

## Hosted Network Reseller Agreement

**THIS RESELLER AGREEMENT** referred to as **Agreement** is entered into this \_\_\_\_ day of \_\_\_\_\_, 2017, referred to as **Effective Date**, by and between Hosted Network (Superior IT Technologies Pty Ltd T/A Hosted Network) ABN 98 128 845 723 of Level 1, Suite 1.30, 90-96 Bourke Rd Alexandria NSW 2015, referred to as Hosted Network and \_\_\_\_\_, ABN \_\_\_\_\_ of \_\_\_\_\_ State \_\_\_\_\_, Post Code \_\_\_\_\_, referred to as **Reseller**. Hosted Network and Reseller may each be referred to as a **Party** and collectively as the **Parties**.

**WHEREAS**, this Agreement specifies terms and conditions under which Hosted Network will sell to Reseller and Reseller will purchase from Hosted Network certain Internet, cloud or communications related services for Reseller's resale to end users.

**NOW, THEREFORE**, in consideration of the foregoing, the mutual agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Hosted Network and Reseller agree as follows:

### **1. Scope of Resell Services**

**1.1 Resell Services.** Subject to the terms and conditions of this Agreement, Hosted Network shall provide to Reseller for resale to end users (collectively, the "Customers") products and/or services of Hosted Network as may be available to Reseller as indicated at [www.hostednetwork.com.au](http://www.hostednetwork.com.au) (the "Resell Services"). Any Resell Services which Reseller elects to obtain and Hosted Network agrees to provide shall be considered Resell Services under this Agreement and shall be provided pursuant to the terms and conditions of this Agreement, together with such additional obligations imposed upon Reseller as a prerequisite for obtaining any particular Resell Service on the web pages at [www.hostednetwork.com.au](http://www.hostednetwork.com.au) which describe such Resell Service and the related procedures for obtaining it, including, without limitation, any on-line authorisations to be made by Reseller and additional terms and conditions to which Reseller must agree in writing and deliver to Hosted Network, in each case, in connection with obtaining any such Resell Service (such additional obligations, terms and conditions being collectively referred to herein as the "Applicable Resell Service Additional Terms and

Conditions”).

### 1.2 Appointment as Reseller; Representation of Reseller; Resale to sub-resellers.

(a) Subject to the terms and conditions of this Agreement (including all Applicable Resell Service Additional Terms and Conditions), Hosted Network appoints Reseller as a reseller of the Resell Services and grants Reseller the non-exclusive right to sell the Resell Services to Customers. In connection with such appointment, Reseller acknowledges and agrees that Hosted Network may contact Reseller via email from time to time with newsletter updates and promotions regarding the Resell Services.

(b) Reseller hereby represents and warrants that (i) Reseller has full right, power and authority to enter into this Agreement, (ii) Reseller is at least 18 years of age, and (iii) Reseller may not provide or on sell the Hosted Network Resell Services to a sub-reseller who then provides this service to the Customer without the prior and express permission of Hosted Network to do so.

1.3 Customer Contracts. Hosted Network acknowledges and agrees that the Customers shall purchase the Resell Services under contracts with Reseller and that Hosted Network shall not have any contractual interest in such Customer relationships. Reseller shall be free to determine the terms and conditions of the sale of the Resell Services; provided, however, that Reseller shall require as a condition to the provision of any Resell Services to a Customer that such Customer execute a contract in a form not materially less protective of Hosted Network than Hosted Network's standard customer agreement for its services, as the same may be amended from time to time, a copy of which can be found at [www.hostednetwork.com.au](http://www.hostednetwork.com.au)

Without limiting the foregoing, Reseller's Customer contract must require, among other things, that (i) Customers comply with Reseller's Acceptable Use Policy ("AUP"), provided that such AUP must be no less restrictive and protective than Hosted Network's Acceptable Use Policy (as defined below), and must permit Reseller and Hosted Network to terminate provision of Resell Services to those Customers who fail to comply with the AUP and (ii) in the case of Customers purchasing domain names, such Customers agree to the terms and conditions set forth in the Applicable Resell Service Additional Terms and Conditions associated with domain name registration at [www.hostednetwork.com.au](http://www.hostednetwork.com.au). As used herein, the term "Hosted Network Acceptable Use Policy" shall mean the Hosted Network acceptable use statement, as amended from time to time by Hosted Network effective upon posting of the revised policy on the Hosted Network web site, currently located at [www.hostednetwork.com.au](http://www.hostednetwork.com.au)

