



## Melbourne Network Solutions Ltd

### Terms of Service

**THIS AGREEMENT** is made

#### **BETWEEN**

**Melbourne Network Solutions Limited** with registered office Turing House, Archway, Manchester M15 5RL ("Melbourne" which expression shall include all or any of its subsidiaries, agents, successors and assigns);

and

Customer, as defined in the Service Order Schedule (the "Customer" which expression shall include its permitted successors and assigns).

#### **Background:**

- A.** Melbourne is in the business of providing collocation facilities in terms of licensing rack/unit space for customers' own computer and telecommunication equipment together with the provision of associated power, security and maintenance services and access to third party telecommunications carriers at the location identified in the Service Order Schedule (the "**Location**");
- B.** The Customer wishes to licence the rack space identified in the Service Order Schedule at the Location and to contract for the Services all in accordance with the following terms and conditions;
- C.** If the Licensed Space is one or more complete quarter racks this Service is referred to as the "**Rack Space Service**" and if the Location is within a rack shared with others it is referred to as the "**Co-location Service**". If hardware is rented from Melbourne to The Customer on a managed basis, the service is referred to as "**Dedicated Server Hosting**" or "**Managed Server Hosting**". The foregoing are collectively referred to as "**the Services**".

#### **1 Definitions and Interpretation:**

1.1 In this Agreement the following words and phrases shall have the meanings respectively set against them:-

- 1.1.1 "Acceptable Use Policy" the policy laid down by Melbourne from time to time;

- 1.1.2 "Charges" all charges including the colocation charge, Helping Hands fee and any additional charges detailed in the Service Order Schedule payable by the Customer to Melbourne under the terms of this Agreement;
- 1.1.3 "Co-location Service" the service referred to in Background C above;
- 1.1.4 "Commencement Date" the date upon which Melbourne commences to supply the Services to the Customer set out in the Service Order Schedule;
- 1.1.5 "Equipment" the Customer's equipment authorised by Melbourne and installed in the Licensed Space in accordance with clause 3.1. of this Agreement;
- 1.1.6 "Licence" the licence granted by Melbourne to the Customer in clause 2;
- 1.1.7 "Licensed Space" the rack space identified in the Service Order Schedule or such other equivalent space that Melbourne may designate from time to time in accordance with clause 2.2.4;
- 1.1.8 "Location" the location identified in the Service Order Schedule;
- 1.1.9 "Outage Event" any event causing Equipment to be off line;
- 1.1.10 "Planned Maintenance" the maintenance referred to in clause 4.2.4(b) and 4.10;
- 1.1.11 "Power Availability Target" the targets set out in clause 4.2;
- 1.1.12 "Procedures" policies, guidelines or procedures published by Melbourne from time to time;
- 1.1.13 "Rack Space Service" the service described in Background C above;
- 1.1.14 "Service Credits" the credits referred to in clause 4.2;
- 1.1.15 "Services" all services to be provided by Melbourne to the Customer under this Agreement;
- 1.1.16 "Site Security Procedures" the procedures set out on Melbourne's Web Site, as amended from time to time;
- 1.1.17 "Standard Service Hours" has the meaning given to it in clause 5;
- 1.1.18 "Targets" either one or both of the Power Availability Targets or the Temperature Targets;
- 1.1.19 "Temperature Targets" the targets set out in clause 4.2;
- 1.1.20 "Term" the initial term as defined in the Service Order Schedule and thereafter subject to not less than 1 months notice in writing given by one party to the other pursuant to clause 13.1;

- 1.1.21 "Web Site" the website with URL support.melbourne.co.uk.
- 1.2 Words importing the singular include the plural and vice versa, words importing a gender include every gender and references to persons include bodies corporate and unincorporated associations and partnerships.
- 1.3 Any reference to a Recital, Clause or Schedule shall (except where specified otherwise) be deemed to be a reference to a Recital, Clause or Schedule (as the case may be) of this Agreement. The Schedules form part of this Agreement and shall have the same full force and effect as if expressly set out in the body of this Agreement.
- 1.4 In this Agreement and in the Schedules, clause or paragraph headings are for ease of reference only and do not form part of this Agreement nor affect the construction of any provisions.
- 1.5 In construing this Agreement general words introduced by the word "other" shall not be given a restrictive meaning by reason of the fact that they are preceded by words indicating a particular class of acts, matters or things and general words shall not be given a restrictive meaning by reason of the fact they are followed by particular examples intended to be embraced by the general words.
- 1.6 The Customer shall be deemed to have notice pursuant to this Agreement of all policies and procedures and notices posted by Melbourne by the Web Site.

