



IRServer

YOUR CHECKER ONLINE

CUSTOMER RELATIONSHIP AGREEMENT (CRA)

CUSTOMER RELATIONSHIP AGREEMENT

1. CUSTOMER RELATIONSHIP AGREEMENT ("CRA")

- 1.1.** Our CRA sets out the standard terms and conditions on which we supply our Services to our customers.
- 1.2.** This CRA incorporates, and is to be read in conjunction with:
- a. Your Application;
 - b. The Service Description;
 - c. The Sales Order;
 - d. Any orders placed through our website, or by any other means;
 - e. The Service Level Agreement;
 - f. The Co-Location Master Services Agreement (if a valid Co-Location Sales Order is in place);
 - g. The Pricing Schedule;
 - h. Any applicable Service Schedules; and
 - i. Where agreed in writing by both parties, any other document that sets out any terms of our customer relationship.
- 1.3.** This CRA applies from the earlier of:
- a. The time that you make an Application; or
 - b. The time that you first request and receive Services from us.

2. APPLICATION

- 2.1.** You may make an Application to receive Services in one of the following ways:
- a. By completing and submitting an online application or order form on our website;
 - b. By completing and returning paperwork that we have provided to you; or
 - c. Over the phone with our customer representatives.
- 2.2.** We will assess your Application based on a number of factors, including but not limited to the following criteria:
- a. Our Credit Assessment;
 - b. The type of Service requested by you, and its availability to you;
 - c. Where there is a technical limitation on our ability to provide the requested Service to you;
 - d. The accuracy of the information provided by you during our Credit Assessment;
 - e. Any previous relationship that you may have had with us, including through Related Entities; and
 - f. Any other criteria that we may decide is applicable.

- 2.3.** We may accept your Application subject to conditions, including but not limited to a personal guarantee being provided.
- 2.4.** You acknowledge and agree that we may refuse your Application at our sole discretion.
- 2.5.** You warrant that the information provided to us in the Application and the Credit Assessment is true and correct, and that you will advise us as soon as possible if any of the information changes in a material respect during the term of this CRA. You acknowledge and agree that we will act in reliance of the information provided by you.

3. CREDIT ASSESSMENT

- 3.1.** We may request that you provide us with information to enable us to undertake a Credit Assessment. You do not have to provide this information, but if you do not then we may refuse your Application. If you do provide the information, it will be used in accordance with our Privacy Policy and as disclosed in this clause 3.
- 3.2.** Our Credit Assessment may include, but is not limited to, the following:
 - a. Obtaining your credit record;
 - b. Obtaining the credit record of any guarantor; or
 - c. Contacting any credit references that you may nominate, or any other person or entity that we may reasonably believe has relevant information.

4. YOUR OBLIGATIONS

- 4.1.** You warrant and agree that you will:
 - a. Comply with all terms of this CRA, and any other document that forms part of our customer relationship;
 - b. Make all payments due to us on time;
 - c. Reasonably co-operate with us to allow us to provide the Services to you in an efficient and safe manner; and
 - d. Not on-sell our Services unless you have entered into a Reseller Agreement with us.
- 4.2.** You warrant and agree that you will not use, or attempt to use, our Services:
 - a. To commit an offence, or to do anything that is contrary to law;
 - b. In any way which damages or interferes with (or threatens to damage or interfere with) the operation of any of our Services or the operation of any of the services provided to us by a Supplier;
 - c. In any way that may cause loss or damage to another person or entity;
 - d. To transmit, publish or communicate any material which is defamatory, offensive, indecent, abusive, menacing, threatening or unsolicited
 - e. To infringe upon another person's right;
 - f. In any way that would constitute misuse;
 - g. In any way that is contrary to the terms of this CRA or any other document that forms part of our customer relationship.

5. OUR OBLIGATIONS

5.1. We agree that we will do the following:

- a. Comply with all terms of this CRA, and any other document that forms part of the customer relationship; and
- b. Reasonably co-operate with you to provide the Services to you in an efficient and safe manner.

5.2. We are subject to a number of legal obligations which we must comply with. These legal obligations may change from time to time as laws are amended.

5.3. In particular, and without limitation, we may be subject to laws that require us to provide your information to third parties, such as state and federal police and other regulatory authorities. We may also be subject to laws that require us to intercept your communications that are made using the Service.

5.4. We agree that we will not take such actions unless we are required to by law.

5.5. You acknowledge that we may be subject to these legal requirements, and you agree that you will not hold us liable for complying with these legal requirements.

6. FEES AND CHARGES

6.1. You must pay all charges for your Services in accordance with the provisions of the Service Description and the Pricing Schedule.

6.2. If you request additional Services from time to time, whether on a continuous or one off basis, you must pay all applicable charges for those additional Services.

6.3. If you obtain additional Services from us, or from our Suppliers at our expense, without our express knowledge or consent, you acknowledge and agree that you must pay all applicable charges for those additional Services, and any expenses incurred by us.

6.4. You acknowledge and agree that we may charge you reasonable additional fees where we have incurred additional costs as a result of:

- a. A breach of this CRA by you;
- b. A negligent or fraudulent act or omission by you or by any of your employees, agents or contractors;
- c. A failure of any of your equipment, or any third party service providers that are contracted directly to you;
- d. A failure or fluctuation in electrical power supply for any reason except for our negligence; or
- e. Any other circumstances caused by you that are outside of our direct control.

6.5. You acknowledge and agree that GST will be applicable to the Services that we provide to you. If our fees and charges are expressed as an amount exclusive of GST, you must pay GST at the applicable rate in addition to the fees and charges. If our fees and charges are expressed as an amount inclusive of GST, we may vary them in accordance with any changes to the applicable GST rate. Subject to all laws and ATO rulings in place at the relevant time, this clause may not apply if you are based outside USA and the Services are deemed to be exported.

6.6. Changes to pricing are addressed in clause 13 of this CRA.

7. INVOICING

7.1. You acknowledge and agree that:

- a. You will be invoiced for the Services that you receive from us in accordance with your Service Description, the Pricing Schedule or as otherwise agreed in writing;
- b. Fixed recurring charges will be invoiced monthly in advance;
- c. Variable charges, if applicable, will be invoiced in monthly in arrears; and
- d. Set up or installation charges will be invoiced prior the set up or installation taking place.

