

## DEDICATED & CO-LOCATION HOSTING SERVICES

### 1. Supply of Services

**1.1 Application of Agreement:** This Agreement (as defined in clause 1.2) applies to the supply by BlueCentral of dedicated and colocation hosting services together with selected operating system support and management services (collectively called "Services", as defined in clause 24) to Customer for use in its business or enterprise pursuant to the hosting business solution selected by Customer (whether Standard, Advantage, Premium or Enterprise).

**1.2 Agreement for Supply of Services:** BlueCentral will supply the Services to Customer utilizing the BlueCentral Network on the terms and conditions set out in:

- (a) The Cover Sheet (which sets out the commercial terms between BlueCentral and the Customer);
- (b) The Services Sheet (which describes the services which BlueCentral will provide to the Customer);
- (c) These Terms and Conditions (Dedicated and Co-location Hosting Services); and
- (d) The Service Level Agreement, the Acceptable Use Policy and the Privacy Policy.

These documents together constitute "the Agreement" between BlueCentral and Customer. If any of the terms set out in these documents are inconsistent with any other, then the documents and their terms will prevail in the order set out above. That is, the terms set out in the Cover Sheet will prevail over the other documents in the event of any inconsistency with the terms set out in those documents, and so on.

**1.3 Amendment of Agreement:** This Agreement may be amended or varied as follows:

- (a) Subject to clause 1.2(a), the Cover Sheet described in clause 1.1(a) may not be amended during the Term except by mutual agreement in writing.
- (b) If this Agreement is automatically extended pursuant to clause 12.1, BlueCentral may, during the Subsequent Term or Terms, amend or vary the Cover Sheet, including prices charged for Services and terms relating to the operation of Services, by posting the amendments or variations in the Control Panel. Such amendment or variation shall become effective 14 days after the date of posting, and the Customer shall be deemed to have accepted such amendment if it continues to use the Services after the amendments become effective.
- (c) The documents described in clauses 1.1(b) through 1.1(d) are published on the BlueCentral Website. BlueCentral may from time to time unilaterally amend or vary the terms

of these documents by publishing such amendments or variations on the BlueCentral Website. These amendments and/or variations shall take effect from the last to occur of:

- (i) the date they are published on the BlueCentral Website; or
- (ii) If they cause a detriment to the Customer, from the date BlueCentral notifies the Customer of the amendment or variation, provided the Customer continues to use the services after the date of notification.

**1.4 Multiple Services:** where Customer takes a number of Services from BlueCentral, the Agreement will include, in addition to the documents described in clause 1.1, a Services Sheet with respect to each Service.

**1.5 Adding Services:** where the Customer wishes to extend the number of Services provided under this Agreement, it may do so at any time by executing a Cover Sheet with relevant details of the additional Service(s), including pricing, and a Services Sheet with respect to each additional Service.

**1.6 Enterprise Service Levels:** BlueCentral will provide Customer with Services in accordance with the Service Level Agreement published on the BlueCentral Website.

### 2. Control Panel

**2.1 Control Panel:** "Control Panel" means a unique, live and interactive website page individualised for each Customer's Services (Hosting and Domain Names) which the Customer may access at the BlueCentral Website after supplying its User ID and Password. When accessed, the Control Panel enables Customer to:

- (a) Review the status of its account, and pay outstanding invoices;
- (b) View the registration status of its domain names and dates for renewal of registration;
- (c) view the current status of its Hosting Services and reports of operation of those Services;
- (d) perform maintenance and other functions on components of Services, Hardware and Software, including configuring website and email services; and
- (e) access Customer support services.