## **2 Grant of License**

- 2.1 With effect from the Commencement Date, Melbourne hereby grants to the Customer a non-exclusive non-transferable license:-
- 2.1.1 to deliver, install and connect the Customer's own equipment authorised under the provisions of clause 3.1 (the "Equipment") within the Licensed Space as a licensee only. The installation and connection shall be carried out by the Customer in compliance with all policies and procedures laid down by Melbourne from time to time;
- 2.1.2 in relation to **Rack Space Services** only and subject to compliance by the Customer with all its obligations under this Agreement and the provisions of clause 2.3, to enter the Location and the Licensed Space, for the purpose of carrying out the activities specified in 2.1.1 above and to inspect, repair or maintain the Equipment either by its own employees and/or by third party telecommunication carrier and maintenance representatives approved by Melbourne in accordance with Melbourne's Site Security Procedures.
- 2.1.3 In relation to **Co-Location** and **Dedicated/Managed Server** Services, Melbourne may provide physical access to the Equipment for the Customer and third parties at the Customer's request. The Customer shall pay for such access in accordance with the current price list rates published by Melbourne

from time to time. The Customer shall give to Melbourne not less than 24 hours notice required for routine visits, by way of a support ticket requesting access. Emergency on-site support is available by following the prescribed procedures set out in Melbourne's welcome literature and as updated on the Web Site from time to time.

2.2 The Customer acknowledges and agrees that:

- 2.2.1 this Licence will not confer on the Customer any tenancy rights or create any relationship of landlord and tenant between the Customer and Melbourne, nor any rights whatsoever against any third parties;
- 2.2.2 this Licence is personal to the Customer and may not be transferred to any assign, sub-tenant or sub-licensee nor the Licensed Space shared with any third party;
- 2.2.3 that the Location will contain equipment of other customers of Melbourne as well as the Equipment and that the use of the Location will be shared with other customers; and
- 2.2.4 Melbourne may move the Equipment to any other space within the Location excising all reasonable care and at times previously agreed with the Customer. Melbourne shall be responsible for all costs incurred in connection with the move.

2.3 Melbourne reserves the right to refuse any person entry to the Licensed Space or to the Location whether for the purposes of access to the Equipment or otherwise in accordance with the Site Security Procedures.

### **3 Equipment**

3.1 The Customer shall not keep any equipment at the Licensed Space unless such equipment has been previously approved by Melbourne and made available for inspection by Melbourne if so required. Any equipment specified in the Service Order Schedule shall be deemed to be authorised by Melbourne. Any replacement or additional equipment must be notified to Melbourne by the Customer and be previously approved by Melbourne prior to installation.

3.2 The Customer will (unless otherwise specified) own all right, title and interest to the Equipment and will be responsible for supplying and arranging delivery of the Equipment to the Licensed Space within the Location at its own expense and at a date and time agreed with Melbourne. The Customer will, to the extent that the Customer is so permitted by Melbourne to install and connect the Equipment in accordance with a mutually agreed installation timetable.

3.3 Melbourne will be responsible for providing power, security and access to the Location to Melbourne's standard specification as specified in Clause 4 below unless a customised

specification or the provision of additional services has been separately agreed in writing between Melbourne and Customer.

3.4 The Customer will at all times throughout the Term of this Agreement:-

3.4.1 maintain the Equipment to an industry acceptable safety standard, and to a standard which ensures that the Equipment does not adversely affect or interfere with the proper operation of Melbourne's own equipment and services nor the equipment and services of third parties or that of other Melbourne customers within the Location;

3.4.2 maintain an up-to-date, complete and accurate inventory of the Equipment in the Licensed Space at the Location and forthwith provide Melbourne with a copy of the same;

3.4.3 ensure that the Equipment is clearly identified as belonging to the Customer and maintain adequate insurance for the same.