7.2. We calculate invoices for variable charges on the basis of data recorded, logged or received by us and our Suppliers. We will review our calculation of variable charges if you can show that it is likely that a manifest error has occurred, but otherwise we are not required to review or amend our calculation of variable charges.

7.3. Normally, we will include all charges relating to an invoicing period on the relevant invoice. However, if this is not possible for whatever reason, you acknowledge and agree that the charges may be included in a later invoice, provided that such invoice is issued within twelve (12) months of the date of the relevant Services.

7.4. We may amend and reissue any invoice if an error is subsequently discovered, provided that such invoice is reissued within thirty (30) days of the error being discovered by us and on the basis that:

- a. If you have overpaid, we will, at your determination; credit your account with the overpayment or issue you with a refund within thirty (30) days; and
- b. If you have underpaid, the difference owed to us must be paid by you within thirty (30) days, unless otherwise agreed in writing.

7.5. For the avoidance of doubt, amounts paid in advance pursuant to clause 13.5 are not overpayments for the purpose of clause 7.4.

7.6. If you have a dispute in relation to an invoice, you agree that you will do the following:

- a. You must raise the dispute within six (6) months of receiving the relevant invoice;
- b. You agree that you will not be entitled to make any claim or commence any proceedings, whether under this CRA or at law, unless you have raised the dispute with us within six (6) months of receiving the relevant invoice;
- c. You must provide us with details as to why you are disputing the invoice;
- d. You must provide us with further details upon reasonable request;
- e. You must pay any undisputed portion of the invoice by the due date; and
- f. If we make a determination that there was no error, and the dispute resolution process is not invoked by you, you must pay the outstanding amount within fourteen (14) days of the determination.

7.7. If you have raised a dispute and complied with clause 7.6, we must do the following:

- a. Within a reasonable time frame, carry out the appropriate investigations and make a determination;

- b. If we agree that there is an error, we must, at your determination, provide you with a credit or a refund;
- c. If we do not agree that there is an error, we must provide you with reasonable written reasons as to why that decision was made.

7.8. If we decide, pursuant to clause 7.7, that there is no error or that the error is not to the extent that you have claimed, you have the right to invoke the dispute resolution process set out in clause 23, provided that you do so within fourteen (14) days of receiving our written reasons. If you do not do so, you will be deemed to have accepted our determination.

8. PAYMENTS

- 8.1.** You must pay all invoices by the due date. Unless otherwise agreed in writing, the due date is ten (10) days after the date that the relevant invoice is issued.
- 8.2.** If an invoice is not paid on time, you agree that we may impose the Administration Fee and/or Interest on the outstanding amount, and that the Administration Fee and Interest are genuine pre-estimates of the loss sustained by us as a result of your default.
- 8.3.** If you have authorised us to debit your bank account and that debit is refused for whatever reason, including but not limited to insufficient funds, you agree that you will reimburse us for any bank charges that are imposed on us as a result of the refusal.
- 8.4.** If you have entered into a direct debit arrangement with us, you must inform us of any changes to your credit or debit card, including but not limited to changes in expiry dates, at least two (2) weeks prior to those changes coming into effect. If you are unable, for reasons beyond your control, to provide us with two (2) weeks' notice of the changes, you must advise us of the changes as soon as reasonably possible.
- 8.5.** If we are required to take legal action against you to recover any amounts owed to us, you warrant and agree that you will pay all of our reasonable enforcement costs, including but not limited to legal fees and disbursements, on a full indemnity basis.
- 8.6.** You acknowledge and agree that we may report any payment defaults by you to a credit reporting agency, provided that we comply with the relevant laws.

9. QUALITY AND MAINTENANCE

- 9.1.** We aim to provide, but do not guarantee, continuous and fault-free services.
- 9.2.** The Service Description sets out our maintenance commitments to you and the customer support that we will provide you with.
- 9.3.** You acknowledge and agree that:
 - a. We must carry out regular maintenance on our Network in order to continue to provide the Services;
 - b. We will try to carry out maintenance outside of normal business hours, but there may be circumstances where this isn't reasonably possible; and
 - c. Your rights in relation to a disruption to your Services are addressed in the Service Level Agreement.
- 9.4.** You acknowledge and agree that we may relocate between data centres from time to time, and at our sole discretion, provided that we give you at least thirty (30) days' notice. You agree that:

- a. You will comply with our reasonable directions, and do all things reasonably necessary, to assist with the relocation and to minimise disruption to your Services;
- b. Your sole remedies in relation to the relocation are set out in the Service Level Agreement, the Master Services Agreement (but only if applicable to your Services), and in clause 20.2.d; and
- c. Without derogating from clause 9.4.b, if your Services are terminated pursuant to clause 20.2.d, we will act reasonably to assist you with transferring your services to another provider.

9.5. If you experience a fault in your Service, you may report it to us by phone, email or through any other means made available by us from time to time.

9.6. You acknowledge and agree that:

- a. Before reporting a fault to us, you must take all reasonable steps to ensure that the fault is not in, or caused by, any of your equipment;
- b. Any costs that we incur due to your incorrect reporting of faults may be charged to you;
- c. We are not responsible for rectifying any fault in the Service where that fault arising in, or is caused by, your equipment or any third party provider engaged directly by you;
- d. We are not responsible for any support that is outside of the scope of our written agreement with you;
- e. we are not responsible for the maintenance, repair or proper functioning of your equipment; and
- f. Unless specifically agreed in writing, we are not responsible for the security of your equipment.

10. SECURITY

10.1. Subject to clause 10.2, you acknowledge and agree that IRServer does not warrant that the Services meet your technical requirements, and that you are required to rely on your own knowledge and expertise when ordering and using Services.

10.2. If you request that IRServer provide technical advice at any time, you agree that:

- a. Additional charges may apply, which will be disclosed to you before the technical advice is provided;
- b. You may be required to enter into a Service Schedule as a condition of the technical advice being provided;
- c. You must supply all relevant information regarding your technical requirements in a timely manner to enable us to provide accurate technical advice. If you do not supply all of the relevant information, and if our technical advice would have been different if all of the relevant information had been provided, you agree that we are not liable for any loss or damage that may result.

10.3. You acknowledge and agree that we do not provide you with any security for your Services, other than the physical security for the hardware in the relevant data centre, unless you have purchased a Managed Security Service from IRServer.

- 10.4.** You warrant and agree that you are responsible for managing the security for your Services, unless otherwise agreed in writing.