## **2. Ordering Resell Services**

**2.1 Service Orders.** Reseller shall order the Resell Services in accordance with the procedures set forth at [www.hostednetwork.com.au](http://www.hostednetwork.com.au) and in the Applicable Resell Service Additional Terms and Conditions (collectively, the "Ordering Procedures"), which orders shall be effective immediately upon acceptance by Hosted Network as provided in the applicable Ordering Procedures. Hosted Network may change or reject an order only in accordance with the Ordering Procedures, and shall accept any and all orders that Hosted Network is not entitled to reject under the Ordering Procedures. An accepted order may be amended or cancelled by Reseller only in accordance with the provisions set forth in Ordering Procedures and, where applicable, for the charges set forth in Ordering Procedures.

## **3. Marketing and Sales of Services**

**3.1 Hosted Network Cloud Partner Program.** The Parties acknowledge and agree that during the term of this Agreement Hosted Network will provide the Reseller with a range of financial and non-financial benefits as well as associated sales and technical requirements in order to participate in the Hosted Network Partner Program and these terms will be published on the web site [www.hostednetwork.com.au](http://www.hostednetwork.com.au) as the "Partner Program Overview" and may be updated from time to time, and are hereby incorporated in full into this Agreement by reference.

**3.2 Branding of Services.** The Parties acknowledge and agree that, unless otherwise agreed by the Parties in the Applicable Resell Service Additional Terms and Conditions, Reseller shall market and sell the Resell Services to Customers under such service marks, trademarks or trade names as Reseller determines to be appropriate in its discretion; provided, however, that in all cases neither the trademarks and logos of Hosted Network and its Affiliates, nor those of Hosted Network's third-party providers of goods and services associated with the Resell Services ("Third Party Provider(s)") may be used by Reseller. Notwithstanding the foregoing, Hosted Network hereby agrees that Reseller may use the phrase "an authorised Hosted Network partner" and also make use of the "Hosted Network partner logo set" in connection with their Hosted Network Partner Program status when reselling or marketing the Resell Services.

3.3 Reseller co-operative advertising. Reseller may request marketing activity co-funding be allocated by providing a written proposal for a suitable marketing activity to Hosted Network.

Hosted Network may accept or reject a proposal, modify a proposal, specify how the funds will be used, specify terms and conditions to the use of the funds or agree or disagree to the use of the funds in its absolute discretion or whether the Reseller must meet the cost of the co-operative promotion and seek re-imburement from Hosted Network. Any claim for re-imburement must be in a form acceptable to Hosted Network specifying details of the claim and provided to Hosted Network within 30 days of the activity having taken place.

3.4 Sales and Marketing Practices. Reseller will at all times perform hereunder in a professional manner and in accordance with this Agreement and any guidelines issued by Hosted Network. Reseller will: (a) conduct business in a manner that reflects favourably at all times on the Resell Services and the good name, goodwill and reputation of Hosted Network; (b) avoid deceptive, misleading or unethical practices that are or might be detrimental to Hosted Network, the Resell Services or the public, including but not limited to disparagement of Hosted Network or the Resell Services ; (c) make no false or misleading representation with respect to Hosted Network or the Resell Services ; and (d) make no representation with respect to Hosted Network or the Resell Services that are inconsistent with Hosted Network's end user descriptions of the Resell Services if outlined on its web site [www.hostednetwork.com.au](http://www.hostednetwork.com.au), promotional materials and other literature distributed by Hosted Network, including all liability limitations and disclaimers contained in such materials.

3.5 Hosted Network Activities. The Parties acknowledge and agree that during the term of this Agreement Hosted Network will conduct sales and marketing activities (including through or in cooperation with other resellers) with respect to services that are the same as or similar to, the Resell Services throughout Australia, and that no agreement has been reached between the Parties to make any division of area in which they will both be conducting sales, whether by customer, industry, or geographical location.

3.6 Installation Support. If applicable, Hosted Network will provide installation support to assist Reseller as provided in the Applicable Resell Service Additional Terms and Conditions for the charges, if any, set forth therein.