**2.2 Password Access:** BlueCentral will provide the Customer with User ID and Password to access the Control Panel for the purposes specified in clause 2.1. The Customer is solely responsible for maintaining the secrecy and confidentiality of its User ID and Password assigned to it or its nominated representatives and is and remains liable for any fees or charges incurred by any

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- person accessing the Control Panel by using that User ID and Password.
3. **Proprietary rights in Software and Hardware**  
Customer shall have no right, title, or interest of any kind whatsoever in the Software, Hardware, documentation, or any copyrights, patents or trademarks, embodied or used in connection therewith, except for:
- (a) the limited licence to use them provided in this Agreement; and
  - (b) Hardware supplied by Customer for use on its premises or supplied for Co-location Services.
4. **Maintenance of Hardware and Network**
- 4.1 **BlueCentral Hardware:** BlueCentral will maintain and support Hardware (other than Hardware on premises of Customer) in accordance with best industry practice or, where applicable, vendor specifications.
- 4.2 **Scheduled Maintenance:** BlueCentral will perform all regularly scheduled maintenance to maintain Hardware and the BlueCentral Network outside Business Hours. BlueCentral will give Customers notice by email at least 48 hours in advance if scheduled maintenance requires interruption to Service for more than 30 minutes.
- 4.3 **Replacement of Hardware:** BlueCentral may substitute, change or modify the Hardware at any time, but shall not thereby substantially alter the technical parameters of the Services without the prior approval of Customer unless the effect of the substitution, change or modification is to enhance the capacity or specifications of the Hardware.
- 4.4 **Technical Support:** BlueCentral will provide technical support by enabling Customer access through the Control Panel to correct operational procedures for tools and modules specified in this Agreement and to links to operational resources on the BlueCentral Website. BlueCentral will charge for any additional technical support at its Technical Account Management Services rates then in effect. Customer acknowledges that technical support is limited to hardware/network failures and utilities provided by BlueCentral.
- 4.5 **Exclusions:** BlueCentral is not responsible for maintenance and support of Hardware where:
- (a) problems arise from tampering, modification, alteration, or additions to the Hardware by persons other than BlueCentral or its authorized representatives;
  - (b) Hardware has been supplied by Customer; and/or
  - (c) Hardware is located on premises of Customer,
- unless in the case of Hardware referred to in clause 4.5(b) and (c) Customer has entered into a maintenance agreement with BlueCentral relating to that Hardware.
- 4.6 **Customer's Obligations:** Customer shall:
- (a) Follow and observe all operational support procedures and policies specified through the Control Panel;
  - (b) Where applicable, document and promptly report all errors and malfunctions in the Hardware using relevant procedures specified through the Control Panel;
  - (c) Ensure that its employees have been trained in the operation of the Hardware in accordance with Vendor specifications; and
  - (d) Be responsible for maintaining its own telecommunications equipment, hardware, information technology and software and all other materials at its premises unless it has entered into a maintenance agreement with BlueCentral relating to that equipment.
5. **Software**
- 5.1 **Operating System and Web Server Software License:** During the Term BlueCentral grants the Customer a non-transferable, nonexclusive license to use and install the Software specified in the Cover Sheet on the Hardware specified in the Cover Sheet for purposes of the Services. BlueCentral warrants that it has full right, title and interest in the Software to grant sublicenses by virtue of a license granted by the vendor of the Software ("Vendor License") to BlueCentral to use and sub-license the Software. BlueCentral does not warrant third party Vendor Software in any way whatsoever, but undertakes to pass onto Customer the benefit of all warranties and indemnities relating to use of the Software under the Vendor License.
- 5.2 **Software License Restrictions:** Customer agrees that it will not, directly or indirectly (and it will not allow others to):
- (a) copy the Software, except as necessary to install on Hardware and for internal, archival purposes. In the event Customer makes authorized copies of the Software, Customer shall reproduce all proprietary notices on such copies;
  - (b) sell, lease, license, transfer, give possession of, or sub-license the Software to others, other than as permitted in the Vendor License; and/or
  - (c) write or develop any derivative or other software programs, based, in whole or in part, upon the Software or any Confidential Information.
- 5.3 **Exclusions:** Customer acknowledges that breach of clause 5.2 may result in invalidation of warranties relating to Software, including the benefit of third party Vendor warranties.
- 5.4 **Software Provided by Customer:** Where Customer provides Software, Customer warrants that it has full right title and interest under a valid license to use the Software and to grant a valid sub-license to BlueCentral to install and run the Software during the Term solely in connection with providing Services under this Agreement.
6. **Acceptable Use Policy and Use of Services**
- 6.1 **Acceptable Use Policy:** Customer agrees and acknowledges that it has read BlueCentral's

