



M2 Commander Pty Ltd ABN 85 136 950 082

COMMANDER DATA CENTRE CORE SERVICE TERMS

1. About this document

This **Core Service Terms** document sets out the basic terms on which **Commander** will provide certain computer and/or Internet-related services to the **Customer**. It provides for further terms to be set out in other documents.

2. Dictionary and Glossary of Terms

In the **Core Service Terms** or a **Service Contract**, unless the context indicates otherwise:

The Expression:	means:
Access	physical or logical, local or remote, direct or indirect access to or control over a network or a computer or their contents
Additional Services	additional services as described in any Service Terms
Application	any computer program, application, script, applet, process or functionality
Approved Third Party Service	has the meaning given by clause 12
Associated Equipment	any Equipment required or used by the Customer in connection with Server/s , such as backup devices and Equipment of a Carrier that provides telecommunications services to Server/s
Backup Instructions	all information required to effect a proper back up and restore of all software and data that the Customer wants to be backed up (including any information required by a Service Level Agreement or any Rules), in writing and signed with the authority of the Customer
Backup Services	backup services as described in any Service Terms
Billing Period	a calendar month, but Commander may nominate a different period from time to time
business day	any day from Monday to Friday inclusive, excluding any public holidays observed in Victoria
carrier	the holder of a carrier license within the meaning of the <i>Telecommunications Act 1997</i>
Claim	any demand, or allegation of liability, and all related costs, claims, demands, liability, damages, losses and expenses of any nature including all legal expenses suffered or incurred

Classification Board	the classification board established by the <i>Classification (Publications, Films and Computer Games) Act 1995</i>
Cloud	any product, service or activity offered by Commander and hosted within the Commander Data Centre using virtualization technology on behalf of the Customer .
Co-Location Services	co-location services as described in any Service Terms
Confidential Information	any information of a party which the other party knows or should know is confidential to the other party, for as long as it remains confidential, or would have remained confidential except for a wrongful disclosure by the first party
Commander	M2 Commander Pty Ltd ABN 85 136 950 082 of Level 10, 452 Flinders Street Melbourne 3000
Commander Contact	Commander's staff member nominated at any time as the Customer's primary point of contact with Commander
Core Service Terms	this document.
CPI	Consumer Price Index - All Groups (weighted average of 8 capital cities) as published by the Australian Bureau of Statistics, but if that index changes significantly or is no longer published, a similar index nominated by Commander
Customer	the person described in Service Application and if there are two or more of them, those persons jointly and severally if there is more than one
Customer Contact	the Customer's staff member nominated from time to time as Commander's primary point of contact with the Customer
Customer Equipment	Server/s and Associated Equipment and, where they are connected to telecommunications services provided by a carrier , those connections
Customer Software	the Customer's interest in any software of any kind, including data, that is under Commander's control
Data Centre	Commander's co-location facility at the address stated in any Service Terms
Dedicated Web Hosting Services	dedicated web hosting services as described in any Service Terms
Dictionary	this table of defined terms
Disk Quota	a specified amount of hard drive storage space made available to the Customer as part of a Service
Emergency	a situation which in the opinion of Commander requires urgent action to avoid some significant harm to Customer Equipment or any data on it or any service provided with it
Exchange Server	a Server that can send and receive Internet email
Expenses	any expense properly paid or payable by Commander to a third party in the course of delivering Selected Services to the Customer
Fault Notification	fault and incident notification as described in any Service Terms
Fault Response	fault response as described in any Service Terms
Fee Schedule	any statement/s published by Commander setting out its current fees from time to time
Fixed Service Fees	fees for any Service that apply on a once only basis, or on a periodical basis and are not variable based on data volumes as between periods

Force Majeure	an event or circumstance beyond Commander's reasonable control
Interactive Gambling Service	the same thing as in the <i>Interactive Gambling (Moratorium) Act 2000</i>
Internet Connection Services	Internet connection as described in any Service Terms
Load Balancing	allocating network traffic or information processing to one of two or more Servers that perform the same function that is best able to deal with that traffic at that time, in accordance with Commander's load balancing procedures at any time.
Loss	any harm, losses or expenses of any nature whether direct or indirect, secondary or consequential suffered by the Customer or anyone else
Mail Server	a Server that can send and receive Internet email
Maintenance Services	maintenance services as described in any Service Terms
Minimum Term	the period set out in any Service Terms as the minimum term for that Service , starting on the date when the Service Contract for that Service is made
Minor Maintenance Services	minor maintenance services as described in any Service Terms
Monitoring	monitoring services as described in any Service Terms
Normal Maintenance	normal maintenance services as described in any Service Terms
Office Hours	between 9 a.m. and 5 p.m. on a business day
Potential Prohibited Content	Internet content that has not been classified by the classification board , but if it were to be classified, there is a substantial likelihood that the content would be prohibited content
Product Description	a guide or description published by Commander , describing a service it offers, as amended from time to time, but excluding any statement about the future features of a service (which shall be taken to indicate a possibility only)
Prohibited Content	Internet content that has been classified RC (Refused Classification) or X by the classification board ; or has been classified R by the classification board and access to the content is not subject to a restricted access system
Public FTP Directory	a directory on a Server that can be accessed by FTP by persons other than the Customer
Publish	include in or fail to exclude from the materials comprising a web site , or as part of an email transmission, or in data that is available for download via FTP, or within a chat session or Usenet, or otherwise make available to any person by means of the Internet
Rack Cabinet	an industry standard Equipment cabinet approved by Commander and made up of multiple rack units
Rack Unit	a slot within a rack cabinet approximately 44 mm x 600 mm x 1000 mm
Remote Administration Services	remote administration services as described in any Service Terms
Reporting	reporting as described in any Service Terms
Representatives	a delegate, authorised representative , employee, agent, appointed contractor,