3.5 In the event that Melbourne has reason to believe that the Customer's Equipment may be the cause of, or contributing factor to, or affected by any power or service problem, the Customer agrees that Melbourne may temporarily disconnect the power supply to the Equipment or any part thereof for the purposes of investigating and rectifying any such problems or for carrying out essential maintenance relating to the Licensed Space, the Location or other equipment in the Location. Wherever reasonably practicable (emergencies excluded), Melbourne will give advance notice of such disconnection and use all reasonable endeavours to cause minimum disruption to the operation of the Equipment by endeavouring to make any such essential disconnection outside the Standard Services Hours.

3.6 The customer grants Melbourne a lien over the Equipment to secure all sums due, owing or incurred to Melbourne under this agreement, and such lien shall continue and Melbourne will be entitled to retain possession of all equipment (and the Customer shall not be entitled to remove the Equipment from the property) until Melbourne has received all such sums in cleared funds. In the event that payment has not been received within 12 weeks of invoice the Customer hereby appoints Melbourne as its agent to sell or otherwise dispose of the Equipment (including any data on it) and to defray any unpaid Charges against the sale proceeds before accounting to the Customer for the balance.

## **4 The Services**

4.1 Melbourne shall use all reasonable endeavours to:-

4.1.1 (unless specified otherwise in the Service Order Schedule) provide a connection point to a protected single-phase 230 Volt AC power supply providing a maximum amount of power per rack as stated in the Service Order Schedule;

- 4.1.2 provide AC power to the Customer's connection point measured at the power distribution board 100% of the time;
- 4.1.3 provide a UPS battery back up system and a diesel generator to protect the above supply so that the UPS will provide sufficient time in normal operating circumstances to enable the diesel generator to take over the load in the event of mains power failure;
- 4.1.4 provide a diesel generator with at least 5 days continuous power before requiring fuel to be replenished;
- 4.1.5 maintain the air temperature into the front (i.e. cold aisle) of customer racks between 18 and 27 degrees centigrade and to maintain humidity around the Equipment at between 25% and 75%;
- 4.1.6 provide a fire detection and/or suppression system;
- 4.1.7 provide adequate lighting within the Location.

4.2 If Melbourne fails to a Target at any time, the Customer will receive a service credit in the next month as follows:

% of month power is available	% of month temperature between 18 and 27 degrees Celsius	Service Credit (% reduction in monthly collocation charge)
< 100.00%	< 99.97%	5 %
< 99.95%	< 99.85%	10%
< 99.90%	< 99.70%	15%
< 99.85%	< 99.30%	20%
<99.80%	< 98.85%	30%

- 4.2.1 The Customer must make a claim for any Service Credit in writing to Melbourne no later than 5 working days after the end of the period in which the Customer considers that the Power Availability Target or the Temperature Targets has not been met.
- 4.2.2 Any claim referred to in clause 4.2.1 above must detail the affected Equipment.
- 4.2.3 Melbourne will calculate the Service Credit (if any) within 5 working days of receipt of the claim.

- 4.2.4 Melbourne shall have no liability to the Customer (whether for Service Credits or otherwise) if the failure to meet Power Availability or Temperature Targets arises directly or indirectly from any of the following:-
- (a) Melbourne acting on recommendations from third parties such as emergency services;
  - (b) scheduled maintenance or re-configuration to service being carried out by Melbourne or the Customer;
  - (c) outages resulting from a failure of Customer Equipment;
  - (d) outages resulting directly or indirectly from a breach of any of the terms of this Agreement by the Customer including but not limited to failure to comply with Procedures or caused by unauthorised changes to Melbourne's equipment by the Customer;
  - (e) Planned Maintenance notified at least 7 days in advance.
- 4.2.5 The Customer will not be entitled to claim any Service Credits if, at the date of the event causing the outage, the Customer is in default in payment of Charges.
- 4.3 Melbourne will provide security cover on the building at all times and the area in which the Equipment is located will be kept secure in the manner set out in the Site Security Procedures.
- 4.4 Melbourne will keep a log of all accesses to the Equipment and make that log available for inspection by the Customer at reasonable times during Service Hours at the Customer's request.
- 4.5 Melbourne will ensure that any changes or alterations at Location or to the Services do not materially impair the operation of the Licensed Space.
- 4.6 Melbourne will use its reasonable endeavours to ensure that maintenance is carried out during off peak hours and that the Customer is notified at least 1 week in advance);
- 4.7 Melbourne will provide to the Customer with the most current Site Security Procedures and with such other documentation and information as may be necessary for the proper use of the Licensed Space. Melbourne will provide the Customer with updates to such documentation from time to time.
- 4.8 Melbourne reserves the right to terminate all Services and deny the Customer access to the Licensed Space should the Customer (or any of its agents or contractors) perform or permit any unauthorised repair, alteration or change to be made to the Licensed Space and to charge for any rectification work required to be carried out by Melbourne to re-instate or correct the same.