3.7 Marketing Cross References. Hosted Network may include Reseller name and corporate

logo, a short description of the Partner's business, a link to the Reseller's website, and/or Reseller's contact information on Hosted Network's and its subsidiaries' website(s) and/or program member directories. Upon Hosted Network's request, the Reseller will provide Hosted Network with colour artwork of Reseller's name and/or logo in the form and on the media specified by Hosted Network for such purposes.

#### **4. Obligations of Hosted Network with Respect to Resell Services**

Hosted Network shall perform all Resell Services in compliance with all laws and regulations applicable to the provision of such services. Reseller acknowledges that, except as may otherwise provided in the Applicable Resell Service Additional Terms and Conditions, Hosted Network will not provide any maintenance of any equipment, software or telecommunication service purchased from or provided through Hosted Network under this Agreement.

#### **5. Obligations of Reseller with Respect to Resell Services**

**5.1 General.** Reseller shall resell Resell Services to Customers in accordance with the terms of this Agreement (including all Applicable Resell Service Additional Terms and Conditions), and in compliance with all laws and regulations applicable to the provision of such services, including, without limitation, Competition and Consumer Act and the Privacy Act.

**5.2 Trained Staff.** Reseller acknowledges that it is responsible for assuring that its sales force and customer care representatives for the Resell Services are trained, competent and professional. Reseller agrees to consult with the Hosted Network on specific issues that Hosted Network may identify to Reseller from time to time in connection with the performance of the Reseller sales force and customer care representatives that may have an adverse impact on Hosted Network, Hosted Network's brand and/or the brand of Third Party Providers, or on the effectiveness of the sales effort or customer care for the Resell Services.

**5.3 Facilities.** Reseller shall require that the Customer shall provide equipment, software, and facilities necessary to enable Reseller to provide the relevant Resell Services to such Customer, other than the equipment, software, and facilities to be provided by Hosted Network as part of the Resell Service as set forth in the Applicable Resell Service Additional Terms and

Conditions. Reseller acknowledges that Hosted Network will not be liable for any failure to deliver Resell Services as a consequence of a Customer's failure to provide the equipment, software, and facilities referenced in the preceding sentence.

## **6. Technical Support**

Hosted Network will provide Reseller with the necessary technical support to enable the Reseller to support their Customer with respect to the Resell Services. Reseller acknowledges and agrees that, notwithstanding any additional discount that may be stated in a written quotation, the price differential between Hosted Network and the Reseller to the Customer for the Resell Services is intended as compensation for material effort by Reseller throughout the process of a sale and support of Resell Services to Customers.

## **7. Training Services**

Hosted Network shall offer training relative to sales and customer care required to adequately conduct sales and marketing activities with respect to the Resell Services. The Reseller must submit to a quality and accreditation process administered by Hosted Network to ensure that they have achieved competence using or promoting the Resell Services to Customers. At any time during the Term of this Agreement Hosted Network may require any of the Resellers staff to pass any form of reasonable test to establish that they possess sufficient skills to comply with the obligations contained in this Agreement.

## **8. Price of Resell Services**

The prices for Resell Services to be provided by Hosted Network shall be the prices set forth at [www.hostednetwork.com.au](http://www.hostednetwork.com.au) or within its pricebook. Hosted Network shall be entitled to increase or decrease the price of a Resell Service as provided at [www.hostednetwork.com.au](http://www.hostednetwork.com.au) or within its pricebook with reasonable notice period. Quotes for a specific Resell Service will remain valid for a period of 30 days from date of issue unless advised otherwise.

## **9. Payment**

9.1 Billing and Payment. Charges for Hosted Network Services (as defined below) are due and payable upon presentment of an invoice from Hosted Network to Reseller, except to the extent otherwise set forth in the Applicable Resell Service Additional Terms and Conditions. Reseller shall be responsible for paying the relevant charges for the Hosted Network Services. Reseller shall be responsible for paying directly, charging and collecting from Customers and submitting all sales, use, gross receipts, access, bypass or other local, state and federal taxes or charges, however designated, imposed on or based upon the provision, sale or use of the Hosted Network Services.

As used herein, the term "Hosted Network Services" means the products and services to be provided by Hosted Network to Reseller under this Agreement, including the Resell Services and any and all customer care services, technical support services, transit services, training services and such other services as Hosted Network may agree to provide to Reseller under the terms of this Agreement, including any Applicable Resell Service Additional Terms and Conditions hereto.