	Customer or trading partner of, or a supplier of goods and/or services to, a party
Root Page	the web page displayed by default on entry to a web site
Rules	Rules made under clause 13
Schedule Item	an item in the schedule to the Core Service Terms
Served	served in accordance with clause 27
Server	a computer accepted or provided by Commander
Server Housing Services	server housing as described in any Service Terms
Server Installation Services	server installation as described in any Service Terms
Server Set Up Services	server set up as described in any Service Terms
Service Application	Commander's application form for a Service as required by it from time to time
Service Contract	the documents indicated by clause 5 for a Service
Service Failure	has the meaning given in clause 11 e) (i)
Service Issues	the detailed definition of a Service , the levels of quality and reliability to which it will be supplied and the Customer's entitlements if those levels are not met
Service Level Agreement	a statement entitled "service level agreement" that identifies one or more Services and details the level and / or standard to which, and / or the continuity with which, they will be supplied, and any rebates or remedies that apply if there is a Service failure , and any related matter
Set Up Fees	fixed fees that relate to set up required to enable provision of a Service
Supported Hardware	computer hardware that Commander nominates as such
Supported Software	computer software (whether an operating system, application, or otherwise) Commander nominates as such, but excluding any functionality that Commander nominates as non-supported
Standards	any of the following that are applicable: Australian Standards , Federal, State or local electrical, communications or safety Standards , industry Standards for safety or non-interference with other Equipment , or any limits set by the Australian Communications Authority for interference with other Equipment or services or noise or for telecommunications Equipment , connections and services and/or any standard prescribed by the Rules
Termination Notice	a notice under clause 8
Terms	express (but not implied) terms, conditions, representations or warranties
Urgent Maintenance	urgent maintenance services as described in any Service Terms
Valid Address	an address in accordance with clause 27
Virtual Web Server	a web Server that contains more than one web site
Virtualisation	the process of running one or more systems, processes or applications within a simulated or virtual environment, as opposed to on a physical or tangible service.
Web Page	the contents that appear in a single web browser window (even if parts of it originate

from different web servers, e.g. a doubleclick server or a streaming video server)

Web Server a **Server** that makes a **web site** visible on the Internet

Web Site a collection of **web pages** with a common hostname, (for instance, all the **web pages** that commence with the hostname www.website.com.au)

Week A period of seven (7) days

Capitalised terms which appear in the Core Service Terms and are not defined in this clause 2 may be defined in the Customer Terms section of your Contract. For the avoidance of doubt, the Interpretation section in the Customer Terms applies to Core Service Terms.

3. The parties to the Core Service Terms

The parties are;

- a) M2 Commander Pty Ltd ABN 85 136 950 082 of Level 10, 452 Flinders Street Melbourne 3000 (“Commander”);
- b) the **Customer** named in the service application (“the **Customer**”);

4. Agreement Date

Agreement to these **Core Service Terms** was made on the date in the **Service Application**.

5. Individual Services and the Core Service Terms

Each **Service** that **Commander** now or later supplies to the **Customer** is supplied under a **Service Contract** that consists of:

- a) a Service Application;
- b) these **Core Service Terms**;
- c) any Service Terms for that Service;
- d) any Service Level Agreement for that Service; and
- e) any Fee Schedule.

6. Customer request for Services

- a) The **Customer** may request a service by completing a **Service Application** for it.
- b) If **Commander** agrees to provide the service, there is a **Service Contract** for its supply, made on that day.
- c) The **Customer** must ensure that its **Service Applications** are correct and complete.

7. Termination of a Service Contract

- a) A **Service Contract** can only be terminated:
 - (i) on at least 30 days’ notice by either party, given after the minimum term has expired for that service; or

- (ii) in accordance with this **clause 7** or **clause 11 d)**; or
 - (iii) in any other way that its service terms allow.
- b) **Commander** may terminate any or all **Service Contracts** immediately if the **Customer**:
- (i) becomes insolvent; or
 - (ii) fails to pay money within 14 days of it being due; or
 - (iii) breaches a **Service Contract** and fails to remedy the breach within 7 days after receiving a notice that details the breach and requires that it be remedied; or
 - (iv) uses a **Service** in a manner which in the reasonable opinion of **Commander** is illegal or exposes **Commander** to the risk of legal action.
- c) The **Customer** may terminate any **Service Contract** at any time by:
- (i) giving at least 30 days' notice to Commander;
 - (ii) paying all fees accrued in respect of that service up to the point of termination; and
 - (iii) paying any fixed service fees that would have been payable between the date of termination and the end of its minimum term if the **Service Contract** had not been terminated.

8. Term

- a) If there are no **Service Contracts** on foot, either party can end the **Core Service Terms** by written notice to the other.
- b) When a **Service Contract** is terminated or the **Core Service Terms** end:
- (i) Commander may invoice any accrued fees for all services (but later invoicing remains effective);
 - (ii) Commander invoices for all services must be paid immediately;
 - (iii) Commander has a lien over any **Customer Equipment** or **Customer** software for unpaid fees;
 - (iv) any remaining **Service Contracts** continue.

9. Survival of rights and obligations

After any **Service Contract** or the **Core Service Terms** end:

- a) a right of action that arises from a breach that occurred before it ended survives;
- b) fees for services delivered before it ended can be invoiced and recovered;
- c) **clauses 8 b), 9, 20, 25, 29** and **34** continue to operate; and
- d) any other clause in the **Service Contract** that indicates that the clause survives termination also continues to operate.