- 4.9 Melbourne shall be entitled to on no less than 7 days notice given to the Customer suspend the provision of Services in the event that the Customer is in arrears in payment of Charges by 45 days or more. Melbourne shall have no liability whatsoever to the Customer arising directly or indirectly from the suspension of Services, and a re-connection charge may be payable.
- 4.10 Melbourne reserves the right to adapt or modify the Licensed Space and/or the Location as may be required from time to time including, but not limited to alternations necessary to comply with changes in Government legislation or statutory instruments or orders which directly affect the Licensed Space or the Location. Any such modification shall be carried out with a minimum of disruption to the Service but Melbourne shall not be liable to the Customer for any disruption which may occur. Melbourne shall, where reasonably practicable, give the Customer at least 48 hours notice.
- 4.11 Melbourne will monitor the agreed level of service at the Licensed Space remotely as may be required. A remote diagnostic service will be provided by Melbourne at all times.
- 4.12 Rack Space Service Customers, shall be entitled to 24/7 unaccompanied access to the Equipment for pre-nominated staff or sub-contractors of the Customer, provided:
- 4.12.1 That they shall have complied with the pre booking by means of the online access request system provided by Melbourne; and
  - 4.12.2 That the Customer shall not be in material default of any of the provisions of this Agreement.

## **5 Standard Service Hours**

Support personnel will be available for routine requests between the hours of 08:00 and 18:00, Monday to Friday inclusive, excluding national holidays ("Standard Service Hours") unless otherwise specified herein. Emergency support will be available 24 hours a day, including weekends and national holidays.

## **6 Service Charges**

- 6.1 The Customer will pay the charges specified in the Service Order Schedule and such other charges levied by Melbourne under the terms of this Agreement;
- 6.2 Charges are set for the initial Term as defined in the Service Order Schedule and thereafter are subject to review by Melbourne giving to the Customer not less than 30 days written notice;
- 6.3 Charges are payable within 30 days of the date of the invoice unless specified otherwise on the Service Order Schedule;

- 6.4 Colocation Charges shall be invoiced by Melbourne monthly in advance and other Charges payable (for example overage charges) shall be invoiced monthly in arrears;
- 6.5 Melbourne reserves the right to payment of a security deposit and/or guarantees from the directors of the Customer.
- 6.6 If the Services have been suspended pursuant to this Agreement the Customer shall pay the reconnection fee in full and provide any deposit or guarantee that Melbourne may require pursuant to clause 6.6 prior to recommencement of any services. The reconnection fee shall be the fee laid down by Melbourne from time to time.
- 6.7 The Service Order Schedule shall set out the billing method applicable to this Agreement. In the event that the "per gigabyte" bandwidth billing method applies, there will be a stated monthly bandwidth transfer "quota", expressed in gigabytes per month. If the Customer exceeds the quota, without prior agreement, the Customer shall pay an overage rate of £0.75 per gigabyte, for the data transferred over and above the monthly quota. These charges shall be invoiced monthly in arrears. The Customer may at any time in writing to Melbourne increase the quota. Any increase shall apply for the remainder of the Term, and may require an extension of the Term.
- 6.8 In the event that the "per megabit" style bandwidth billing method applies, any burst using industry standard 95th percentile billing, will be charged to the Customer at a premium of ten per cent over the rate for committed data rate (CDR) set out in the Service Order Schedule, unless agreed in writing beforehand. If the Customer's usage of bandwidth bursts in any two consecutive months Melbourne shall have the right to offer a new agreement containing an increased bandwidth commitment and/or rate limit the connection to the committed data rate.
- 6.9 Within the Term, defined in the Service Order Schedule, Melbourne shall pass on to the Customer the cost of any increase in the cost of power supplied to Melbourne to a maximum increase of a sum equivalent to 10% of the annual Charges for Colocation Services or Rack Space Services (as the case may be) within the initial term, with 30 days notice being provided.
- 6.10 After the Term, Melbourne shall pass on any increase in the cost of power supplied to Melbourne, with 30 days notice being provided.