9.2 Interest on Overdue Amounts; Actions Upon Arrearage.

(a) Any charges payable but not paid by Reseller within 30 days of the date of Hosted Network's presentment of an invoice to Reseller (or such longer date as may be set forth in the Applicable Resell Service Additional Terms and Conditions) will accrue interest at a rate of one and one half percent (1-1/2%) per month, or the highest rate allowed by applicable law, whichever is the lower. Interest shall accrue from the date that payment is due on any amounts that are required to be paid under Section 9.1 above.

(b) In the event Reseller's account becomes past due, Hosted Network may, in its sole discretion, suspend or disconnect the Resell Services to Reseller and its Customers upon ten (10) days advance written notice to Reseller. Reseller hereby agrees that, in the event of any such suspension or disconnection, Hosted Network shall have the right to use Customer Information (as defined in Section 10.5 below) to contact Reseller's Customers directly concerning alternative provisioning of the Resell Services to such Customers.

## **10. Confidential Information**

10.1 Confidential Information and Obligations. All documents, other materials and other



information made available to a Party or its employees by the disclosing Party in connection with this Agreement (including but not limited to, this Agreement), whether in oral, written, graphic, or electronic form (collectively, the "Confidential Information"), shall be deemed to have been furnished to the other Party in confidence and shall remain the exclusive property of the disclosing Party both during and after the term of this Agreement. Each Party shall maintain in trust and confidence all Confidential Information which it may (i) develop or accumulate for the disclosing Party during the term of this Agreement or (ii) acquire from the disclosing Party at any time, and will not during the term of this Agreement or thereafter, use the disclosing Party's Confidential Information for its own benefit or disclose or permit any of its employees or agents to disclose the Confidential Information to any other person; provided, however, that the recipient Party may disclose the disclosing Party's Confidential Information to such employees, agents and Affiliates of the recipient Party who need to know such Confidential Information for the purpose of effectuating this Agreement and who have been informed of and have agreed to protect the confidential nature of such Confidential Information. For purposes of this Article 10, the term "Party" shall include the Party's Affiliates. As used herein, the term "Affiliate" shall mean, as to any person or entity, any other person or entity that controls (i.e., possesses the power to direct or cause the direction of the management and policies of an entity, whether through ownership of voting securities, by contract, or otherwise), is controlled by or is under common control with such person or entity.

10.2 Use of Information. Nothing in this Agreement shall prohibit or limit either Party's use of information which (a) is now, or hereafter becomes, publicly known or available through lawful means; (b) is rightfully in recipient's possession, as evidenced by recipient's records; (c) is disclosed to recipient without confidential or proprietary restriction by a third party who rightfully possesses the information (without confidential or proprietary restriction); (d) is independently developed by recipient without any breach of this Agreement; or (e) is the subject of a written permission to disclose provided by the disclosing party. In the event either Party receives a subpoena or other validly issued administrative or judicial process requesting Confidential Information of the other Party, it shall, to the extent reasonably practicable and lawfully permitted, provide prompt notice to the other Party of such receipt and permit the other Party an opportunity to obtain a protective order with respect to such Confidential Information.

10.3 Return of Confidential Information. Upon the termination or expiration of this Agreement, or upon request from the disclosing Party, the non-disclosing Party shall return all Confidential Information to the disclosing Party or destroy all Confidential Information and certify in writing



that it has returned or destroyed all such information to the disclosing Party and has not kept any copies of the Confidential Information. The obligation of each Party with respect to the Confidential Information shall survive the termination or expiration of this Agreement for a period of three (3) years.

10.4 Publicity. No publicity, including, but not limited to press releases, concerning this Agreement, the Hosted Network Services provided hereunder, and/or the relationship between the Parties or with Third Party Providers by either Party, shall be issued by either Party without the prior written consent of the other Party, and if necessary in the opinion of Hosted Network, the applicable Third Party Provider.