10. Role of product descriptions and other documents

- a) A **product description** simply indicates the title and general nature of a **Service**. It does not form part of any agreement between the parties, and it is not to be taken as setting any standard for a **Service** or constituting any warranty or representation about a **Service**.
- b) If there is a conflict between documents in a **Service Contract** that relates to **Service issues** then the order of priority is (from highest to lowest):
 - (i) a service level agreement;
 - (ii) service terms;
 - (iii) **Core Service Terms**.
- c) If there is a conflict between documents in a **Service Contract** that relates to issues other than **Service issues** then the order of priority is (from highest to lowest):
 - (i) **Service Terms**;
 - (ii) **Core Service Terms**;
 - (iii) **Service Level Agreement**.
- d) Except for things set out in black & white in the **Core Service Terms** or a **Service Contract**, and things that are implied by law and cannot be excluded, there are no other representations, promises, warranties, covenants or undertakings between the parties and the **Core Service Terms** and **Service Contracts** made under it contain the entire understanding of the parties.
- e) No oral explanation or information provided by **Commander** or its **Representatives** to the **Customer** or its **Representatives** affects the meaning of the **Core Service Terms** or a **Service Contract** or constitutes any collateral agreement, warranty or understanding between the parties.
- f) Where a **Service Contract** indicates that some matter is the responsibility of the **Customer**, **Commander's** obligations regarding anything that depends on that matter are conditional on the **Customer** doing it, and the **Customer** indemnifies **Commander** from any loss that arises because it was not done.
- g) **Service terms** or a **Service Level Agreement** are not a separate agreement between the parties. They only have force as part of a **Service Contract**.

11. Application of Service Level Agreements

- a) Commander may publish a service level agreement for any service.
- b) **Commander** may vary any **Service Level Agreement** from time to time.
- c) A variation to a **Service Level Agreement** takes effect seven days after a copy is **served** on the **Customer**, unless the **Service Level Agreement** states a later time.

- d) If a variation to a **Service Level Agreement**, taken as a whole, significantly reduces the quality or value of a **Service** to the **Customer**, the **Customer** may cancel that **Service Contract** by written notice **served** within 14 days after the variation takes effect.
- e) Where a **Service Level Agreement** is published for a **Service**:
 - (i) **Commander** will use all reasonable endeavours to deliver that **Service** in accordance with the **Service Level Agreement**;
 - (ii) if that **Service** is not delivered in accordance with the **Service Level Agreement** ("**Service Failure**");
 - (iii) any rebates or other remedies set out in respect to that **Service failure** in the **Service Level Agreement** in favour of the **Customer** shall apply (provided that in the case of multiple **Service failures** those rebates taken cumulatively cannot exceed 100% of the fee payable for that **Service** in the **billing period** in which the **Service failure/s** occur); and
 - (iv) to the extent permitted by law and despite **clause 18 b)**, they shall be the only rebates or remedies that the **Customer** is entitled to in respect of the **Service failure** and anything arising directly or indirectly from it.

12. Approved third party Services

- a) For the convenience of the **Customer**, **Commander** may source ancillary services to be delivered in whole or part by a third party; for instance, off-site backup tape collection and storage services.
- b) If the **Customer** approves **Commander** arranging such a service for the **Customer's** benefit, that service is an **approved third party Service**.
- c) **Commander** is not liable for any **loss** arising in relation to an **approved third party Service** except to the extent that **Commander** causes it.
- d) To the extent that any service is supplied as an **approved third party Service**, it is not subject to any **Service Level Agreement**.

13. The making of Rules

- a) **Commander** may make and alter **Rules** regulating any matter desirable for the safe, secure, efficient and reliable operation of a **Service**, and any other matter provided for by its **Service Terms** ("**Rules**").
- b) **Rules** may be set out in one or more documents.
- c) **Rules** may not be a fee increase, or a change to a **Service Level Agreement**, in disguise.
- d) The **Rules** are taken to be set out in black and white in the **Core Service Terms** and the **Customer** and its **Representatives** must obey them.

- e) Documents entitled “Acceptable Use Policy”, “Fair Use Policy” or the like are also taken to be **Rules**.
- f) **Rules** and alterations to them take effect when the **Customer** is notified of them.

14. Fees

- a) **Commander** may charge any fees set out in a **fee schedule** from time to time.
- b) Unless a **fee schedule** states otherwise:
 - (i) **set up fees** apply as soon as **Commander** agrees to provide a **Service**;
 - (ii) **fixed Service fees** apply from the date when **Commander** notifies the **Customer** that it is ready to commence the **Service**;
 - (iii) data volume-based fees apply as soon as the **Customer’s** data traffic exceeds any allowance included in **fixed Service fees**; and
 - (iv) fees for other one-off services apply as soon as the service is provided.
- c) If a **fee schedule** is attached to **Service Terms**, it applies to that **Service**. If it is not, the fees for each **Service** set out in its most recent **product description** as at the date of the **Core Service Terms** apply.
- d) **Commander** may alter or restructure a **fee schedule** on 45 days’ notice, but if any alteration would result in the **Customer’s** total fees for all **Commander Services** increasing by more than the increase in CPI since the previous fee alteration, the **Customer** may terminate the **Service Contract** that was subject to the increase on 21 days’ notice to **Commander** given within the 45 day period.
- e) **Commander** will invoice the **Customer** each **billing period**, but late billing does not affect its right to payment.
- f) Invoices must be paid within 30 days of delivery, unless **Service Terms** or the **Core Service Terms** provide for payment within another time.
- g) Apart from **Commander’s** other rights in case of non-payment, it may suspend any **Services** and/or charge interest at 15% per annum and has a lien over any **Customer Equipment** and **Customer software** for the debt.