## **7 Undertakings by the Customer**

The Customer undertakes:

- 7.1 to comply strictly with the provisions of the Licence specified in Clause 2 above and the other terms and conditions of this agreement;
- 7.2 not to exceed the weight loading limited specified in the Service Order Schedule (if any);
- 7.3 to comply with Melbourne's Site Security Procedures specified on Melbourne's Web Site;

- 7.4 to Comply with Melbourne's Acceptable Use Policy;
- 7.5 not to cause, directly or indirectly, any breach of reliability, safety or security of the Location or the Licensed Space nor cause any other unauthorised access or exposure to its own, Melbourne's or other Customers' equipment or operations;
- 7.6 to supervise and control use of its Licensed Space and the Equipment located therein in accordance with the terms of the License specified in this Agreement;
- 7.7 to respect the confidentiality of Melbourne, the Location and other customers at the Location;
- 7.8 to pay the Charges;
- 7.9 the Customer agrees and accepts that the Service Credits are their sole and exclusive remedy for failure by Melbourne to meet the Targets and the Customer indemnifies Melbourne against all costs, claims, damages and proceedings whatsoever arising from such failure;
- 7.10 Conduct at the Location
- The Customer and its Representatives agree to adhere to and abide by all Site Security Procedures and safety measures laid down by Melbourne from time to time and available on the Web Site. The Customer shall not and shall procure that its Representatives shall not directly or indirectly:-
- (a) misuse or abuse any Melbourne property or equipment or third party equipment;
  - (b) make any unauthorised use of or interfere with any property or equipment of any other Melbourne customer, or any other licensee of Melbourne at the Location;
  - (c) harass any individual, including Melbourne personnel and representatives of other Melbourne customers;
  - (d) act in a way which is incompatible with sharing resources or property;
  - (e) engage in any activity that is in violation of the law or aids or assists any criminal activity while on the Location or in connection with the Services.
  - (f) cause any material inconvenience to Melbourne or other customers at the Location.
- 7.11 Customers will also adhere to any guidelines governing their general conduct at the Location published by Melbourne from time to time on its Web Site.
- 7.12 The Customer agrees that it shall defend, indemnify, save and hold harmless Melbourne from any and all demands, liabilities, losses, costs and claims, including all legal fees, that may arise or result from any service provided or performed or agreed to be performed by a

Customer, its clients, agents, employees or representatives. (1) any injury to person or property caused by any products sold or otherwise distributed in connection with the Services; (2) any material supplied by Customer infringing or allegedly infringing on the proprietary rights of a third party; (3) copyright infringement and (4) any defective Product sold via the Services.

- 7.13 Any equipment or goods sent by or on behalf of the Customer to Melbourne shall be entirely at the Customer's own risk. It is the responsibility of the Customer to ensure that such items are adequately packaged and insured if necessary.
- 7.14 The Equipment shall be at the Customer's risk at all times and the Customer shall be responsible for insuring the Equipment against all risks. The Customer shall also effect and maintain insurance policies for public liability, material damage and business interruption cover from the commencement date until such a date as is necessary to ensure that the insurance is provided for all of the Customer's liabilities rising under this agreement and which would usually be covered under such policies irrespective of when any claim in relation to any such liability is made. The customer shall produce upon demand for inspection by Melbourne adequate proof of such insurance.
- 7.15 The Customer shall indemnify Melbourne and hold it harmless against any and all costs, expenses (including, without limitation, legal costs), liabilities, losses, damages, claims, demands and judgements which Melbourne incurs or suffers as a result of:
- any claim that the presence of the Equipment at the Property (or its installation or use there) infringes the intellectual property rights or industrial property rights of a third party;
  - any claim arising from the content or data stored on or transmitted through the Equipment;
  - any damage to the Property or any third party's equipment at the Property caused by a Third Party;
  - claims brought against Melbourne by a Third Party arising as a result of that Third Party having access to or use of the Colocation Services;
  - any damage done to the Property or any third party's equipment at the Property caused by the Customer.