11. POLICIES

- 11.1.** We may provide Policies from time to time in relation to the use of the Services and any related matters.
- 11.2.** You acknowledge and agree that you will comply with any applicable Policies, and that the intent of these Policies is to assist you with using the Services effectively.

12. CHANGES TO THIS CRA

- 12.1.** If we wish to make any changes to your CRA or any of its schedules, we must provide you with at least thirty (30) days' notice in writing.
- 12.2.** If you do not advise us within that thirty (30) day period that you object to the changes to your CRA, they will take effect.
- 12.3.** If you object to the changes to your CRA, you agree that the following will apply:
- a. You must advise us in writing of your objections within that thirty (30) day period;
 - b. We will, at our sole discretion, either:
 - i. provide you with notice that you are permitted to terminate this CRA, including any remaining fixed term, without penalty provided that such termination occurs within fourteen (14) days; or
 - ii. provide you with notice that the changes will not occur to your CRA and continue on the basis of the existing terms of the CRA;
 - c. The terms of the existing CRA will remain in effect during this process.
- 12.4.** This clause does not apply to changes in pricing, which are addressed in clause 13.

13. CHANGES TO PRICING

- 13.1.** The charges for the Services that we provide to you are set out in the Pricing Schedule and Sales Order.
- 13.2.** Subject to clause 13.3, if you are on a Fixed Term Contract, your Pricing Schedule will remain fixed for the contracted Services, unless we have otherwise agreed with you in writing.
- 13.3.** If your Fixed Term Contract contains software licencing that we obtain from third parties, you acknowledge and agree that we may pass on any price increases imposed on us by those third parties. We agree to provide you with at least thirty (30) days' notice before passing on those price increases, and to only increase our pricing in proportion to the price increase that is imposed on us.
- 13.4.** If you are on a Monthly Contract, we may change your Pricing Schedule with at least thirty (30) days' notice. If you do not accept the changes to your Pricing Schedule, you may terminate your Monthly Contract with seven (7) days' notice, provided that such notice is given in writing during our thirty (30) day notice period.
- 13.5.** We may, at our sole discretion, offer to provide discounts if payments are made in advance. If you accept such an offer, then the provisions of clause 13.6 and clause 13.7 apply.

13.6. If you are on a Monthly Contract, and it is terminated before all of the advance payments are used, then you may elect one of the following:

- a. To apply the remaining advance payments as a credit to your account against future services; or
- b. To have the remaining advance payments refunded to you, less an adjustment for all of the discounts received as a result of the payments being made in advance.

13.7. If you are on a Fixed Term Contract, and it is terminated before the end of the term due to your breach, then:

- a. You are not entitled to any refund or credit for advance payments; and
- b. The advance payments will be applied against any amounts owed by you as a result of your breach of the Fixed Term Contract.

13.8. This clause does not apply to changes in the GST rate as set out in clause 6.5.

14. PPSR

14.1. This clause 14 applies if we provide you with credit. If we invoice you in advance, and if you consistently make payments in accordance with the invoice terms, we agree that this clause 14 will not apply.

14.2. In order to secure payments if credit is provided, and the performance of your present and future obligations to us, you agree to grant a security interest to IRServer Pty Ltd in all present and after acquired property.

14.3. You consent to us registering its security interest on the Personal Property Securities Register, and agree to provide all assistance required by us to facilitate registration, and to do all things required to ensure that the registration is valid.

14.4. You agree that the registration of the security interest will remain in place until all of your obligations to us, however arising, have been discharged in full, and you have requested the release of the registration of the security interest in writing. If the registration of the security interest is discharged, you acknowledge and agree that we have no obligation to provide you with further credit.

14.5. You agree to waive your rights to receive any notice under *Personal Property Securities Act 2009 (Cth)*, including but not limited to notice of verification statement, unless the notice is required by *Personal Property Securities Act 2009 (Cth)* and cannot be excluded.

14.6. For the avoidance of doubt, this clause 14 constitutes a security agreement as defined in *Personal Property Securities Act 2009 (Cth)*.

15. AMERICAN CONSUMER LAW

15.1. If you are an individual or a small business, as defined in the American Consumer Law, you have certain rights in relation to agreements such as this CRA.

15.2. We have prepared this CRA, and the associated documents referred to in clause 1.1, so that they are fair and in accordance with your rights and our obligations under the American Consumer Law.

15.3. We acknowledge that we have a wide range of customers who all have different circumstances. If you believe that any terms in this CRA are unfair, within the meaning of the American Consumer Law, please let us know and we will discuss your concerns with you.

- 15.4.** If you advise us that you believe that a term is unfair, and we agree with your position, we will negotiate the appropriate amendments with you.
- 15.5.** If we do not agree with your position that a term is unfair, there is a dispute resolution mechanism available to you as set out in clause 23 of this CRA. This dispute resolution process is in addition to your rights at law.

16. EQUIPMENT

- 16.1.** In order to provide you with the Services, we may use Products that we own or lease.
- 16.2.** Where we use our Products in connection with providing you with the Service:
- a. Title in the Products is not transferred to you;
 - b. You must comply with our reasonable directions in relation to the use of the Products;
 - c. You must only use the Products in accordance with the manufacturer's specifications, the terms of any warranty and the terms of any lease or similar arrangement that we are subject to;
 - d. You must not part with possession of the Products, except to us or in accordance with our written directions;
 - e. You must not create any encumbrances over our Products;
 - f. You must allow us to inspect, test, service, modify, repair, remove or replace our Products when reasonably necessary;
 - g. You must do all things necessary to allow us to recover our Products after your Service is cancelled;
 - h. You must ensure that the Products will not be altered, repaired, serviced, moved or disconnected except by personnel approved by us in writing; and
 - i. You must ensure that you have all consents and approvals necessary for the installation and use of the Products in connection with the Services.
- 16.3.** You must ensure that all equipment that you use in connection with the Services, other than our Products, complies with all laws and relevant technical standards. You must also comply with all reasonable directions issued by us, including making any changes necessary to your equipment to avoid any dangers or any interference that it may cause.
- 16.4.** If you do not comply with any of your obligations under this clause 16, we may disconnect your equipment if it is causing, or likely to cause, a Disruption. We will take all reasonable steps to provide you with notice if this is to occur, but you acknowledge and agree that we may not be able to provide you with notice if we reasonably believe that your equipment needs to be disconnected urgently in order to mitigate our loss or that of our other customers.

