) to re-supplying the Services or paying the cost of having the Services re-supplied;
 - 17.3. If, notwithstanding clause 17.2, RightServ is liable to the Customer in relation to the Services or this Agreement, RightServ's liability is limited to a sum equal to the total amount paid or payable by the Customer under the Agreement in relation to the Services affected by the circumstances giving rise to the claim for the period of 12 months prior to the date of the liability arising.
 - 17.4. Notwithstanding any other provision of this Agreement, the Customer is liable to RightServ, for and indemnifies RightServ and its directors, officers, employees and agents against any loss, damage, claim, proceeding and cost (including all legal costs on an indemnity basis), including as a result of a third party claim against RightServ arising out of:
 - 17.4.1 the use or attempted use (including fraudulent use), by any person (including the Customer), of the Service or Equipment connected to the Service;
 - 17.4.2 any information, data or material produced, stored, transmitted or downloaded by the Customer or any other person using the Services;
 - 17.4.3 any breach by the Customer of the Agreement, including the Acceptable Use Policies; and
 - 17.4.4 any loss or damage to any RightServ Equipment while it is in its possession or control (except to the extent of RightServ's negligence).
18. FORCE MAJEURE
- 18.1. Notwithstanding any other provision in the Agreement, neither party will be liable for any delay or failure in performance of any part of the Agreement, other than for any delay or failure in an obligation to pay money, to the extent that such delay or failure is attributable to a Force Majeure Event.
 - 18.2. Each party's obligations under this agreement affected by the Force Majeure Event will be suspended to the extent of the Force Majeure Event. The parties will work together in good faith to minimise the impact of any Force Majeure Event (including implementing any commercially practicable workarounds).
19. NOTICES
- 19.1. All notices, consents, requests and other communications required to be given under the Agreement must be in writing and delivered or sent by mail or email to the Customer's address, as appears on the Service Order, or to RightServ at: RightServ Pty Limited, L6, 275 Alfred St, North Sydney, 2090. E-mail: info@rightserv.com.au.

20. ENTIRE AGREEMENT

- 20.1. The Agreement constitutes the entire agreement and understanding between the Customer and RightServ in relation to its subject matter. All previous negotiations and representations (express or implied), are excluded to the maximum extent permissible at law or in equity.
- 20.2. If a part of the Agreement is held to be void, voidable or unenforceable or an invalid part severed, the remainder of the Agreement is not affected.

21. ASSIGNMENT

- 21.1. RightServ may at any time assign the whole or any part of the Agreement to a related body corporate or a third party without the Customer's consent.
- 21.2. The Customer may assign or deal with its rights or obligations under the Agreement with RightServ's prior written consent, which RightServ will not unreasonably withhold.

22. VARIATION

- 22.1. RightServ may vary this Agreement while the Services continue to be provided by giving the Customer 30 days prior notice. The Customer may object to the variation provided that RightServ receives the Customer's objection within 10 days of RightServ's notice. If the Customer objects, then the parties will negotiate in good faith to agree on an acceptable variation. If no agreement is reached before expiry of the original 30 day notice period, then RightServ reserves the right to terminate the Agreement upon 30 days notice.
- 22.2. No waiver by RightServ, whether express or implied, of any provision in the Agreement or of any breach or default by the Customer will constitute a continuing waiver or a waiver of any other provision of the Agreement, unless expressly so provided in writing and signed by RightServ's authorised representative.
- 22.3. The laws of New South Wales govern the Agreement and both parties irrevocably submit to the exclusive jurisdiction of the courts of New South Wales.

23. PRECEDENCE

- 23.1. In the event of any inconsistency between a written variation to the Trading Terms, Acceptable Use Policies, a Service Order, a Pricing Schedule or Service Order Confirmation, the order of precedence between them will be as listed in this clause.

24. INTERPRETATION

- 24.1. Interpretation in the Agreement means:
 - 24.1.1 the singular includes the plural and vice versa;
 - 24.1.2 a reference to a document includes any amendment, replacement or novation of it;
 - 24.1.3 a reference to a party includes its successors and assigns;
 - 24.1.4 all
 - 24.1.5 a reference to a statutory or regulatory authority includes any replacement or successor authority.