## **8 Support not included and which will be charged for if provided**

The following additional services are supplied by Melbourne at its own discretion after receiving a written request from the Customer. Melbourne is not obliged to provide any of the services described below, but acknowledges that, at the specific request of the Customer, it may agree to do so. If so the Customer shall pay Melbourne the prevailing charges for any such services at its prevailing standard rates or as otherwise agreed.

- 8.1 Support of the Equipment, software, accessories, attachments, machines, systems or other devices not supplied by Melbourne nor previously agreed in writing between the parties
- 8.2 Rectification of lost or corrupted data arising for any reason other than Melbourne's own negligence.
- 8.3 Support rendered more difficult because of any unauthorised changes, alterations, additions, modifications or variations to the Licensed Space or to the Customer's Equipment
- 8.4 Attendance to faults and rectification of damage caused by using the Licensed Space outside the terms of this Agreement

## **9 Dedicated Server Hardware Failure Guarantee**

Melbourne guarantees to its dedicated server clients that defective hardware will be replaced within 2 or 4 hours (dependant on service level chosen) of signalling the problem via the 24/7 emergency telephone line or emergency ticket form, regardless of the time of day.

In case of hardware unavailability, a temporary server of similar specifications (if available) will be offered to the client.

If the hardware replacement has not be completed within 4 hours and a temporary server has not been made available within this same delay, Melbourne will compensate its clients with a credit equivalent to one day for the first 15 minutes of unavailability after the first 4 hours and one day of credit for each of the following hours. The credit can be claimed up to the monthly amount paid for the service.

The guarantee is limited to the hardware owned by Melbourne and rented by the client. The guarantee provides for the defective hardware's replacement only. This guarantee does not apply to operating system reconfiguration or data restoring. The guarantee only applies to critical hardware failures that affect the server availability.

All claims concerning this guarantee must be done by support ticket. All requests must be made within seven (7) days following the end of the month in question.

## **10 Acceptable Use Policy**

The Acceptable Use Policy below defines the actions which Melbourne considers to be abusive, and thus, strictly prohibited. In using Melbourne's Services you agree to the conditions herein. Should any action be taken by Melbourne in the suspension or the withdrawal of Services the Customer shall forgo any claims against Melbourne in respect of refunds for unused Services and any performance claims against Melbourne.

The Customer shall not participate in or facilitate any of the following:

- Unsolicited e-mail activities
- Illegal pornography
- Impersonated or libellous postings
- Hacking or unauthorised access
- Propagation of viruses or worms
- Terrorism or threat of terrorism
- Denial of Service (DoS) or Distributed Denial of Service (DDoS) attacks

The Customer shall not deliberately or maliciously cause or allow to be caused any disruption to Melbourne's Services, its servers, network or other infrastructure, or any other networks or services on the internet.

We reserve the right to modify these Policies from time-to-time in our sole discretion. We will notify you of any such modifications either via e-mail or by posting a revised copy of the Policies on our Web Site.

## **11 IP Transit Service Level Agreement (SLA)**

- 11.1 Melbourne aims to provide a 99.95% "uptime" level of network connectivity on all IP transit and Point-to-Point link services. In the event that Melbourne is unable to provide Services to the Customer for more than 0.05% of any given calendar month, Melbourne will refund the Customer a portion of the Charges at the rate of 5% for every additional 15 minutes of downtime (or part thereof) due to lack of connectivity at the Location, except where more than 7 days prior notification of the loss of Services has been issued to the Customer (i.e. scheduled maintenance work). The maximum amount refunded shall not exceed the Charges relating to connectivity applicable for that month.
- 11.2 Save for outages referred to in clause 11.3, no event shall be treated as an Outage Event unless and until the Customer has notified Melbourne by use of support ticket.
- 11.3 General outages affecting Melbourne's network generally, or a substantial section of that network, will result in Melbourne issuing a fault report within 24 hours of the incident. The said fault report will be accepted as a loss of service for the purpose of this clause 11.2.
- 11.4 No refund is payable to a Customer if its account with Melbourne is in arrears, Melbourne has suspended or withdrawn services as a result of the customer being in breach of any of the terms in the use of the Services or if the Customer is subject to any event specified in clause 13.2.