17. THIRD PARTY SUPPLIERS

- 17.1.** We obtain Third Party Products and Services that we use, and permit you to use, as part of our Services. This includes, but is not limited to, software licences.
- 17.2.** We confirm that your agreement is with IRServer, and not with any Suppliers (unless you enter into separate agreements with them). We are responsible for providing technical

support for the supplied Third Party Products and Services, unless other arrangements have been agreed to.

17.3. It is a condition of our agreements with Suppliers that you agree to certain obligations in relation to the Third Party Products and Services.

17.4. You warrant and agree that you will comply with the following:

- a. You must not remove, modify or obscure any copyright, trademark or other proprietary rights notices that are contained in or on the Third Party Products and Services;
- b. You must not use any Supplier logos in any manner, without prior written consent;
- c. You must not undertake any action that may diminish or interfere with any Supplier's right, title or interest in any intellectual property, including but not limited to copyright, trademarks or patents;
- d. If you refer to any Third Party Products and Services in any written or visual communication, you must use the appropriate trademark, product descriptor and trademark symbol, and clearly indicate the Supplier's ownership of such marks;
- e. You must not reverse engineer, decompile or disassemble the Third Party Products and Services, except to the extent that such activity is expressly permitted by the applicable law; and
- f. You must disclaim, to the extent permitted by the applicable law, all warranties by the Suppliers and any liability by the Suppliers for any damages, whether direct, indirect or consequential, arising from the Third Party Products and Services.

17.5. If you require any further information about our Suppliers and the terms of our agreements with them, please contact us. We will provide you with any relevant information connected to your Services that isn't commercially sensitive, unless otherwise required by law.

18. HIGH RISK USE

18.1. You warrant and agree that you will not use our Services in any application or situation where interruption to, or failure of, Services, could lead to death or serious injury of any person, or to severe property or environmental damage.

18.2. For the avoidance of doubt, the prohibition in clause 18.1 does not include the use of our Services for administrative purposes, to store configuration data, engineering or configuration tools or other non-control applications where any interruption to, or failure of, Services would not result in death, personal injury or severe property or environmental damage.

18.3. You warrant and agree that you will indemnify IRTServer and our Suppliers, on a full indemnity basis, for any claims arising out of your breach of this clause 18.

19. SUSPENSION OF SERVICES

19.1. We may immediately suspend your Services in the following circumstances:

- a. If you attack, or attempt to attack, other servers within the IRTServer Network;

- b. If you engage in, or attempt to engage in, port-scanning, hacking, snooping, or any attempts to gain access to our systems;
- c. If we reasonably suspect that you have engaged, or intend to engage in, illegal activity;
- d. If we receive any take down or similar notices from a court or other authority;
- e. If we are required to by law; or
- f. If any invoice that we have issued to you is overdue.

20. TERMINATION OF SERVICES

20.1. If we have a fixed term agreement with you, it will roll over into a month to month agreement at the end of the fixed term, unless otherwise agreed in writing or unless terminated in accordance with clause 20.2 of this CRA.

20.2. The Services that we provide to you may be terminated in the following circumstances:

- a. At the end of any fixed term, by either party providing the other party with at least thirty (30) days' notice in writing to you;
- b. During any month to month agreement, by either party providing the other party with at least thirty (30) days' notice in writing;
- c. If an event of Force Majeure has occurred and remains subsisting for at least fourteen (14) days, by either party providing the other party with at least seven (7) days' notice in writing;
- d. If we relocate from the data centre that you are located in to another data centre, and if we are not reasonably able to transfer your Services, by either party providing the other party with at least thirty (30) days' notice in writing;
- e. If you commit a breach of this CRA, or any other document referred to in clause 1.1, and you fail to rectify that breach with fourteen (14) days of receiving a notice from us requiring you to rectify the breach;
- f. If you commit a breach of this CRA that cannot be rectified, or that constitutes a material breach, or that causes serious risk of loss or harm to us or our other customers or Suppliers;
- g. If you or your representatives engage in conduct that is abusive, intimidating, or harassing towards our employees, and that conduct has continued after you have received two (2) written warnings; or
- h. As otherwise agreed in writing.

20.3. You acknowledge and agree that if your Services are terminated for any reason;

- a. All data stored with IRServer on those Services will be deleted or destroyed within 48 hours of termination;
- b. IRServer cannot recover deleted or destroyed data; and
- c. IRServer is not liable for any loss or damage caused by the deletion or destruction of data.

21. FORCE MAJEURE

21.1. A Party is not liable for failure to perform its obligations under this Agreement if such failure is solely the result of the occurrence of an event of Force Majeure.

- 21.2.** If a Party asserts that an event of Force Majeure pursuant to clause 21.1 caused a failure to perform its obligations under this Agreement, that Party must prove that:
- a. It took all reasonable steps to minimise delay or damages caused by foreseeable events;
 - b. It substantially fulfilled all non-excused obligations; and
 - c. It notified the other Party of the likelihood or actual occurrence of the Force Majeure event in a timely manner.

22. LIABILITY

- 22.1.** You acknowledge and agree that all express or implied terms, conditions, warranties, statements, assurances and representations in relation to the provision of the Services by us are hereby excluded, with the exception of:
- a. The terms and conditions of this CRA, the documents referred to in clause 1.1, and any additional terms and conditions or variations to which we both agree in writing;
 - b. Any conditions, warranties or requirements expressed or implied under the provisions of any legislation that cannot be contracted out of, including but not limited to the provisions of the American Consumer Law.
- 22.2.** Our liability for you for direct loss is set out in our Service Level Agreement, unless otherwise agreed in writing.
- 22.3.** You acknowledge and agree that our Service Level Agreement is in excess of your rights, and our obligations, under the American Consumer Law.
- 22.4.** However, if our Service Level Agreement does not meet the requirements of the American Consumer Law, or if we are not permitted by law to exclude our liability, our liability will be limited, to the maximum extent permitted by law, to one or more of the following as determined by us in our absolute discretion:
- a. The re-supply of the Services; or
 - b. The payment of the reasonable cost of having the Services re-supplied; or
 - c. The refund of any payments made to us by you for the relevant time period.
- 22.5.** To the maximum extent permitted by law, and except as expressly provided in this CRA, we will not be liable for any consequential loss or damage, whether arising in contract, tort or otherwise, sustained by you in connection with or arising out of the provision of the Services by us, our Related Entities or our Suppliers.
- 22.6.** Any advice, recommendation, information, assistance of service given by us in relation to the Services is given in good faith and is believed to be accurate, appropriate and reliable at the time it is given, but is provided without any warranty as to accuracy, appropriateness or reliability. To the maximum extent permitted by law, we do not accept any liability or responsibility or any loss or damage suffered as a result of your reliance on any such information, assistance or service.
- 22.7.** You and any guarantor acknowledge and agree that you are jointly and severally liable for all obligations under this clause 22.