15. Third party fees

Unless a **Service** that **Commander** agrees to provide expressly includes the fees of any third party (for instance, a **carrier** who provides services to the **Customer**) the **Customer** is solely responsible for all such fees and indemnifies **Commander** against them.

16. GST

- a) Except where express provision is made to the contrary, the *consideration* payable by the **Customer** under the **Core Service Terms** represents the *value* of any *taxable supply* for which payment is to be made.

- b) Subject to the **Customer** being supplied with a valid *tax invoice*, if **Commander** makes a *taxable supply* in connection with the **Core Service Terms** for a *consideration*, which represents its *value*, then the **Customer** will pay, at the same time and in the same manner as the *value* is otherwise payable, (or, if for any reason that does not happen, without delay after **Commander** requests it to) the amount of any **GST** payable in respect of the *taxable supply*.
- c) Subject to the **Customer** being supplied with a valid *tax invoice*, if the **Core Service Terms** requires the **Customer** to pay, reimburse or contribute to an amount paid or payable by **Commander** in respect of an *acquisition* of a *taxable supply* from a third party, the amount required to be paid, reimbursed or contributed by the **Customer** will be the *value* of the *acquisition* by **Commander** less any *input tax credit* to which **Commander** is entitled plus, if **Commander's** recovery from the **Customer** is a *taxable supply*, any **GST** payable under **clause 16 a)**.

17. Warranties given by Commander

- a) **Commander** will provide **Services** with reasonable care and skill but does not warrant that they will be provided without fault or disruption.
- b) Where **Commander** publishes a **Service Level Agreement** for a **Service**, **clause 11** applies.

18. Limitation of liability

- a) Except for any express warranties in the **Core Service Terms** or an applicable **Service Level Agreement**, to the extent permitted by law, **Commander** disclaims all express and implied warranties in relation to the **Core Service Terms** or a **Service Contract**.
- b) In the case of any breach of the **Core Service Terms** or a **Service Contract**, or any negligence for which **Commander** is responsible, or breach of a condition or warranty that legislation prohibits **Commander** from excluding (which condition or warranty shall accordingly be included in the **Core Service Terms**), **Commander's** liability to the **Customer** shall be limited, at its option, to:
 - (i) if the breach relates to goods –
 - a. replacement of any goods involved or the supply of equivalent goods;
 - b. the repair of such goods;
 - c. the payment of the cost of replacing the goods or of acquiring equivalent goods; or
 - d. the payment of the cost of having the goods repaired, and
 - (ii) if the breach relates to services --
 - a. supplying of the services again;
 - b. the payment of the cost of having the services supplied again.

- c) In no circumstances is **Commander** liable for any indirect, secondary or consequential loss or loss of income that the **Customer** or anyone else may suffer.

19. Records

- a) **Commander** may make and keep any record that it reasonably requires for the purpose of operating its business.
- b) All such records are the sole property of **Commander**.

20. Confidential information

- a) Each party must treat the **Confidential Information** of the other party as confidential and commercially valuable and ensure that its **Representatives** do the same.
- b) The parties' duties under this **clause 20** are in addition to, and not instead of, any duties they may have under any other confidentiality or non-disclosure agreement.

21. Security requirements

The **Rules** or a **Service Level Agreement** may prescribe additional security requirements, but in any event:

- a) The **Customer** or its **Representatives** must not attempt to connect directly to **Equipment** owned by **Commander** or another **Customer** of **Commander** without explicit written permission.
- b) The **Customer** or its **Representatives** must not attempt any port probe, address space probe, multiple diverse ping tests or to install any mechanism for use in a denial of service attacks or any similar "zombie" type activities.
- c) The **Customer** or its **Representatives** must not do anything that gives rise to a significant chance that the premises, hardware, software, network, data or security of **Commander** or anyone else will be harmed.
- d) The **Customer** or its **Representatives** must not attempt to gain **access** to any computer or network without an express or implied licence to do so.
- e) The **Customer** and its **Representatives** must take reasonable care not to propagate or transmit computer viruses, Trojans, worms or similar malicious content.
- f) The **Customer** must not allow **Customer Equipment** to be used in furtherance of any unlawful purpose or activity, and authorises **Commander** to cooperate with any police enquiry regarding **Customer Equipment** or data passing through it.
- g) Where there is evidence of a breach of this **clause 21** or another security rule, **Commander** may shut down and isolate any **Customer Equipment** it believes to be involved, without notice to the **Customer** or liability for any **loss**.

22. Indemnities and warranties given by the Customer

- a) The **Customer** indemnifies **Commander** against any **claim** that may arise directly or indirectly out of anything that happens or does not happen, or that a party, or anyone for whom a party is responsible in law or fact, does or fails to do in connection with:
- (i) **Core Service Terms**;
 - (ii) any correspondence and representations (whether written or verbal) by **Commander** or its **Representatives** to the **Customer** or its **Representatives**;
 - (iii) any breach of the **Core Service Terms** by the **Customer** or its **Representatives**;
 - (iv) negligence or intentional act or omission by the **Customer** or its **Representatives**.
- b) The **Customer** warrants that all information it gives to **Commander** touching the **Core Service Terms** or any **Service** is accurate and complete in all material respects.

23. Emergency

If there is an **emergency**, **Commander** may take any steps that it reasonably believes are appropriate to minimise any **loss**, but is not obliged to do so unless a **Service Level Agreement** specifies otherwise.