- 11.5 The refunds set out in clause 11.1 are the sole remedies available to the Customer for a failure to meet the “uptime” service level and Melbourne shall not have any further liability to the Customer for loss of business, custom, loss of data and any service interruptions.
- 11.6 Melbourne shall have no liability for claims under the “uptime” service level agreement set out in this clause 11.1 of less than £15 per month. Any claim for more than £15 per month shall be refunded in full up to the maximum set out in clause 11.1.

## **12 Interest**

Interest shall be paid on Charges which are not paid within the period set out in clause 6.3 in accordance with Late Payment of Commercial Debts (Interest) Act 1998.

## **13 Terms and Termination**

13.1 This Agreement will commence on the date of signing by both parties (“Commencement Date”) and will continue for the Term specified in the Service Order Schedule and thereafter until or unless either party gives to the other Not less than 30 days notice to expire at any time after the initial Term subject to earlier termination as hereinafter contained.

13.2 Either party may by notice in writing to the other party terminate this Agreement forthwith if any of the following events will occur, namely:

13.2.1 if the other party is in breach of any term, condition or provision of this Agreement or required by the law relating to this Agreement (including but not limited to non payment) and has failed to remedy such breach (if capable of remedy) within 14 days of having received notice from the first party specifying the nature of the breach;

13.2.2 if the other party, being a body corporate, shall present a petition or have a petition presented by a creditor for its winding up, or convene a meeting to pass a resolution for voluntary winding up, or shall enter into any liquidation whether compulsory or voluntary (other than for the purposes of reconstruction or amalgamation), shall call a meeting of its creditors, shall enter any composition or arrangement with its creditors, or shall have a receiver **or administration** of all or any of its undertaking or assets appointed, or shall be unable to pay its debts or shall cease to carry on business.

## **13.3 Consequences of Termination**

13.3.1 On termination of this agreement pursuant to clause 13.2 in the event of Melbourne serving notice on the Customer pursuant to clause 13.2.1 or if any event specified in clause 13.2.2 shall have occurred in relation to the Customer, the Customer will pay all Charges due and payable to Melbourne, together with all costs and expenses properly incurred by Melbourne in connection with the

termination by Melbourne of this Agreement, together with a sum equivalent to Colocation other than 13.2 Charges for 30 days by way of liquidated damages to compensate Melbourne for losses arising as a result of the termination.

- 13.3.2 Upon termination of this agreement, howsoever or whenever occurring, Melbourne shall cease to be under any obligation to provide Services to the Customer. All Equipment and data shall be returned by Melbourne to the Customer upon payment in full by the Customer of all Charges due and payable but unpaid on the date of termination.

## **14 Liability**

- 14.1 Except to the extent that by the law relating to this Agreement it is not lawful to exclude such liability, Melbourne will not be liable to the Customer or to any person for any loss or damage whatsoever or howsoever caused, except as provided in 14.4 below, arising directly or indirectly in connection with this Agreement or the Services carried out hereunder.
- 14.2 Notwithstanding the foregoing generally, neither party shall be liable for indirect or consequential loss or damage including, but not limited to loss or damage to the Equipment or to other equipment or property (whether or not the same may be in either party's care, custody or control), or to data, or for loss of profit, business, revenue, goodwill or anticipated savings.
- 14.3 In the event that any exclusion of liability contained herein shall be held to be invalid for any reasons and Melbourne becomes liable for loss or damage that may be limited, such liability shall be limited to the total rental charge paid for the space for the Term specified in clause 14.1 above
- 14.4 Neither party excludes liability for death or personal injury to the extent that the same arises from the negligence of one of the parties, its employees, agents or authorised representatives.
- 14.5 Melbourne's total liability for loss of or damage to Equipment of the Customer that caused directly by any breach of the terms of this Agreement by Melbourne other than in respect of failure to meet Targets or the "uptime" service levels referred to in clause 11 shall be limited in aggregate to the sum of £30,000.
- 14.6 The Customer's total liability for damage to Melbourne's property or the property of a third party occupying space in the Location caused by a breach of the Customer's obligations under this Agreement will be limited to a sum equal to twenty times the Charges for colocation payable for the initial Term.