25. ACCEPTABLE USAGE POLICY

- 25.1. The Acceptable Usage Policy (AUP) outlines the activities for which RightServ servers and associated Internet network infrastructure may and may not be used.
- 25.2. Violation of the AUP may result in immediate suspension of the Services and/or removal of Customer content.
- 25.3. This policy is strongly enforced by RightServ, and is subject to change at any time. Usage of the Services indicates full understanding and acceptance of the AUP.
- 25.4. RightServ systems and networks may not be used to store, post, transmit or retransmit any of the following content:
 - 25.4.1 Illegal Material - Including, but not limited to, copyrighted works, commercial audio, video, and music files. Also includes any material in violation of State or Local regulation.
 - 25.4.2 Adult Material - The definition of 'Adult Material' is left entirely to the discretion of RightServ.

- 25.4.3 Warez Material - Including, but not limited to, pirated software, hacking software, cracking information, phreaking, emulators, backdoor information, password cracking, IP Spoofing software, and encryption of any of the above. Links to sites which do contain any of the above are also prohibited.
- 25.5. the Customer will not take any part in any of the following activities while connected to or on behalf of any site, user, system, or domain associated in any way with RightServ, it's systems, or it's network:
 - 25.5.1 Spam - Including, but not limited to, unsolicited email, bulk email posts, mailing list abuse, bulk newsgroup posts, inappropriate newsgroup posts, discussion forum abuse;
 - 25.5.2 System and Network Security- Including, but not limited to, any attempt to access any part of RightServ systems or network other than those designated by the company for use with direct regards to website and/or email hosting and operation;
 - 25.5.3 Cracking - Including, but not limited to, attempting to access an account or retrieve data on any host or network, whether local or on the Internet, to which the customer has not been given express permission to access;
 - 25.5.4 Probing - Including, but not limited to, probing, monitoring, or network traffic capturing/filtering of any hosts;
 - 25.5.5 Password Sharing - Including, but not limited to, making the Customer's account's password(s) available to anyone else, or making available any usernames and passwords to any hosts or websites on the Internet to which the general public are not entitled.

26. DICTIONARY

- 26.1. **Acceptable Use Policies** means RightServ's Acceptable Use Policies as documented from time to time.
- 26.2. **Agreement** means the agreement between RightServ and the Customer which includes the Trading Terms, each accepted Service Order and Service Order Confirmation and Pricing Schedule, and the Acceptable Use Policies.
- 26.3. **Charges** means the amounts payable by the Customer for the provision of the Services and Consulting Services. Charges may be payable in advance or in arrears, and are specified in the Pricing Schedule.
- 26.4. **Change Control** means planned and unplanned actions taken by RightServ to change the configuration of the Services, as defined in the RightServ Change Control Process document.
- 26.5. **Consulting Services** means any or all services supplied by RightServ, charged at a fixed cost or hourly rate, in the course of, or related to, the supply of the Services to the Customer, or any other services which may be provided by RightServ as agreed with the Customer from time to time. Consulting Services may be identified in an applicable Service Schedule.
- 26.6. **Completion Notice** is a notice issued by RightServ notifying the date that the Services are ready for use.
- 26.7. **CPI** means the Consumer Price Index, a measure of inflation, as publically released from time to time.
- 26.8. **Credit Limit** means, where applicable, the maximum credit limit provided by RightServ to the Customer for the Services.
- 26.9. **Customer** means the person or company within the meaning of section 9 of the Corporations Act 2001 and which uses the Services. It includes any additional person or company nominated by the Customer, whether orally or in writing, to receive the Services, or as detailed in the Service Order.
- 26.10. **Customer Content** means any data or software loaded onto the Customer Equipment from time to time, including, but not limited to, all text, words, names, likenesses, trademarks, logos, artwork, graphics, video, audio, HTML coding, domain names, image maps, links, software applications and any other content whatsoever.
- 26.11. **Customer Equipment** means all hardware, devices, software, licensing and data owned by the Customer.
- 26.12. **Data Network** means the private IP network, made available at the Location.
- 26.13. **Deposit** means: (a) an irrevocable standby letter of credit issued by an Australian licensed bank; (b) an unconditional and irrevocable bank guarantee issued by a licensed Australian bank; and/or (c) a directors' guarantee in a form acceptable to RightServ.
- 26.14. **Emergency Change Control** is a reactive change control process required as a result of unpredictable circumstances affecting the performance, security or stability of the Service, and that may result in the Services being unavailable for a period of time.
- 26.15. **Equipment** means hardware, software and related security and connectivity devices dedicated to the delivery of the Service.
- 26.16. **Force Majeure Event** means any cause beyond a party's reasonable control affecting the performance of its obligations under this Agreement, including, but not limited to, fire, flood, explosion, accident, war, strike, embargo, governmental requirement, civil or military authority, Act of God, inability to secure materials, industrial disputes, and acts or omissions of other providers of telecommunications services.
- 26.17. **Insolvency Event** means any of the following events in relation to a party: (a) having a receiver and/or manager appointed over any of its assets and property; (b) having a liquidator appointed (whether under a creditor's petition, voluntary liquidation or otherwise); (c) passing a resolution for winding-up (otherwise than for a purpose of amalgamation or reconstruction); (d) being placed under any form of insolvency administration; (e) entering into any composition or arrangement with its creditors; (f) becoming insolvent; or (g) ceasing to carry on business.
- 26.18. **Internet Access** means the provision of a dedicated or shared port and traffic plan, allowing access to the Internet.