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- Acceptable Use Policy published on the BlueCentral Website, and agrees and undertakes that it will at all times observe and comply with that Acceptable Use Policy, as may be amended from time to time by publishing of amendments on the BlueCentral Website.
- 6.2 Sole Responsibility:** Customer acknowledges and agrees that it is solely responsible for all information, material, content or data (“Content”) of any postings, data or transmissions utilizing the Services or any other use of the Services by Customer or User.
- 6.3 Removal of Offending Content:** Customer acknowledges that BlueCentral has the right to remove Content in accordance with the terms of the Acceptable Use Policy, including without limitation and without notice to Customer any Content deemed by it in its sole opinion to breach or offend its Acceptable Use Policy, or to suspend Services or disconnect or deny access to Services if in its sole opinion it deems Content to breach or offend its Acceptable Use Policies.
- 6.4 Excessive Use:** Customer covenants and agrees that it will at all times observe and comply with and not breach usage limitations, including bandwidth, traffic (inbound, outbound and aggregated), data storage and backup, server resources and mailboxes, applicable to the plan or product chosen by the Customer. Customer also agrees and covenants that it will not use the Services in an excessive or unusual way.
- 6.5 Suspension:** Customer acknowledges that BlueCentral is entitled to suspend or cancel Services, permanently or temporarily, if Customer breaches clause 6.4, and that if at any time BlueCentral does suspend or cancel the Services, the Customer remains liable for any charges incurred:
- (a) through excessive or unusual usage; and
  - (b) where the suspension is temporary, during such suspension.
- 6.6 Indemnity:** Customer agrees to and shall hold harmless and indemnify BlueCentral against any loss, expenses, liability, damages or claim made against it by any party whatsoever (including without limitation Customer, a User or any party claiming through Customer) which BlueCentral may suffer, directly or indirectly, resulting from or arising out of Customer’s or User’s breach of the Acceptable Use Policy or the misuse or abuse of the Services in any way whatsoever by Customer or any User.
- 7. Warranties**
- 7.1 Consumer Warranties:** where the Customer is a consumer (as defined in the Trade Practices Act), BlueCentral warrants that the Service will be supplied with due care and skill and that any material supplied in connection with the Service is reasonably fit for the purposes for which it is supplied.
- 7.2 Exclusion:** Except as otherwise expressly provided in these Terms and Conditions (Dedicated and Co-location Hosting Services) (including without limitation clause 7.1) and the documents listed in clause 1.1, and to the full extent permitted by law, all express or implied warranties, representations, terms and conditions regarding Services, Hardware and/or Software and their use (including without limitation their merchantability or fitness for any particular purpose) or regarding the Agreement and these Terms and Conditions (Dedicated and Co-location Hosting Services) are hereby expressly excluded.
- 7.3 Sole Remedy:** Customer acknowledges that its sole remedy under this Agreement for interruption to availability of Services which constitutes “Downtime” as defined in the Service Level Agreement is to claim rebates in accordance with the Service Level Agreement.
- 7.4 Statutory Provisions:** Provisions of the Trade Practices Act 1974 (as amended) and other statutes from time to time in force in Australia may imply warranties or conditions or impose obligations on BlueCentral which cannot be excluded or modified. These Terms and Conditions (Dedicated and Co-location Hosting Services) must be read and interpreted subject to any such statutory provisions. If any such statutory provisions apply, then to the extent permitted by law, BlueCentral’s liability will be limited at its option to the resupply of Services, or payment of the cost of having the Services supplied again.
- 8. Limitation of Liability:** BlueCentral’s aggregate liability to any Customer who is not a consumer (either directly or as a third party defendant in any action or proceeding) for any claim arising out of or relating to this Agreement or the provision of any Services (including, without limitation, maintenance and support) under this Agreement shall be limited to the amount of fees paid by the Customer to BlueCentral under this Agreement within one year preceding the date Customer contends its claim arose. In no event shall BlueCentral be liable for any loss of data, loss of profits, cost of cover, or any other special, incidental, consequential, indirect or punitive damages, however caused and regardless of theory or liability, notwithstanding BlueCentral has been made aware or advised of the possibility of such damages.
- 9. Confidential Information**
- 9.1 Confidential Information.** Each party acknowledges that it may have access to certain confidential information (“Confidential Information”) of the other party concerning the other party’s business, plans, customers, technology (including software), and products, including the terms and conditions of this Agreement. Each party agrees that it will not use in any way, for its own account or the account of any third party, except as expressly permitted by this Agreement, nor disclose to any third party (except as required by law or to that party’s attorneys, accountants and other advisors as