10.5 Customer Information. The Parties acknowledge and agree that Reseller owns and retains all rights in relation to any and all information relating to Customers (collectively the "Customer Information"), except (i) as provided in Section 9.2(b) above and (ii) for disclosure of Customer Information to its Third Party Providers to enable the provisioning of Resell Services. Reseller grants to Hosted Network a non-exclusive, royalty free license to use the Customer Information for purposes of Hosted Network carrying out its obligations under this Agreement within its obligations under the Australian Privacy Regulation 2013.

## **11. Intellectual Property**

Each party acknowledges that the other party, its Affiliates and Third Party Providers own and retain all trademarks, service marks, trade names, logos, designations, copyrights and other proprietary rights in or associated with the other Party, its Affiliates, and the Third Party Providers, as applicable, and agrees that it will not at any time during or after the term of this Agreement assert or claim any interest in or do anything that may adversely affect the validity of any trademark, service mark, trade name, logo, designation or copyright belonging to or licensed to the other Party, its Affiliates, and applicable Third Party Providers (including, without limitation, any act or assistance to act which may infringe or lead to the infringement of any of the proprietary rights of the other Party, its Affiliate, and applicable Third Party Providers).

## **12. Disclaimer of Warranties**

THE HOSTED NETWORK SERVICES ARE PROVIDED ON AN "AS IS" BASIS. NOTWITHSTANDING ANY OTHER ORAL OR WRITTEN COMMUNICATIONS WITH HOSTED NETWORK ABOUT OR IN CONNECTION WITH THE HOSTED NETWORK SERVICES, HOSTED NETWORK MAKES NO WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING WITH RESPECT TO THE PROVISION OF THE HOSTED NETWORK SERVICES, TO RESELLER OR CUSTOMERS, INCLUDING WITHOUT LIMITATION ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON INTERRUPTION OF SERVICES, OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS. HOSTED NETWORK IS NOT LIABLE FOR THE CONTENT OR LOSS OF ANY DATA TRANSFERRED EITHER TO OR FROM RESELLER OR CUSTOMER, OR STORED BY RESELLER OR CUSTOMER OR ANY OF RESELLER'S OR CUSTOMER'S CLIENTELE OR OTHER THIRD PARTIES WHICH MAY BE AFFECTED BY THE HOSTED NETWORK SERVICE(S) PROVIDED BY OR THROUGH HOSTED NETWORK. WHERE DATA BACKUP AND RESTORATION SERVICES ARE A PART OF HOSTED NETWORK'S PROVISIONING OF A HOSTED NETWORK SERVICE, HOSTED NETWORK WILL NOT BE LIABLE FOR DATA LOSS, OR FOR DAMAGE TO SERVERS OR OTHER EQUIPMENT.

Reseller shall not extend to customers warranties or guarantees (i) in the name of Hosted Network or in the name of any Third Party Provider or (ii) which would bind Hosted Network or Third Party Providers with respect to the performance, design, quality, merchantability, non-infringement or fitness for a particular purpose of the Resell Services or any of them.

### **13. Indemnification**

Reseller hereby agrees to indemnify, defend and hold harmless Hosted Network and its Affiliates and Hosted Network's and its Affiliates' directors, officers, employees and agents from and against all actual and direct damages, costs and expenses, including, without limitation, interest, penalties and reasonable attorneys' fees and disburse asserted against, resulting to, imposed upon or incurred by any of the foregoing indemnified parties by reason of or resulting from (i) any personal injury, death or physical damage to property caused by the negligence or wilful misconduct (whether acts or omissions) of Reseller or its employees, agents, subcontractors, or business invitees and (ii) use of a Hosted Network Service or the intellectual property of Hosted Network or of Third Party Providers by Reseller or a Customer, including any violation of the AUP by Reseller or a Customer.

## **14. Limitation of Liability**

**14.1 EXCLUSION OF CONSEQUENTIAL DAMAGES.** EXCEPT FOR A BREACH OF ARTICLE 10 HEREOF AND THE INDEMNIFICATION OBLIGATIONS ARISING UNDER ARTICLE 13 HEREOF, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL ANY PARTY OR ITS AFFILIATES BE LIABLE TO THE OTHER PARTY OR TO ANY THIRD PARTY FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES OF ANY NATURE (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS OR PERSONAL PROFITS, BUSINESS INTERRUPTION, OR ANY OTHER PECUNIARY LOSS) ARISING OUT OF OR IN ANY WAY RELATED TO THE PARTIES PERFORMANCE OR FAILURE TO PERFORM UNDER THIS AGREEMENT, WHETHER SUCH LIABILITY IS ASSERTED ON THE BASIS OF CONTRACT, TORT OR OTHERWISE, EVEN IF THE OTHER PARTY (OR ITS AFFILIATES) HAS BEEN WARNED OF THE POSSIBILITY OF SUCH DAMAGES.