24. Force majeure

Commander is not responsible for the consequences of **force majeure**.

25. Staff

During the term of the **Core Service Terms** and for one year after, no party may employ any of the other party's employees, consultants, **Representatives** and agents without the other party's prior written consent.

26. Serving documents

- a) A notice may be given by either party to the other by delivery or prepaid mail at any of:
- (i) in the case of a corporation, its registered office;
 - (ii) in the case of the **Customer**, at its address or fax number specified in the **Core Service Terms** or otherwise notified by it to **Commander** for the purposes of the **Core Service Terms**;
 - (iii) in the case of **Commander**, addressed to the Company Secretary Level 10 452 Flinders Collins Street Melbourne 3000.
- b) A notice is duly given:
- (i) if personally delivered – at the time of delivery;
 - (ii) if sent by prepaid mail– at 10:00 am on the business day next following posting;
 - (iii) if faxed - when the sender's fax machine indicates a successful transmission.

27. Electronic communications

- a) In this **clause 27**, “electronic communication” and “giving information” have the same meanings as in the *Electronic Transactions (Victoria) Act 2000* (“the Act”).
- b) No party consents to either party giving information in relation to the **Core Service Terms** by means of an electronic communication except on the terms specifically allowed by the **Core Service Terms**.
- c) The parties consent to any requirement for a signature being met by way of the use of the method mentioned in paragraph 9(1)(a) of the Act.

28. Customer Contact

- a) At all times, the **Customer** must keep **Commander** informed (in such format as may be specified by Commander) of the current and accurate contact details of one or more **Customer Contacts**.
- b) Each **Customer Contact** must be contactable at all times.
- c) **Commander** may deal with a **Customer Contact** on the basis that they are the **Customer** and have its full authority. For instance, any direction given by a **Customer Contact** is taken to have been given by the **Customer**, or a notice given to a **Customer Contact** is taken to have been given to the **Customer**.
- d) A person remains a **Customer Contact** until **Commander** is given notice that they are no longer a **Customer Contact**.
- e) Each **Customer Contact** is a representative of the **Customer**.
- f) Until the **Customer** notifies **Commander** otherwise, the person described in **Service Application** is the **Customer Contact**.
- g) **Commander** may implement or modify requirements for verifying the authenticity of a person claiming to be a **Customer Contact** and is only obliged to treat a person as a **Customer Contact** if they satisfy those requirements.
- h) The **Customer** indemnifies **Commander** against any direct or indirect consequences caused in whole or part by:
 - (i) the **Customer’s** failure to comply with **clause 29 (a)**;
 - (ii) a **Customer Contact’s** failure to be contactable at all times;
 - (iii) anything done by a **Customer Contact**, including any instruction given or **Commander’s** compliance with it;
 - (iv) the **Customer’s** failure to notify **Commander** that a person should no longer be a **Customer Contact**;
 - (v) a **Customer Contact** exceeding their authority;

- (vi) any person who is able to masquerade as a **Customer Contact** by fraud, unless the fraud was not facilitated in any way by the negligence of the **Customer** or its **Representatives**.

29. Unlawful content

- a) The **Customer** must not use any **Service** in the course of making available or promoting any content or service that is unlawful, or that does not comply with any legal requirements for that kind of content or service.
- b) In particular, the **Customer** must not use any service in the course of making available or promoting any prohibited content, potential prohibited content or interactive gambling service.
- c) If Commander reasonably suspects a breach of this **clause 29**, it may take any step reasonably necessary to prevent the content or service concerned from being made available or promoted, and may suspend any service for that purpose.
- d) The **Customer** indemnifies Commander against all loss or expense it may suffer because of a breach of this **clause 29**, and releases Commander from any liability for anything it does on the strength of this **clause 29**.

30. Full effect

Each party will do or refrain from doing (as the case may be) anything necessary or desirable to give full effect to the **Core Service Terms** and any **Service Contracts**.

31. Waiver of rights

- a) No right under the **Core Service Terms** or a **Service Contract** can be waived except by notice in writing signed by the party waiving it.
- b) If a party overlooks a breach of the **Core Service Terms** or a **Service Contract** by the other party on one or more occasions, it is not taken to have agreed to any future breach.

32. Assignment

Customer must not transfer or assign its rights or obligations under the **Core Service Terms** or a **Service Contract** without the prior written consent of Commander.

33. Amendments

The **Core Service Terms** or a **Service Contract** can only be amended or modified by a written instrument executed by all parties, except that **Commander** may amend any **product description**, **Rules**, **Service Level Agreement**, **Rules** or **fee schedule** as permitted by the **Core Service Terms**.

34. Governing law

- a) The **Core Service Terms** and any **Service Contract** is governed by the law of Victoria.

- b) Any legal proceedings relating to them can only be taken in courts with jurisdiction in Victoria.

35. **Holidays**

Anything that can or must be done on or before a day that is not a **business day** can be done on the next **business day**.

36. **Government charges**

The **Customer** must pay stamp duty and other government charges in relation to the **Core Service Terms** or a **Service Contract**.

37. **Relationship between the parties**

The **Core Service Terms** or a **Service Contract** does not constitute a partnership, association or joint venture, or enable any of the parties to commit another contractually.