23. DISPUTE RESOLUTION

- 23.1.** If any dispute arises out of, or in connection with, this CRA or the interpretation of its terms, a Party must not commence any court proceedings relating to that dispute unless this dispute resolution clause has been complied with, except:
- a. Where that Party seeks urgent interlocutory relief; or
 - b. Where we are entitled to recover a debt owed to us by you.
- 23.2.** A Party claiming that a dispute has arisen under or in relation to this Agreement must give written notice to the other parties specifying the nature of the dispute.
- 23.3.** On receipt of that notice by the other parties, all of the Parties must use their best endeavours to resolve the dispute within a reasonable period of time.

24. GENERAL

- 24.1.** If you make an Application which is either withdrawn before it is accepted, or rejected by us before any Services are provided, only clauses 1, 2, 3, 5, 22, 23 and 24 of this CRA are applicable.
- 24.2.** Notices in writing may be sent by us to the contact email address provided by you from time to time. You acknowledge and agree that it is your responsibility to keep your contact details updated, and that notices sent by us to out of date contact details will be deemed to have been correctly served for the purposes of this CRA.
- 24.3.** This CRA may only be amended in writing, signed by the Parties.
- 24.4.** Time is of the essence in relation to the obligations contained in this CRA, unless otherwise specifically stated.
- 24.5.** Each party shall take all steps, execute all documents and do everything reasonably required to give effect to this CRA.
- 24.6.** This CRA is binding on the successors and permitted assigns of each party.
- 24.7.** The provisions of this CRA will remain in full force and effect and be binding upon the Parties after completion.
- 24.8.** If part or all of any provision of this CRA is illegal or unenforceable then it may be severed from this CRA and the remaining provisions of this CRA will continue in full force and effect.
- 24.9.** A waiver of any provision of this CRA or consent to any departure by a party from any provision of this CRA must be in writing and be signed by all parties and is effective only to the extent for which it is given.
- 24.10.** This CRA contains the entire understanding between the Parties and all agreements, negotiations, understandings, representations, warranties, memoranda, or commitments in relation to or in any way affecting the subject matter of this CRA are superseded by this CRA and shall be of no force or effect whatsoever, except where specifically listed in clause 1.1.
- 24.11.** The Parties acknowledge that they have received or had the opportunity to receive independent legal advice in respect of the terms and effect of this CRA and do not rely upon any representations or warranties in entering into this CRA (other than those set out expressly within the CRA).
- 24.12.** This CRA is governed by and must be construed in accordance with the laws of New South Wales and any Court which may have appeals from it and the parties are subject to the non-exclusive jurisdiction of those Courts.

25. DEFINITIONS AND INTERPRETATION

25.1. In this CRA, the following definitions apply unless the context otherwise requires:

“Administration Fee” means the sum of \$15 for each overdue invoice.

“Application” has the meaning set out in clause 2.1.

“American Consumer Law” means the provisions of Schedule 2 of *Competition and Consumer Act 2010 (Cth)*.

“Co-Location Master Services Agreement” means the Co-Location Master Services Agreement set out in Schedule B, unless otherwise expressly agreed in writing.

“Corporations Act” means *Corporations Act 2001 (Cth)*.

“CRA” means this Customer Relationship Agreement, including any amendments or variations that may occur.

“Credit Assessment” means the credit assessment process set out in clause 3.

“Customer” means the party that has agreed to the terms of this CRA.

“Disruption” means a material disruption to the Services provided by IRServer to any customer or other party, or to the business operated by IRServer.

“Fixed Term Contract” means a contract between IRServer and the Customer that has a fixed term.

“Force Majeure” means an event outside the control of either Party including but not limited to natural disasters (including but not limited to fire, flood, earthquake, storm, hurricane or other natural disaster), war, invasion, act of foreign enemies, hostilities (regardless of whether war is declared), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation, terrorist activities, nationalisation, government sanction, blockage, embargo, labour dispute, strike, lockout or interruption or failure of electricity or telephone service.

“GST” has the meaning set out in the GST Act.

“GST Act” means *A New Tax System (Goods and Services Tax) Act 1999* and its associated regulations.

“Interest” means simple interest calculated daily at the applicable Reserve Bank of USA cash rate plus two percent (2%).

“Managed Security Service” means a specific agreement between IRServer and the Customer whereby IRServer agrees to maintain the security of your Services.

“Monthly Contract” means a contract between IRServer and the Customer that does not have a fixed term and is able to be terminated by either party with one (1) months’ notice.

“Network” means the equipment, facilities and all other products or services that are used by IRServer from time to time to provide the Products or Services to the Customer.

“Parties” means, collectively, IRServer and the Customer.

“Policies” means any policies set by IRServer from time to time.

“Pricing Schedule” means the pricing schedule agreed by IRServer to the Customer.

“Privacy Policy” means the privacy policy of IRServer.

“Products” means the products provided by IRServer from time to time.

“Related Entities” has the meaning defined in the Corporations Act.

“Reseller Agreement” means a written agreement between IRServer and the Customer as agreed from time to time.

“IRServer” means IRServer Pty Ltd (ACN: 125 037 443).

“Service Description” means our standard service description describing the applicable Service and setting out specific terms and conditions for the Service.

“Service Level Agreement” means the Service Level Agreement set out in Schedule A. If a separate Service Level Agreement has been entered into by IRServer and the Customer, it replaces the Service Level Agreement set out in Schedule A.

“Service Schedule” means a written agreement setting out the terms and conditions of particular Services from time to time.

“Services” means the services provided by IRServer from time to time.

“Supplier” means any third party who supplies goods or services to us that we use to supply the Services to you, or otherwise in the operation of our business.