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- reasonably necessary), any of the other party's Confidential Information and will take all reasonable precautions to protect the confidentiality of such information.
- 9.2 Exceptions:** Information will not be deemed Confidential Information hereunder if such information:
- (a) is known to the receiving party prior to receipt from the disclosing party directly or indirectly from a source other than one having an obligation of confidentiality to the disclosing party;
  - (b) becomes known (independently of disclosure by the disclosing party) to the receiving party directly or indirectly from a source other than one having an obligation of confidentiality to the disclosing party;
  - (c) becomes publicly known or otherwise ceases to be secret or confidential, except through a breach of this Agreement by the receiving party; or
  - (d) is independently developed by the receiving party.
- 10. Release of Information to Authorized Agencies**
- 10.1 Monitoring Use of Services.** In order to comply with, and subject to, any applicable laws, including without limitation the Telecommunications Act 1997 and the Telecommunications (Interception) Act 1979, BlueCentral may at any time:
- (a) When required by a warrant issued by a Regulatory Agency or an authorised law enforcement agency or court, intercept or monitor Services, or enable another person authorised by a warrant issued by a Regulatory Agency or an authorised law enforcement agency or court, to intercept or monitor Services, including data hosted on or being transmitted through Services;
  - (b) Monitor and/or examine use of Services, including email, records and other data in the course of installation, connection or routine maintenance of the Services, but only to the extent permitted by legislation;
  - (c) Suspend Services; and/or
  - (d) Release information obtained by any of these actions to any Regulatory Agency.
- 10.2 Indemnity.** Customer agrees to and shall hold harmless and indemnify BlueCentral against any loss, expenses, liability, damages or claim made against it by any party whatsoever (including without limitation Customer, a User or any party claiming through Customer or a User) which BlueCentral may suffer, directly or indirectly,
- resulting from or arising out of any actions taken by it pursuant to clause 10.1.
- 11. Public Addressing Identifiers**
- 11.1 Use: BlueCentral** may use one or more identifiers ("Identifiers") such as telephone numbers, Internet Protocol Addresses ("IP Addresses") and domain names in providing Services, and may designate one or more of them for use on a temporary basis by Customer from those Identifiers allocated to BlueCentral by regulatory authorities. Customer acknowledges and agrees that BlueCentral does not control the allocation of Identifiers, and that BlueCentral may be required to change Identifiers by a Regulatory Authority responsible for administering Identifiers. Customer further acknowledges and agrees that the IP Addresses are the sole property of BlueCentral, are designated for Customer's use on a temporary basis, and may not be portable.
- 11.2 Change of Identifiers:** BlueCentral reserves the right to change Identifiers and IP Addresses at any time and for any reason, including without limitation at the direction of a Regulatory Authority but in doing so shall:
- (a) use reasonable efforts to minimize inconvenience to Customer, and
  - (b) shall give Customer reasonable notice of changes.
- 11.3 Justification Processes:** Customer acknowledges that it is bound by the justification processes imposed by Regulatory Authorities under policies for the responsible use of Identifiers and IP Address space which may from time to time be in force.
- 11.4 On Termination of Agreement:** Customer agrees that:
- (a) it will have no right to use Identifiers and IP Addresses assigned to it upon termination of this Agreement, and
  - (b) it will be solely responsible for any change in Identifiers and IP Addresses required after termination of this Agreement.
- 12. Term and Termination**
- 12.1** This Agreement shall be effective for the Term set out in the Cover Sheet. Unless Customer gives notice of termination prior to the expiration of the Term, this Agreement shall automatically be extended for a further period identical to the period set out in the definition of Term in the Cover Sheet, which further period shall be referred to as "the Term" or "Subsequent Term", and where appropriate any reference in this Agreement to Term shall be deemed to include a reference to a Subsequent Term.
- 12.2** This Agreement shall be terminated prior to the expiration of the Term set out in the Cover Sheet in the following circumstances:
- (a) either party gives written notice of a material breach of this Agreement, and the breach is not remedied