38. **Credit checks**

- a) The **Customer** authorises **Commander** to do the things set out in this **clause 38** and acknowledges that **Commander** may do so, whenever it sees fit for as long as the **Core Service Terms** continues or the **Customer** owes any money to **Commander**.
- b) **Commander** may obtain and rely on financial, credit and other information about the **Customer** in order to assess its creditworthiness, from any source including a bank or credit reporting agency.
- c) **Commander** may use a credit report (within the meaning of the *Privacy Act 1988* (Cth)) on the **Customer** to assess its creditworthiness or for debt recovery purposes.
- d) **Commander** may give to a credit reporting agency any information it has about the **Customer** to enable it to obtain a credit report.
- e) **Commander** may exchange information about the **Customer** with other credit providers or a credit reporting agency;
- f) The **Customer** acknowledges that **Commander** is authorised to do the things set out in this **clause 38** under the *Privacy Act 1988* (Commonwealth) and that to assess or review the **Customer's** creditworthiness, **Commander** may:
 - (i) request a third party to report about the **Customer's** creditworthiness; and
 - (ii) disclose financial, credit and other information about the **Customer** to any person.
- g) The **Customer** must cooperate with any enquiries that **Commander** makes about its creditworthiness and provide any further information, consent or authority it reasonably requires.

39. Interpretation

- a) If an expression is defined in the **Dictionary** in **clause 2** and is used in **bold typeface**, that is what it means.
- b) If an expression is defined in the **Dictionary**, grammatical derivatives of that expression have a corresponding meaning. (For instance, if “to colour” means “to paint red”, then “coloured” means “painted red”.)
- c) Headings are only for convenience. They are to be ignored when interpreting the agreement.
- d) A schedule to a document is part of that document.
- e) A reference to the singular includes the plural and vice versa.
- f) Where one thing is said to include one or more other things, it is not limited to those other things.
- g) There is no significance in the use of gender-specific language.
- h) A “person” includes any entity which can sue and be sued.
- i) A “person” includes any legal successor to or representative of that person.
- j) A reference to a law includes any amendment or replacement of that law.
- k) Anything that is unenforceable must be read down, to the point of severance if necessary.
- l) Anything a party can do, it may do through an appropriately authorised representative.
- m) Any matter in **Commander’s** discretion, including anything that it “may” do, is in its absolute and unfettered discretion.
- n) Expressions in **clause 16** of the **Core Service Terms** in italics have the same meaning as in the **GST Act**.

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M2 Commander Pty Ltd ABN 85 136 950 082

COMMANDER DATA CENTRE CO-LOCATION SERVICE SCHEDULE

1. About this document

- a) This **Co-location Service Schedule** document provides the particular terms which apply to **Commander's Co-location Services**.
- b) They apply in addition to the foregoing the **Core Service Terms**, and must be read in conjunction with them.

2. Co-location Services

Co-location Services are:

- a) Server Installation Service;
- b) Server Housing Services; and
- c) any of the following services that Commander agrees to supply to the **Customer**:
 - (i) Internet Connection Services;
 - (ii) Carrier Connection Services;
 - (iii) Minor Maintenance Services;
 - (iv) Additional Services.

3. Dictionary and Glossary of Terms

In this **Co-location Service Schedule** or a **Service Contract**, unless the context indicates otherwise:

The expression:	Means:
------------------------	---------------

Additional Services	Any other Service offered from time to time by Commander as a co-location service, as generally described in its product description , in accordance with any applicable Service Level Agreement and subject to its Service Application , such as Load Balancing, Monitoring, Fault response, or Reporting .
Backup Services	<ul style="list-style-type: none"> a. removing the Customer's backup media from Server/s or Associated Equipment; b. dealing with the media as the Customer reasonably requests; c. inserting fresh media as supplied by the Customer; d. complying with any applicable Service Level Agreement; and e. providing services to back up Customer data to an agreed location on an agreed schedule;
Carrier Connection Services	<ul style="list-style-type: none"> a. allowing the Customer to have Server/s connected to telecommunications services provided by a carrier; b. giving the Customer and carrier reasonable assistance to effect connection to the carrier's telecommunications services; c. permitting the installation of a Carrier's Associated Equipment; and d. complying with any applicable Service Level Agreement;
Fault Response	Responding to conditions that cause a Server to fail to respond to monitoring : <ul style="list-style-type: none"> a. in accordance with the Customer's instructions (if any) under clause 12; and b. otherwise, in accordance with any default procedure in any Service Level Agreement.
Internet Connection Services	<ul style="list-style-type: none"> a. supplying and fitting cables to connect server/s to a point of connection to the Internet at a bandwidth as near as practicable from time to time to that indicated in the service application; b. using reasonable endeavours to keep that connectivity operating normally; and c. complying with any applicable service level agreement;
Load Balancing	Allocating Internet traffic to one of two or more Servers that support the same web site that is best able to deal with that traffic at that time, in accordance with Commander's load balancing procedures at any time.
Minor Maintenance Services	<ul style="list-style-type: none"> a. rebooting Server/s as instructed by the Customer; b. any other actions that Commander in its absolute discretion elects to undertake at the Customer's request; and c. complying with any applicable Service Level Agreement;
Monitoring	Regular IP ping testing of the operation of all Server interfaces with public-routable IP addresses, and response testing as follows: <ul style="list-style-type: none"> a. for a web server: port 80; b. for an SMTP server: port 25; and c. for an FTP server: port 21 in accordance with any applicable Service Level Agreement .
Reporting	Monthly reporting of: <ul style="list-style-type: none"> a. total data traffic;