“Third Party Products and Services” means services and products that are supplied by a third party to IRServer for use in conjunction with the Services provided to you.

25.2. In this CRA, the following rules of interpretation apply unless the context otherwise requires:

- a. references to “in writing” include, but are not limited to, emails, and notifications and messages delivered through the online portal operated by IRServer;
- b. references to “you”, “your” and similar terms refers to the Customer who has entered into the CRA;
- c. a reference to an individual or person includes a corporation, partnership, joint venture, association, authority, trust, state or government, and vice versa;
- d. a reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and any subordinate legislation issued under that legislation or legislative provision;
- e. the singular includes the plural and vice versa;
- f. a reference to any gender includes all genders;
- g. a reference to a clause or schedule is to a clause or schedule of this CRA;
- h. a recital, schedule, annexure or a description of the parties forms part of this CRA;
- i. a reference to any agreement or document is to that agreement or document (and, where applicable, any of its provisions), as amended, novated, supplemented or replaced from time to time;
- j. a reference to any party to this CRA, or any other document or arrangement, includes that party's executors, administrators, substitutes, successors and permitted assigns;
- k. where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
- l. where an expression is defined anywhere in this CRA, it has the same meaning throughout;
- m. a reference to any monetary amount is to an amount in American currency;

- n. headings are for convenience of reference only and do not affect interpretation.

SCHEDULE A

SERVICE LEVEL AGREEMENT

1. NETWORK UPTIME SLA

- 1.1.** IRServer provides a Guarantee that if our Network Uptime is not 100%, you will receive a Credit calculated in accordance with and subject to the terms of this SLA.
- 1.2.** In the event that our Network Uptime is not 100%, you will become eligible to request the following Credits for any Downtime:
 - (a) If our Network Uptime has an availability of less than 100% but equal to or more than 99.00% during a Month, you are entitled to a Credit of twenty five (25) times the duration of the outage;
 - (b) If our Network Uptime has an availability of less than 99.00% during a Month, you are entitled to a one (1) month Credit;
- 1.3.** The maximum amount of compensation that can be claimed pursuant to the Guarantee for any Downtime in a Month is one (1) month Credit. The compensation is payable by way of Credit only, and will not be paid as a refund or other type of payment.

2. HARDWARE SLA

- 2.1.** IRServer provides a Hardware Guarantee that if Faulty Hardware is not replaced within thirty (30) minutes of IRServer identifying the failure, you will receive a Credit calculated in accordance with and subject to the terms of this SLA.
- 2.2.** In the event that the Hardware Guarantee is not met, you will become eligible to request a Credit of twenty (20) times the amount of Downtime that is over and above the initial thirty (30) minute time period set out in clause 2.1.
- 2.3.** The maximum amount of compensation that can be claimed pursuant to the Hardware Guarantee for any Downtime in a Month is one (1) month Credit. The compensation is payable by way of Credit only, and will not be paid as a refund or other type of payment.
- 2.4.** The Hardware Guarantee does not apply to the time required to perform software related maintenance and tasks in relation to the Faulty Hardware and the replacement hardware, which includes but is not limited to:
 - (a) Rebuilding web accounts from backups;
 - (b) Cloning hard drives;
 - (c) Reloading the operating system;
 - (d) Reloading and configuring applications; and
 - (e) Rebuilding RAID arrays.

3. HOW TO CLAIM AN SLA

- 3.1.** All requests for compensation must be received within five (5) business days of the relevant Downtime occurring. Requests must be made via contact@internationalregistrationserver.info and include the following details:
 - (a) Date and time of the claimed Downtime;
 - (b) Service IDs of the services affected; and
 - (c) Any reference IDs or correspondence relating to your claim.

4. NETWORK UPTIME SLA EXCLUSIONS

4.1. Many possible situations are completely beyond the control of IRServer, and therefore are not in the scope of this SLA. These situations include:

(a) **Scheduled Maintenance**

IRServer requires from time to time the ability to perform maintenance on the network. IRServer will provide notification via email (to the technical and administrative contact listed in the Portal), to the following schedule:

Category	Notice Period	Duration	Period
Consultative	As Agreed	As Agreed	As Agreed by Parties
Planned	5 Business Days	<3 Hours	1:00am - 5:00am (AEST)
Unplanned	24 Hours	<10 mins	1:00am - 5:00am (AEST)
Emergency	-	< 5 Mins	1:00am - 5:00am (AEST)

(b) **Software Maintenance**

If you choose to have IRServer manage your server, occasional software updates will be required to address security or performance issues. Usually, little or no Downtime will be experienced, but we cannot guarantee this.

(c) **Malicious Attacks**

If a third party not associated with IRServer initiates a "Denial of Service" or other form of disabling attack against your hosting or major portions of the IRServer core network, IRServer will do everything in its power to stop the attack, but cannot guarantee a resolution time.

(d) **Legal Actions**

In the case that a legal action is taken against a customer of IRServer and IRServer is required to act in accordance with the order, IRServer shall not be required to pay any compensation under this SLA.

(e) **3rd Party Software Issues**

Any disruption to services caused by Third Party Products and Services, including but not limited to applications, control panels or custom software, is not within the control of IRServer and is excluded from this SLA. Third Party Products and Services will be updated from time to time, and this may cause disruptions to the services that IRServer provide to you. IRServer will do everything reasonably possible to rectify such disruptions as a priority, but you acknowledge and agree that these issues are not within our control and that we are not liable for any loss or damage caused.

Third Party Products and Services may include but are not limited to:

- **cPanel**
- **Plesk**
- **VMware**
- **Veeam**

(f) **Customer Breach**

If you are in breach of any of your agreements with IRServer when Downtime occurs, including but not limited to overdue accounts, you will not be entitled to make a claim under this SLA.

5. DISPUTE RESOLUTION

5.1. If a dispute arises in relation to this SLA, the following must apply:

- (a) A party claiming that a dispute has arisen under or in relation to this SLA must give written notice to the other party within five (5) business days of becoming aware of the existence of the dispute;
- (b) The written notice must contain sufficient details of the claimed dispute to allow the other party to become properly informed of all of the relevant issues;
- (c) All of the parties must use their best endeavours to resolve the dispute within a reasonable period of time after notice of the dispute is given and received; and
- (d) You are not permitted to use or rely on the existence of the dispute to withhold, offset or otherwise delay any payments due to IRServer.