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- within 30 days after receipt of the notice; or
- (b) if either party goes into administration or liquidation either compulsorily or voluntarily (save for the purpose of reconstruction or amalgamation) or if a receiver is appointed in respect of the whole or any part of its assets or if either party makes an assignment for the benefit of or composition with its creditors generally or threatens to do any of these things, and in either event the other Party gives notice that it elects to terminate the Agreement which notice shall be effective immediately.
- (c) The Customer gives written notice of a material ongoing or recurring breach of the Service Level Agreement that has occurred or has continued to occur for three consecutive months, and a remediation plan has not been agreed within 30 days after receipt of the notice. Customer must not withhold agreement to the remediation plan if BlueCentral can demonstrate that the plan will have:
- (i) no additional cost to Customer;
- (ii) no negative consequences to the Customer's use of the Service; and
- (iii) a reasonable chance of success.
- 12.3** BlueCentral may terminate this Agreement by giving reasonable notice to the Customer prior to the expiration of the Term set out in the Cover Sheet if:
- (a) a Regulatory Authority directs it to do so; or
- (b) a Supplier terminates an agreement to supply services to BlueCentral, and as a consequence BlueCentral is unable to supply Service(s) to Customer through an alternative Supplier on reasonable commercial terms.
- 13. Consequences of Termination**
- 13.1** In the event of termination of the Agreement prior to the expiration of the Term by reason of a default by Customer under clause 12.2(a) or by reason of actions by or on behalf of Customer under clause 12.2(b), all amounts which would have become due and payable under the Agreement had it continued in effect until the expiration of the Term shall immediately become due and payable, and Customer shall immediately pay all amounts so becoming due and payable. If Customer has made a payment for services in advance, BlueCentral will apply the balance of any such payment remaining (calculated on a pro rata basis) against any amounts due and payable by the Customer, but in no other case shall Customer be entitled to a refund of such payments.
- 13.2** In the event of termination of the Agreement prior to the expiration of the Term under clause 12.3, and on the expiration of the Term, BlueCentral will bill Customer for all services up to date of termination, and Customer will immediately pay that invoice and any other outstanding invoices.
- 13.3** On the expiration of the Term or on termination of the Agreement pursuant to clause 12, BlueCentral will immediately cancel Services, and Customer will:
- (a) Immediately cease using Services and any Software and Hardware provided under this Agreement.
- (b) Return all Hardware, Software and Confidential Information to BlueCentral; and
- (c) Do all things and execute all such documents as may be required by BlueCentral to give effect to clause 13.3(a) and (b).
- 14. Suspension of Services**
- 14.1 Events of Suspension.** BlueCentral may, in its sole discretion and without derogating from its right to terminate this Agreement pursuant to clause 12, at any time suspend, restrict or disconnect the supply of Services to the Customer and/or any of its customers or Users on the occurrence of any of the following events:
- (a) Customer fails to pay any outstanding invoices within 7 days of written demand by BlueCentral;
- (b) Customer breaches BlueCentral's Acceptable Use Policy and fails to rectify that breach immediately on written demand by BlueCentral;
- (c) BlueCentral is directed by any Regulatory Agency and/or authorised law enforcement agency to do so;
- (d) During any technical failure, modification or maintenance of the Service, provided that BlueCentral will use its reasonable endeavours to ensure that the Service are resumed as soon as practicable; and/or
- (e) BlueCentral deems it necessary for purposes of scheduled or unscheduled maintenance.
- 14.2 Consequences of Suspension.** BlueCentral will not reconnect or re-activate Services suspended pursuant to clause 14.1(a), (b) and (c) until Customer has paid any re-connection or re-activation fee then in effect for each Service. Customer will remain liable under this Agreement for all payments falling due within the period for suspension of Services, including without limitation for all fees accruing and accrued during the suspension.