	<ul style="list-style-type: none"> b. all incidents subject to fault response; c. all core data centre service interruptions; in accordance with any applicable Service Level Agreement
Server Housing Services	<ul style="list-style-type: none"> a. allowing the Customer to keep Server/s in rack unit/s in rack cabinet/s at the Data Centre, connected to a suitable power supply; b. using reasonable endeavours to keep that power supply operating normally; and c. complying with any applicable Service Level Agreement.
Server Installation Services	<ul style="list-style-type: none"> a. physically installing Server/s in a rack cabinet at the Data Centre; b. connecting Server/s to a suitable power supply; c. using reasonable endeavours to keep that power supply operating normally; d. turning Server/s on; and e. complying with any applicable Service Level Agreement.
<p>Capitalised terms which appear in this Co-Location Terms Service Schedule and are not defined in this clause 3 may be defined in the Customer Terms section of your Contract. For the avoidance of doubt, the Interpretation section in the Customer Terms applies to this Co-Location Terms Service Schedule</p>	

4. Rack cabinets

- a) Server housing services will be in rack units in rack cabinets supplied by Commander.
- b) The **Customer** is responsible for ensuring that **Customer Equipment** fits Commander's rack units.
- c) The **Customer** may source its own cabinets at its own expense:
 - (i) if **Commander** is satisfied in its absolute discretion that **Customer Equipment** requires non-standard cabinets;
 - (ii) subject to any conditions **Commander** may impose; and
 - (iii) on condition that the **Customer** may not remove them from the **Data Centre** without first offering to sell them to **Commander** at their written down value in the **Customer's** books of account.
- d) The **Customer** must pay fees for each **rack unit** required for its **Server/s**, and any **Associated Equipment**, and any spare parts, consumables or other items stored in connection with **Server/s** and any space required to be left vacant for heat dissipation or ventilation.
- e) If the **Customer** wants to use additional **rack units**:
 - (i) they are subject to availability and any waiting list;
 - (ii) they may not be available in the **Customer's** preferred position.
- f) No **Customer Equipment** may protrude outside the **Customer's** allotted **rack units**.

5. Customer Equipment delivery

Customer Equipment may only be delivered to the **Data Centre** according to the **Rules** and:

- a) during **business hours** or at other times first approved by **Commander**;
- b) by prior arrangement with **Commander**; and
- c) when the **Customer** has an authorised **representative** present to take delivery of it;

and **Commander** is not otherwise obliged to allow delivery of any **Customer Equipment** to the **Data Centre** or be responsible for it.

6. Server installation

Commander will install all **Servers** but:

- a) the **Customer** must provide all necessary **Equipment** and documentation;
- b) if **Server/s** are not suitable for installation in a **rack cabinet**, **Commander** may decline to install them, or may require that suitable **Equipment** be substituted for them.

7. Associated Equipment installation

- a) The **Customer** must not install any **Associated Equipment** without prior notice to **Commander**.
- b) **Commander** may insist that it installs any **Associated Equipment** for the **Customer**.
- c) Otherwise, the **Customer** is solely responsible for installing and configuring its **Associated Equipment**, as and when directed by **Commander**.

8. Customer Equipment configuration

- a) The **Customer** is solely responsible for the configuration and set up of all **Customer Equipment**.
- b) **Commander** is entitled to treat **Customer Equipment** as a “black box” to which it provides power and (if the **Customer** selects **Internet Connection Services**) Internet bandwidth.

9. Customer Equipment maintenance

- a) If the **Customer** chooses minor maintenance services, **Commander** will provide them.
- b) Otherwise, the **Customer** is solely responsible for all maintenance of **Customer Equipment**.

10. Customer Equipment standards

- a) **Customer Equipment** must continuously comply with all **Standards**.

- b) If it appears that any **Customer Equipment** does not comply with all **Standards**:
 - (i) the **Customer** must rectify the matter without delay;
 - (ii) **Commander** may isolate and / or switch it off in the meantime.

11. Relocation of Customer Equipment

- a) Commander may relocate any **Customer Equipment** within the data centre.
- b) Relocation must be on reasonable notice and in consultation with the **Customer**, and so as to avoid unnecessary disruption to the **Customer Equipment**.
- c) Unless relocation is required due to the **Customer's** needs, it shall be at the expense of Commander.

12. Fault response

- a) The **Customer** may give **Commander** written instructions as to what to do if a **Server** fails to respond to **Monitoring**, and is solely responsible for the accuracy, completeness and appropriateness of those instructions.
- b) **Commander** will comply with those instructions.
- c) If the **Customer** does not give written instructions, then it directs **Commander** to respond in accordance with any default procedure set out in an applicable **Service Level Agreement**.
- d) The **Customer's** written instructions are instead of, and not in addition to, **Commander's** default procedure. Once written instructions are given, **Commander** is not obliged to observe any default procedure.
- e) **Commander** is not responsible for the consequences of anything it does, or does not do, in accordance with this **clause 12**.

13. Data Centre access

- a) The **Customer** or any **Representatives** that it authorises to do so may access the **Data Centre** to bring in, work on or remove **Customer Equipment** in accordance with the **Rules**.
- b) Only properly identified persons, with satisfactory evidence of their authority to represent the **Customer**, may enter the **Data Centre** in the name of the **Customer**.
- c) **Commander** may limit access on behalf of the **Customer** to specified and pre-approved persons included on a **Customer** access control list who present any form of identification or authority mandated by **Commander**.

- d) **Commander** may remove any person from a **Customer** access control list, or deny any person access to the **Data Centre**, if there is evidence that they may not be relied upon not to do any thing which might compromise the security of the **Data Centre** in any way.
- e) **Commander** is not responsible for anything done by the **Customer's Representatives**.
- f) **Commander** may restrict the number of persons in the **Data Centre** at any one time, and make others wait.
- g) The **Customer** or its **Representatives** may not modify or interfere with **Commander's Equipment** without prior written consent from **Commander**.
- h) Anything that the **Customer** or its **Representatives** does in the **Data Centre** must be done by arrangement with **Commander** and on reasonable notice in the circumstances.