5.2. A party must not commence any court proceedings relating to a dispute arising out of this SLA unless this dispute resolution clause has been complied with, except where that party seeks urgent interlocutory relief.

6. AMERICAN CONSUMER LAW

6.1. This clause 6 only applies if you are a consumer, as defined in section 3 of the American Consumer Law, and if regulation 90 of *Competition and Consumer Regulations 2010* applies to your Services.

6.2. Our goods and service come with guarantees that cannot be excluded under the American Consumer Law. For major failures with the service, you are entitled:

- (a) To cancel your service contract with us; and
- (b) To a refund for the unused portion, or to compensation for its reduced value.

6.3. You are also entitled to choose a refund or replacement for major failures with goods. If a failure with the goods or service does not amount to a major failure, you are entitled to have the failure rectified in a reasonable time. If this is not done you are entitled to a refund for the goods and to cancel the contract for the service and obtain a refund of any unused portion. You are also entitled to be compensated for any other reasonably foreseeable loss or damage from a failure in the goods and services.

7. DEFINITIONS AND INTERPRETATION

7.1. The definitions and rules of interpretation in clause 25 of the CRA also apply to this SLA.

7.2. The following additional definitions apply in relation to this SLA:

"American Consumer Law" means *Competition and Consumer Act 2010 (Cth)*, schedule 2.

"Credit" means a credit against future invoices issued by IRServer in relation to services provided under the Sales Order, but excluding any licencing costs for any Third Party Products and Services.

"Downtime" means a period of time where we have not complied with our Guarantee.

"Faulty Hardware" means dedicated server hardware provided by us that fails.

"Guarantee" means the guarantee set out in clause 1.1.

"Hardware Guarantee" means the hardware guarantee set out in clause 2.1.

"Month" means a calendar month that commences on the anniversary of the commencement of the relevant services as set out in the Sales Order.

"Network Uptime" means all major routing devices within our network are reachable 100% of the time.

"Portal" means the client portal made available by IRServer from time to time. **"Sales Order"** means a sales order placed by you and accepted by IRServer that incorporates this SLA.

"IRServer" means IRServer Pty Ltd (ACN: 125 037 443).

SCHEDULE B

CO-LOCATION MASTER SERVICES AGREEMENT

1. CO-LOCATION SERVICES

- 1.1.** We will provide you with access to the Co-Location Facilities, subject to a valid Co-Location Sales Order being in place and subject to the terms of this MSA.
- 1.2.** You acknowledge and agree that your Co-Location Sales Order and this MSA provides with you a licence to use the Co-Location Facilities only, and does not create any lease, right of access, or any other rights in the Co-Location Facilities.
- 1.3.** Your access to the Co-Location Facilities must only occur through properly authorised personnel in accordance with our Policies and any requirements of the Third Party Suppliers as notified to you from time to time.

2. TERM OF MSA

- 2.1.** This MSA forms part of, and must be read in conjunction with the CRA. If the CRA is terminated for any reason, this MSA will simultaneously terminate.
- 2.2.** If all of your Co-Location Sales Orders are terminated for reasons other than breach, but if there are still other Sales Orders in place, then this MSA will not terminate unless and until the CRA is terminated.
- 2.3.** If the Co-Location Sales Orders or this MSA are terminated by us as a result of your breach, we may elect to terminate the CRA at our sole discretion.
- 2.4.** If you are unable, or fail to, cure a breach of this MSA where that breach relates to only one Co-Location Facility, and where you have existing Co-Location Sales Orders that relate to more than one Co-Location Facility, we may elect to limit our termination rights to only be Co-Location Sales Orders that are connected to that breach.
- 2.5.** If we have served you with a notice in accordance with clause 20.2.e of the CRA, we may restrict your access to the Co-Location Facilities during any time from the service of that notice until the breach is rectified.
- 2.6.** For the avoidance of doubt, clause 20 of the CRA applies to this MSA.

3. YOUR OBLIGATIONS

- 3.1.** You must:
 - a. Comply with our Policies, and those of our Third Party Suppliers, in relation to access to the Co-Location Facilities, including but not limited to the persons who are permitted to access the Co-Location Facilities on your behalf, and any other security requirements;
 - b. Comply with any reasonable directions given by us, or a Third Party Supplier, in relation to access to or use of the Co-Location Facilities;
 - c. Ensure that any persons that you authorise to access the Co-Location Facilities on your behalf are approved by us in accordance with our reasonable requirements, and hold any security passes or identification directed by us or our Third Party Suppliers. In the event that any of your authorised persons ceased to be authorised by you, you must ensure that any security passes or other items or information that those persons had access to are surrendered and you must advise us immediately if there is any basis for

suspecting that any such persons would be able to access the Co-Location Facilities after their authorisation has ceased;

- d. Not permit any third party to access the Co-Location Facilities, except with our prior written consent which we may withhold at our sole discretion;
- e. Advise us immediately if you become aware of any loss or damage within the Co-Location Facilities, regardless of the cause of such loss or damage;
- f. Hold and comply with all relevant licences, permits or authorisations that you may be required to hold in order to lawfully receive or use the Co-Location Services;
- g. Take good and proper care of all your equipment that you use in relation to the Co-Location Services;
- h. Not engage in any illegal or unauthorised conduct, including but not limited to interfering with any services provided to any third party;
- i. Use the Co-Location Services in accordance with the terms and conditions of this MSA, the CRA, our Policies, and any applicable industry standards.

4. POWER

- 4.1. Notwithstanding any other provision of the CRA, the rates and fees for the Power Services ordered by you will remain in effect for one year from the commencement of the relevant Co-Location Sales Order for such Power Services. Thereafter, the rates and fees for the Power Services will be subject to variation, at our reasonable discretion, upon 60 days prior notice to you.
- 4.2. If you exceed your Allocated Power, we may request, by providing you with notice in writing, that you reduce your usage of the Power Services to the Allocated Power levels within 30 days. If you do not comply with such notice, we may, at our sole discretion, serve you with a breach notice, or reduce the levels of power made available to you.
- 4.3. If you exceed your Allocated Power to an extent where it has a detrimental effect on other customers of us or the Third Party Supplier, or where there is a reasonable risk of damage to equipment in the Co-Location Facility, we may immediately and without notice to you reduce the supply of power to your Allocated Power levels.