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- 14.3 Indemnity.** Customer agrees to and shall hold harmless and indemnify BlueCentral against any loss, expenses, liability, damages or claim made against it by any party whatsoever (including without limitation Customer, a User or any party claiming through Customer) which BlueCentral may suffer, directly or indirectly, resulting from or arising out of any actions taken by it pursuant to clause 14.1.
- 15. Charges and Invoices**
- 15.1 Payment of Charges:** Customer agrees to pay the charges and fees set out in the Cover Sheet, and such other charges and fees as may properly be incurred under this Agreement, or in accordance with the terms and conditions of invoices from time to time rendered by BlueCentral. Such charges and fees include excess usage fees and any additional charges and fees incurred by BlueCentral under its contracts with third party suppliers, software licensors, carriage service providers and service providers, and include, without limitation:
- (a) Charges for excess data, traffic, bandwidth and/or power usage by Customer; and
  - (b) Additional license fees charged to BlueCentral under software licenses where fees are calculated by reference to usage or number of users or mailboxes.
- 15.2 Price Changes:** In the manner described in the Master Services Agreement or as BlueCentral may otherwise reasonably specify, BlueCentral may modify the charges for specific services from time to time provided that BlueCentral notifies the Customer of the proposed modification at least 28 days before it is to take effect ('Price Change Notice Period'). BlueCentral may issue a Price Change notice by email, in statements added to or included with monthly invoices, by letter, via the control panel, or by other reasonable means selected by BlueCentral.
- 15.3 Pricing Structure:** BlueCentral may from time to time change the structure of the pricing in relation to specific services which it provides to the Customer. BlueCentral will notify the Customer of the proposed price structure changes at least 28 days before it is due to take effect. BlueCentral may issue a Price Structure Change notice by email, in statements added to or included with monthly invoices, by letter, via the control panel, or by other reasonable means selected by BlueCentral.
- 15.4 Pricing from Service Providers:** From time to time service providers and suppliers to BlueCentral may amend their prices. BlueCentral reserves the right to pass on price changes as described in 15.2 and 15.3.
- 15.5 Usage Charges:** Where applicable, Usage Charges are measured by the billing data collection devices that measure data traffic at the BlueCentral router interface at the edge of the BlueCentral network, and are calculated according to the billing method selected by Customer and set out on the Cover Sheet. In the event of a billing dispute, Customer acknowledges and agrees that it will accept these data traffic records as accurate and final records of the data traffic to which they relate.
- 15.6 Invoices:** BlueCentral will issue invoices in accordance with its billing cycle, as from time to time notified to Customer:
- (a) For fixed or recurring charges, in advance;
  - (b) For variable charges including Usage Charges and excess Usage Charges, in arrears;
  - (c) For Hardware and Software, on or after delivery, or otherwise in accordance with the Cover Sheet;
  - (d) For any installation charges, on or after installation, or otherwise in accordance with the Cover Sheet;
  - (e) Otherwise as notified by BlueCentral from time to time.
- 15.7 Billing Periods:** BlueCentral will use its best endeavours to bill all charges for the relevant billing period in the invoice relating to that period. Where charges relating to that billing period arise for any reason after the invoice is issued, including without limitation late notification of a Supplier of billing errors, BlueCentral may include such charges on a later invoice.
- 15.8 Account Maintenance Fee:** where Customer has not authorised BlueCentral to debit invoiced fees and charges against a nominated bank Account, debit card or credit card, BlueCentral may charge, and Customer agrees to pay, an account maintenance fee of \$3.50 on each monthly invoice rendered by BlueCentral to Customer, including, where Customer has multiple services, on each invoice rendered for each of those services.
- 15.9 Downgrade Fee:** where Customer requests a change to the specifications for its Services which results in lower monthly fees, and BlueCentral agrees to such request, BlueCentral may charge Customer a Downgrade Fee of \$100.
- 16. Payment Authorities**  
Customer hereby authorizes BlueCentral to debit all fees under any invoices rendered by it under this Agreement, as the Customer chooses, to its nominated Bank Account or to Customer's nominated credit card and all subsequent renewals of that credit card.
- 17. Privacy**  
BlueCentral may collect, use and disclose information relating to Customer for purposes related to the supply of Services, including without limitation billing and account management, business management and product development, and to the provision of information about promotions, products and services of BlueCentral, in accordance with the Privacy Policy set out on the BlueCentral