14. **Customer storage**

Any thing stored by the **Customer** or its **Representatives** at the **Data Centre** must:

- a) at all times be approved by **Commander** (and the **Customer** must give **Commander** any information it needs to consider its approval);
- b) only be stored in a **Rack Unit** allotted to the **Customer** by **Commander**;
- c) be removed from the **Data Centre** if **Commander** determines it to be unsuitable, including but not limited to, flammable materials such as cardboard boxes

15. **Data Centre appearance**

The **Customer** or its **Representatives** must not make the **Data Centre** untidy, dirty or littered.

16. **Co-location Rules**

Apart from any other **Rules** it may make, **Commander** may make and alter **Rules** regulating the way **Customer Equipment** is delivered or installed, how it is to be connected or terminated, how it is to be labelled, how and when the **Customer** or its **Representatives** may access the **Data Centre**, what **Standards** apply to **Customer Equipment**, how changes in the **Customer Contact** are to be communicated, what kinds of **Equipment** cabinets **Customers** may request to source themselves, or any other matter desirable for the safe, efficient and reliable operation of the **Data Centre**.

17. **Removal of Equipment**

- a) Subject to any lien that **Commander** may have, the **Customer** must remove **Customer Equipment** from the **Data Centre** safely, without causing any damage, and leaving its **Rack Space/s** tidy and ready for use by other persons, at a time approved by **Commander**.

- b) If the **Customer** leaves any **Customer Equipment** in the **Data Centre** for more than 30 days without a satisfactory arrangement for its storage and collection, **Commander** may:
- (i) ship it back to the **Customer's** last known business address, at the **Customer's** cost and risk; or
 - (ii) give the **Customer** notice that it intends to sell the **Customer Equipment**, and if no satisfactory arrangement is made within a further 30 days, sell the **Customer Equipment**, deduct any unpaid fees and the costs of storage and sale and treat the balance in accordance with the *Unclaimed Moneys Act 1962*. The **Customer** releases **Commander** and its agents from any liability in respect of such a sale, and indemnifies it against any claim by a third party arising out of it.

18. Customer insurance

- a) The **Customer** must keep the **Customer Equipment** continuously insured against all risks for its full replacement value, and any direct or indirect, consequential or secondary loss the **Customer** would suffer if it or that data on it was lost or damaged.
- b) If **Commander** asks for it, the **Customer** must provide evidence of insurance.

19. Firewalling and security

- a) The **Customer** is solely responsible for:
 - (i) determining its security needs;
 - (ii) sourcing and selecting any firewall or other security hardware or software;
 - (iii) determining the appropriate configuration of any firewall or other security hardware or software;
 - (iv) assessing the ongoing suitability of any firewall or other security hardware or software; and
 - (v) determining whether to patch, upgrade or reconfigure any firewall or other security hardware or software.
- b) **Commander** may, as an **additional Service**, install and configure any firewall or other security hardware or software, or any patch or upgrade to them. Its only obligation is to do so in accordance with any written instructions from the **Customer**, and apart from that, it is not responsible for any failure of the any firewall or other security hardware or software to provide full protection of a **Server** or any software or data on it.
- c) **Commander** is not responsible for testing or monitoring the operation of any firewall or other security hardware or software.

20. Records of Customer Equipment

- a) The **Customer** must not bring any **Equipment** into the **Data Centre** without declaring it to **Commander's** staff on duty and providing any identifying information (e.g. serial number or model number) or other information (e.g. value of **Equipment**) that is requested.
- b) The **Customer** must not remove any **Equipment** from the **Data Centre** without declaring it to **Commander's** staff on duty and providing any information necessary to identify it against its incoming record.
- c) **Commander** is not obliged to permit the introduction into or the removal from the **Data Centre** of any **Equipment** that it is not satisfied is properly identified.
- d) **Commander** may make any enquiry or keep any record it requires to maintain its inventory of the **Data Centre** and its contents.
- e) **Commander** may treat all **Equipment** brought into the **Data Centre** by or on behalf of the **Customer** as the absolute and unencumbered property of the **Customer** and the **Customer** indemnifies **Commander** against any claims by any other person to any interest whatsoever in the **Equipment**.

21. Ownership of IP addresses

Where **Commander** makes any IP address available for the use of the **Customer**, then unless otherwise agreed, it remains the property of **Commander**.

22. Indemnities given by the Customer

- a) The **Customer** indemnifies **Commander** against any **claim** touching anything that the **Customer** or its **Representatives** does or keeps on the **Data Centre**, or that occurs in relation to **Customer Equipment** or any service or facility provided using **Customer Equipment**.
- b) The **Customer** indemnifies **Commander** against **claim** that may arise directly or indirectly out of anything that happens or does not happen, or that a party, or anyone for whom a party is responsible in law or fact, does or fails to do in connection with:
 - (i) the delivery of **Customer Equipment** to the data centre;
 - (ii) the presence of the **Customer** or its **Representatives** at the data centre;
 - (iii) any modification to the **Customer Equipment** which harms **Commander's Equipment** or a third party's **Equipment** or other services;
 - (iv) the installation, removal, replacement, maintenance of **Customer Equipment** on or from the data centre;
 - (v) defects in **Customer Equipment**.

23. Rights

Core Service Terms does not give the **Customer** any property rights in the **Data Centre**.

24. Clauses that survive termination

Clause 18 (for as long as any **Customer Equipment** remains at the data centre), **clause 15** and **clause 22** continue in force after a **Service Contract** for co-location services ends.

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