**14.2 LIMITATION OF LIABILITY.** OTHER THAN A BREACH OF ARTICLE 10 HEREOF AND THE INDEMNIFICATION OBLIGATIONS ARISING UNDER ARTICLE 13 HEREOF AND NOTWITHSTANDING ANY DAMAGES THAT A PARTY MIGHT INCUR FOR ANY REASON WHATSOEVER, EACH PARTY'S ENTIRE LIABILITY FOR ANY MATTER ARISING OR RELATED TO THIS AGREEMENT SHALL BE LIMITED TO THE GREATER OF (I) THE AMOUNTS PAID OR PAYABLE BY RESELLER TO HOSTED NETWORK WITHIN THE PRECEDING TWELVE MONTHS OF THE EVENT GIVING RISE TO SUCH DAMAGES UNDER THIS AGREEMENT OR (II) TWELVE TIMES THE AMOUNT PAID OR PAYABLE BY RESELLER TO HOSTED NETWORK FOR RESELL SERVICES PROVIDED HEREUNDER IN THE MONTH IMMEDIATELY PRECEDING THE MONTH IN WHICH THE EVENT GIVING RISE TO SUCH DAMAGES OCCURRED.

## **15. Term and Termination**

**15.1 Term and Termination.** The term of this Agreement shall be from the Effective Date until the end of the calendar year in which the Effective Date occurs (the "Initial Term"), and shall automatically renew on an annual basis (calendar year basis) unless terminated in one of the following ways (the Initial Term and all renewal periods, if any, being referred to herein collectively as the "Term"):

(a) Either Party may terminate this Agreement effective upon written notice to the other Party ("Termination Notice"): (i) in the event of the insolvency of the other Party or the institution of voluntary or involuntary proceedings in bankruptcy or under any other insolvency law, or an arrangement with creditors, or corporate reorganization, receivership or dissolution, of the other Party; or (ii) in the event that the other Party has breached any material obligation under this Agreement and such breach is not cured within thirty (30) days after written notice thereof by the non-breaching Party to the breaching Party.

(b) Hosted Network may terminate this Agreement (i) at any time upon 60 days' prior written notice or (ii) immediately in the event of (A) a breach of the AUP by Reseller or a Customer of Reseller or (B) a change in control of the majority of voting equity shares or interests of Reseller (as determined by reference to the ultimate parent entity of Reseller), which involves a competitor of a Hosted Network or one of its Affiliates gaining control of Reseller.

15.2 Survival. The following provisions shall survive such expiration or termination of this Agreement: Articles 10, 13, 14, 16, and 17.

## **16. Dispute Resolution**

The parties record their intention that if any dispute or difference arises out of or in relation to this Agreement, it will be resolved in a spirit of good faith and on a commercially realistic basis by negotiation or mediation. Each Party shall bear its own costs and expenses arising out of any arbitration, including the costs of any arbitrator selected by it, and shall bear equally the costs, expenses and fees of a third party arbitrator. Any award rendered by the arbitrators shall be final, binding and enforceable by any party to the arbitration, and judgment may be rendered upon it in accordance with applicable law in a court of competent jurisdiction.

## **17. General Provisions**

17.1 No Third-Party Beneficiary. It is the explicit intention of the Parties hereto, that no person or entity other than the Parties is or shall be entitled to bring any action to enforce any provision of this Agreement against either of the Parties, and the covenants, undertakings, and agreements set forth in this Agreement shall be solely for the benefit of, and shall be enforceable only by the

Parties hereto or their respective permitted successors and assigns hereunder.

17.2 Relationship of the Parties. Nothing in this Agreement shall be construed to constitute Reseller and Hosted Network in the relationship of an employer-employee, franchiser-franchisee, principal-agent, partners or joint venturers, or as anything other than an independent contractors. Neither Party will have the authority to make any representations, claims or warranties of any kind on behalf of the other Party or on behalf of such Party's licensors or suppliers.