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Website, but will not use such information so as to breach any Privacy Law.

### 18. Credit Information

The Customer hereby agrees and consents to BlueCentral acquiring a credit report from any credit reporting agency containing personal information (as well as information concerning commercial creditworthiness and activities) for purpose of assessment by BlueCentral of an application for credit (whether commercial or private) or for the collection of payments which are overdue. The Customer also agrees and consents to BlueCentral reporting information to any credit reporting agency that the Customer is in default of the trading terms of this Agreement or that it has handed over collection of the Customer's account to a collection agency.

### 19. Access to Data Centres

**19.1 No right of Access:** Where this Agreement relates to dedicated hosting services, Customer shall not be entitled to have physical access to the Data Centre under any circumstances and for any purpose whatsoever.

**19.2 Co-location Services:** Where this Agreement relates to Co-location Services, the Customer may only have physical access to the Data Centre if Customer has first:

- (a) Given reasonable notice of request for access, which access is for the sole purpose of carrying out routine maintenance, system upgrades or repairs;
- (b) Agreed to pay the appropriate access fee from time to time and in effect at the time and set out on the Website; and
- (c) Agreed to abide by such conditions as BlueCentral in its sole discretion deems necessary to protect the security of the Data Centre and the facilities, hardware and equipment located therein.

### 20. Colocation Lien

Where this Agreement relates to Co-location Services, the Customer grants BlueCentral a lien over all Customer's equipment as security for the Customer's obligations under this Agreement, including without limitation its obligation to pay all amounts due and owing under any invoice rendered under this Agreement. If the Customer fails to pay all amounts owing under invoices by the due date, BlueCentral may in its sole discretion:

- (a) Impose such conditions on Customer's physical access to Data Centre as BlueCentral deems appropriate; and/or
- (b) take possession of Customer's equipment and store it, at Customer's expense, until taken in full or partial satisfaction of any lien or judgment, all without being liable

to prosecution or for damages, until BlueCentral receives payment in full of any overdue charge or expense in relation to any Services.

### 21. Insurance – Colocation

Where this Agreement relates to Colocation Services, Customer shall effect and maintain for the Term comprehensive general liability policy of insurance with an insurance carrier and in a form approved by BlueCentral in an amount not less than the equivalent of AU\$5,000,000 per occurrence for bodily injury and property damage caused or arising out of malfunctions of Customer equipment or actions of Customer, its agents or employees during physical access to Data Centre.

### 22. Force Majeure

Neither party will be responsible for any delay or failure to perform its obligations under this Agreement (except obligations relating to payment), resulting from any cause beyond its reasonable control, including but not limited to: acts of God; inclement weather, fire, explosion or flood; strikes, work stoppages, slow-downs or other industrial disputes; riots or civil disturbances; and acts of government. BlueCentral and the Customer will give each other notice of the event as soon as practicable after the event and will as soon as the event ceases to effect performance of the obligations under the Agreement in question resume compliance with their obligations.

### 23. Notices

**23.1** Subject to clause 23.2, any notice to be served on either of the parties by the other shall be sent by prepaid recorded delivery or registered post or by facsimile or by electronic mail and shall be deemed to have been received by the addressee within 72 hours of posting, within 24 hours if sent by facsimile to the correct facsimile number (with correct answerback), or within 24 hours if sent by electronic mail to the correct electronic mail address of the addressee.