5. SUB-LICENSING

- 5.1. You may Sub-License your space in the Co-Location Facilities provided that:
 - a. The terms and conditions of any such Sub-License must be no less restrictive than the terms of this MSA and any other applicable requirements;
 - b. The Sub-Licenses must terminate on or before the termination of your rights to receive Co-Location Services pursuant to this MSA;
 - c. You must not, in your dealings with any Sub-Licensee or otherwise, purport to act on behalf of or otherwise represent us or any of our Related Entities;
 - d. You must require the Sub-Licensee to conform with any rules or regulations regarding the use of the Co-Location Facilities as set out in our Policies, or any policies or other directions of Third Party Suppliers from time to time;
 - e. You must require that any Sub-Licensees have insurance policies in place to the same or greater extent as the insurance policies that we require you to have in place pursuant to clause 8 of this MSA, and must obtain regular certificates of currency from Sub-Licensees to ensure that this requirement is being complied with.

- 5.2. For the avoidance of doubt, you are solely responsible to us for the performance of all of your obligations under this MSA, and the sub-licensing some or all of the Co-Location Services does not derogate from your obligations.
- 5.3. You acknowledge and agree that you are liable to us to fullest extent permitted by law for any loss or damage caused by your Sub-Licensees.
- 5.4. You must ensure that all of your Sub-License agreements do not have any terms, whether express or implied, that:
 - a. Are inconsistent with this MSA or any other document that forms part of your agreement with us; or
 - b. Seek to provide the Sub-Licensee with rights that you do not have under this MSA. For the avoidance of doubt, this includes but is not limited to providing or purporting to provide any Sub-Licensee with any right to use the Co-Location Facilities in any manner that you are not permitted to.
- 5.5. You acknowledge and agree that your Sub-Licensees do not have any rights that are separate from, or in addition to, your rights to access to Co-Location Facilities.
- 5.6. You must ensure that the Sub-Licensees will not further sub-license, delegate, assign, or otherwise transfer their rights to use the Sub-licensed Space, or access the Co-Location Facilities, to any other person or entity without our prior written consent, which may be withheld at our sole discretion.

6. REMOVAL OF EQUIPMENT

- 6.1. Upon termination of part or all of a Co-Location Sales Order for whatever reason, you must immediately remove all of your associated equipment and other property from the Co-Location Facility. For the avoidance of doubt, you must not remove any wiring, cabling, equipment, or property that is owed by us or the Third Party Suppliers.
- 6.2. If you do not remove your equipment and property in accordance with clause 6.1, we may, at our sole discretion:
 - a. Remove all of your equipment and property, and store it at your risk and expense;
 - b. Remove all of your equipment and property and arrange for delivery to your last notified address, at your risk and expense;
 - c. Take any action permitted by law in relation to the disposal of uncollected goods; or
 - d. Take any other action permitted by law.
- 6.3. Notwithstanding clause 6.1, if you owe us any amounts under the CRA or MSA then we may retain a lien over your equipment until all outstanding amounts are paid.

7. INSURANCE

- 7.1. You must maintain, at your own expense and during any time in which a Co-Location Sales Order is effective, the following insurance policies:
 - a. Public liability insurance in an amount of not less than \$20 million that applies in relation to the Co-Location Services, and access to the Co-Location Facilities by you and any of your Sub-Licensees;
 - b. Workers compensation insurance in an amount not less than that prescribed by law; and
 - c. Any other insurance policy that we deem to be reasonably necessary from time to time.

- 7.2. You warrant and agree that you will comply with all terms of the insurance policies that you have in place, and that will advise us immediately if any insurance policy that you have in place ceases to be effective.
- 7.3. Upon request, you must provide us with copies of certificates of currency evidencing that the insurance policies set out in clause 7.1 are in place, and any other further documentation in this regard that we reasonably require.

8. RELOCATION

- 8.1. This clause applies in addition to, and without derogating from, clause 9.4 of the CRA.
- 8.2. You acknowledge and agree that we may require you to relocate your equipment and other property within the Co-Location Facility, or change the location of the Co-Location Facility specified in your Co-Location Sales Order, provided that;
- a. we give you at least thirty (30) days prior written notice;
 - b. the direct costs of the relocation are at our reasonable expense;
 - c. the new location will be of equivalent or better technical specifications; and
 - d. we do all things reasonably necessary to minimise disruptions to you.

9. WARRANTIES AND INDEMNITIES

- 9.1. You agree to use the Co-Location Facilities at your own risk.
- 9.2. You warrant and agree that you will release us, and the Third Party Suppliers, to the fullest extent permitted by law, from any and all claims and demands of any kind, and from all liability which may arise in respect of any accident, damage or injury occurring to any person or property at or in connection with the Co-Location Facilities.
- 9.3. You warrant that you will indemnify us against all claims, action, losses, and expenses of any nature which we may suffer, incur, become liable, or otherwise be required to respond to or defend, in respect of or arising out of:
- e. Any negligent or careless use or misuse by you, or any persons under your control or authority, of the Co-Location Facilities or any of the services provided to you in connection with Co-Location Facilities, or arising out of any faulty installation, fixture, or fitting of any equipment or other items in the Co-Location Facilities by you; and
 - f. Any accident, damage to property, injury, or death suffered by any person that arises out of your negligent or careless use or misuse of the Sub-Licensed Space or the Co-Location Facilities.

10. ADDITIONAL DEFINITIONS

- 10.1. The definitions and rules of interpretation in clause 25 of the CRA also apply to this MSA.

- 10.2. The following additional definitions apply in relation to this MSA:

“Allocated Power” means the power allocation specified in the Co-Location Sales Order, or any other written agreement between the parties.

“Co-Location Facilities” means the data centres specified in the Co-Location Sales Order, being data centres controlled by Third Party Suppliers which are used in connection with the Co-Location Services.

“Co-Location Sales Order” means a Sales Order that includes Co-Location Services.

“Co-Location Services” means the services specified in the Co-Location Sales Order.

“MSA” means this schedule to the CRA.

“Power Services” means the supply of power as specified in the Co-Location Sales Order.

“Sub-License” means the sub-license between you and the Sub-Licensee.

“Sub-Licensed Space” means the space in the Co-Location Facilities that is subject to a Sub-License from you to a Sub-Licensee.

“Sub-Licensee” means a third party who Sub-Licenses the Sub-Licensed Space from you.

“Third Party Suppliers” means a third party that controls the Co-Location Facilities.