17.3 Force Majeure. Neither Party shall be deemed in default of this Agreement to the extent that performance of its obligations or attempts to cure any breach are delayed or prevented by reason of any act of God, fire, natural disaster, accident, act of government, strikes, unavailability of material, Telco capacity, or supplies, any failure of a Third Party Provider to supply goods or services associated with or comprising a Resell Service, shortages of or failure to deliver hardware and/or software not attributable to an act or failure to act of the Party seeking the protection of the force majeure or any other cause beyond the reasonable control of such Party ("Force Majeure"), provided that such Party gives the other Party written notice thereof promptly and, in any event, within fifteen (15) days of discovery thereof. In the event of such a Force Majeure, the time for performance or cure shall be extended for a period equal to the duration of the Force Majeure but not in excess of sixty (60) days.

17.4 Assignment and Subcontracting. This Agreement and the rights and obligations hereunder shall not be assigned or otherwise transferred by either Party, except that Hosted Network may (i) assign this Agreement to one of its Affiliates without the consent of Reseller or (ii) delegate performance of any of its duties, obligations and responsibilities hereunder to any of its Affiliates or to any independent contractor selected by Hosted Network; provided that Hosted Network shall not be relieved of any of its duties, obligations or responsibilities hereunder by delegation to such Affiliates or independent contractors.

17.5 Notices. Notices under this Agreement shall be in writing and shall be deemed given when delivered (i) personally, (ii) by Email (with confirmation of receipt), (iii) by overnight mail or conventional mail (registered or certified, postage prepaid with return receipt requested) or (iv) by facsimile. Notices shall be addressed to the Parties at the addresses appearing below their

signatures on this Agreement, but each Party may change the address by written notice in accordance with this paragraph.

17.6 Waiver. Any waiver of any right or default hereunder shall be effective only in the instance given and shall not operate as or imply a waiver of any similar right or default on any subsequent occasion.

17.7 Severability. No determination by a court of competent jurisdiction that any term or provision of this Agreement is invalid or otherwise unenforceable shall operate to invalidate or render unenforceable any other term or provision of this Agreement and all remaining provisions shall be enforced in accordance with their terms.

17.8 Governing Law. This Agreement will be governed by and construed under, and the legal relations between the Parties hereto will be determined in accordance with, the laws of the State of New South Wales.

17.9 Remedies Cumulative. Except to the extent specifically provided otherwise in this Agreement, all remedies provided for hereunder, including, without limitation, the right to terminate this Agreement and all of the remedies provided by law (and not excluded pursuant to Article 14 hereof), shall be deemed cumulative and non exclusive.

17.10 Entire Agreement & Amendments. This Agreement, including the Applicable Resell Service Additional Terms and Conditions, constitutes the entire agreement between the Parties pertaining to the subject matter hereof and supersedes all prior or contemporaneous, written or oral negotiations, agreements, negotiations, correspondence and understandings between the Parties respecting the subject matter of this Agreement. Specifically, this Agreement, including all Applicable Resell Service Additional Terms and Conditions, also constitutes the entire agreement between the Parties pertaining to all services which are the subject of prior resell agreements (other than any Billing Authorisation Agreement(s) that may be in existence between the Parties as of the date hereof) (collectively, the "Prior Agreements") between the Parties (collectively, the "Prior Services"). To that end, Reseller hereby acknowledges and agrees that it is the intent of the Parties that, as of the Effective Date, this Agreement, including all Applicable Resell Service Additional Terms and Conditions, amends and restates all Prior

Agreements in their entireties such that the terms and conditions of such Prior Agreements are terminated and of no further force or effect. Except to the extent described in this Section 17.9, this Agreement may be modified only by an instrument in writing duly executed by both Parties.

17.11 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document.

**IN WITNESS WHEREOF**, the Parties hereto have signed and sealed this Agreement on the date first set forth above.

<p><b>HOSTED NETWORK:</b></p> <p>Signature:</p> <p>_____</p> <p>Print Name:</p> <p>_____</p> <p>Title:</p> <p>_____</p>	<p><b>RESELLER:</b></p> <p>Signature:</p> <p>_____</p> <p>Print Name:</p> <p>_____</p> <p>Title:</p> <p>_____</p> <p>Company Name:</p> <p>_____</p>
---	---