- 26.19. **Location** means the Macquarie Telecom data centre (Intellicentre) situated at L15 and L16, 477 Pitt St, Sydney, NSW, Australia, 2000
- 26.20. **Service Start Date** means the date from which RightServ expects to supply the Services, which may or may not be the same as the date requested by the Customer.
- 26.21. **RightServ** means RightServe Pty Limited ACN 116 624 198 and includes RightServ's employees, subcontractors and authorised representatives.
- 26.22. **RightServ Equipment** means any server, networking or other equipment or devices supplied by RightServ for the purpose of providing the Services.
- 26.23. **RightServ Trading Terms**, or Trading Terms, means these terms and conditions.
- 26.24. **Minimum Charges** means, in relation to the Services, the sum of: (a) all fixed one-off and/or periodic Charges specified in the applicable Pricing Schedule that would be payable if the Services were provided for the whole of the Minimum Period or, if applicable any Renewal Period, less any such Charges already paid by the Customer during the relevant Period; and (b) any installation charges that may have been waived by RightServ on the basis that the relevant Services continue for the duration of the Minimum Period.
- 26.25. **Minimum Period** means: A period of 12 months or such longer period as specified in the Service Order, commencing on the Service Start Date;
- 26.26. **Outage** is a period of time that the supply of the Services to the Customer is interrupted for more than 5 seconds in duration, or a Planned Outage or Emergency Outage.
- 26.27. **Payment Period** means the period for payment of RightServ's invoices specified in the Service Order. It is 14 days from receipt of the invoice if no other date is specified.
- 26.28. **Period** means the Minimum Period and each subsequent Renewal Period.
- 26.29. **Planned Outage** means a period of time that RightServ may interrupt some or all of its supply of the Services to the Customer for routine maintenance or up-grading or other similar processes according to the then current Change Management Process document as defined by RightServ.
- 26.30. **Pricing Schedule** means the Schedule attached to each Service Order Form, that specifies the Charges.
- 26.31. **Provider** means a hosting or telecommunications provider or other supplier used by RightServ to provide some or all of the Services to a Customer.
- 26.32. **Renewal Date** means, in respect of any Services the date on which the Minimum Period or any subsequent Renewal Period expires for the relevant Services.
- 26.33. **Renewal Period** unless a longer term is agreed in writing is a period of 12 months.
- 26.34. **Security** means any personal guarantee, Director's Guarantee, Bill of Sale, Charge, undertaking or mortgage.
- 26.35. **Security Services** means Internet firewall and associated policies.
- 26.36. **Server Hosting** means the provision of access to shared or dedicated server/s by RightServ for purposes of online access to Customer specific application/s.
- 26.37. **Service Level** means the reliability and performance standard that applies in regard to RightServ's delivery of the Services to the Customer, as selected by the Customer in the Service Order and detailed in the applicable Service Level Guarantee.
- 26.38. **Service Level Guarantee** means the extent of the guarantee given by RightServ for the Services, having regard to the Service Level, as modified by RightServ from time to time.
- 26.39. **Service Order** means the service order form document, completed and signed by the Customer, placed on RightServ for any Service (or any combination of Services) in the manner prescribed by RightServ from time to time, detailing the Services required by the Customer.
- 26.40. **Service Order Confirmation** means a written or emailed confirmation form issued by RightServ under clause 2.2 of the Trading Terms.
- 26.41. **Services** mean the Server Hosting, Co-location, Internet Access, Security Services and Consulting Services or related services, as specified in the Service Order Form, provided by RightServ to the Customer.

- 26.42. **Service Start Date** means the date from which RightServ commences the supply of Services to the Customer, the Customer has accepted the configuration and availability of the Services in whole or in part, and the Charges for those Services are billable to the Customer.
- 26.43. **Term** means the Minimum Period, unless specified in the Service Order, and each successive Renewal Period.