**15 Assignment**

The Customer will not assign or otherwise transfer all or any part of this Agreement without the prior written consent of Melbourne

**16 Cross-claims and Set-offs**

The Customer hereby waives any and all existing future claims and set offs against any instalment, charge or other payment due hereunder and agrees to pay the charges and other amounts due hereunder regardless of any set off or cross claim the Customer may have against Melbourne.

**17 Waiver**

Failure or neglect by Melbourne to enforce at any time any of the provisions hereof shall not be construed nor shall be deemed to be a waiver of Melbourne's rights hereunder nor in any way affect the validity of the whole or any part of this Agreement nor prejudice Melbourne's rights to take subsequent action..

**18 Notices**

All notices to or by the respective parties hereto will be in writing and will be deemed to have been duly given when delivered by hand, posted or sent by facsimile or email to the party to which such notice is required to be given under this Agreement addressed as follows:

The Customer:  
As per the Service Order Schedule

Melbourne:  
Address: Turing House, Archway, Manchester, M15 5RL  
Fax: 0161 232 0125  
Email: [inbox@melbourne.co.uk](mailto:inbox@melbourne.co.uk).

Or to such other address or facsimile number as the respective parties hereto may hereafter specify to the others in writing.

Notices delivered by hand or sent by facsimile will be deemed received the first working day following such delivery or sending. Notices which have been posted as above will be deemed received on the third working day following posting.

Notices sent by email to the email address above will be deemed to have been served 24 hours after being sent unless the email has been returned undelivered.

**19 Headings**

The headings of the terms and conditions herein contained are inserted for convenience of reference only and are not intended to be part of or to affect the meaning or interpretation of any of the terms and conditions.

**20 Severability**

In the event that any of the terms, conditions or provisions of this Agreement shall be determined by any competent authority to be invalid, unlawful or unenforceable to any extent, such term, condition or provision shall to that extent be severed from the body of this Agreement and the remainder thereof shall continue to be valid and enforceable to the fullest extent permitted by law.

**21 Force Majeure**

Melbourne shall be under no liability to the Customer in respect of anything which, apart from this provision, may constitute breach of this Agreement arising by reason for *Force Majeure* namely, circumstances beyond the control of Melbourne which shall include (but shall not be limited to) acts of God, perils of the sea or air, fire, flood, drought, explosion, sabotage, accident, embargo, riot, civil commotion, including acts of local government and parliamentary authority; inability to provide support or supply materials; breakdown of equipment and labour disputes of whatever nature and for whatever cause arising including (but without prejudice to the generality of the foregoing) work to rule, overtime bars, strikes and lockouts and whether between either of the parties hereto and any or all of its employees and/or any other employer and any or all of its employees and/or between any two or more groups of employees (and whether or either of the parties hereto or any other employer)

**22 Law**

The parties hereby agree that this Agreement shall be construed in accordance with the laws of England and Wales

**23 Power Overages**

Melbourne will measure the sustained load consumed by the Equipment and will provide power to average of load as specified in the Service Order Schedule. Additional power used without pre-agreement will be charged at £180 per Amp per month or at the current price list rate for power overages, whichever is greater.

**24 Intellectual Property**

Each party in this agreement warrants to the other, that it has all requisite consents, licences and authorities (whether statutory or otherwise) that are applicable or required in connection with the execution of and performance of its obligations under this Agreement and that it shall fully comply with its obligations under the same and under all relevant laws;

Each party in this agreement warrants to the other party, that it will ensure that, so far as it is within the party's control, the provision of the Services will not infringe any patents, trade marks, design rights (whether registerable or otherwise), copyright, database right, know how and other similar rights or obligations (whether registerable or not) of any third party in any country.

**25 Non-Solicitation**

Each party agrees with the other that for the duration of this Agreement and for a period of 12 months after the date of termination that it will not solicit or entice or attempt to solicit or entice any person or persons who are employed by the other party in connection with the Services.

**26 Contracts (Rights of Third Parties) Act 1999**

Nothing in this Agreement is intended to create any right which, by virtue of the Contracts (Rights of Third Parties) Act 1999, may be enforceable by a third party against either party to this Agreement.