**23.2** Any notice to be served by BlueCentral pursuant to clause 1.3(b) in relation to the variation or amendment of the terms set out in the Cover Sheet, including prices for Services and terms relating to the operation of Services, during Subsequent Terms may be served by posting the amendment or variation on the Customer's Control Panel, and such notice shall be deemed effective 14 days after the date of posting of the notice.

### 24. Assignment

**24.1** BlueCentral may assign its rights and obligations under this Agreement to any third party able to perform those obligations and otherwise on such terms and conditions as it may deem acceptable.

**24.2** Customer may not assign this Agreement unless with the prior written consent of BlueCentral.

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### 25. Governing Law

This Agreement shall be governed by the law in effect in the State of New South Wales, and the parties submit to the jurisdiction of the Supreme Court of New South Wales

### 26. General Provisions

If any provision or portion of this Agreement is held to be unenforceable, it shall be enforced to the maximum extent permissible consistent with the terms hereof, and the remainder of this Agreement shall continue in full force and effect. This Agreement may not be amended or modified, and no provision may be waived, without a writing signed by the Parties. This Agreement represents the entire agreement of the Parties with respect to the subject matter hereof and supersedes all prior and/or contemporaneous agreements and understandings between the Parties with respect to the subject.

### 27. Definitions

**Acceptable Use Policy** means the policy set out at URL <http://www.bluecentral.com/customer-service/customer-service-acceptable-usage/> which defines acceptable and unacceptable use of the Services by the Customer.

**BlueCentral** or **BC** means BlueCentral, a division of BlueFreeway Limited, a public corporation listed on the Australian Stock Exchange.

**BlueCentral Network** or **BlueCentral IP Network** means the data communications network (based on TCP/IP and other Internet protocols) between the BlueCentral IP routers owned and operated by BlueCentral.

**BlueCentral Website** means the website located at the URL, <http://www.bluecentral.com>.

**Business Hours** means the hours between 8 am and 6 pm on normal business days.

**Control Panel** means an interface on the BlueCentral Website which enables a Customer, by logging in using assigned User IDs and Passwords, to access tools and modules provided by BlueCentral or specified in the Agreement for monitoring, managing and maintaining various functions of hosted websites such as user accounts, file managers, server logs, databases and other analytical tools.

**Customer** means the end user of Services to whom BlueCentral sell Services to, or it's authorized Resellers resell Services to.

**Data Centre** means any secure facility (whether maintained by a third party or by BlueCentral) for housing Hardware for purposes of supplying Services under this Agreement.

**Privacy Law** means and includes the Privacy Act (Cth) 1988, the Privacy and Personal Information Protection Act (NSW) 1988, and any other law,

statute or code in Australia that regulates the dissemination and use of information about or concerning an individual person or corporation.

**Privacy Policy** means the BlueCentral Privacy policy as set out from the main URL page <http://www.bluecentral.com/customer-service/terms-and-conditions/>

**Reseller** means an organisation who on-sells BlueCentrals Services to Customers (as defined above) and who are permitted to do so by BlueCentral.

**Regulatory Authority** means and includes the Australian Communications and Media Authority, the Australian Competition and Consumer Commission, the Australian Communications Industry Forum Limited, the Telecommunications Industry Ombudsman, the Internet Industry Association, the Asia Pacific Network Information Centre, authorized domain name registrars, and any other competent government or statutory body or authority having jurisdiction over BlueCentral.

**Service** or **Services** means the service or Services set out in the Cover Sheet and in the Services Sheet, and any related Hardware, Software and additional services which BlueCentral supplies in connection with the Service or Services.

**Service Level Agreement** means the agreement set out at the URL <http://www.bluecentral.com/customer-service/business-service-level-agreement/>

**Supplier** means any supplier of goods or services (including without limitation interconnection services) used directly or indirectly by BlueCentral to supply Services under this Agreement.

**Term** means the period set out in the Cover Sheet and Subsequent Term means any further period for which this Agreement is automatically extended pursuant to clause 12.1.

**Usage Charges** means any charges for services which are measured, calculated or determined by reference to use of the Services by Customer.

**User** means any person or entity authorized by Customer to access and/or use the Services, and includes any person accessing any Customer website.