

Our Customer Relationship Agreement

VIRTUAL PRIVATE SERVER SERVICE DESCRIPTION

Internode Pty Ltd ABN 82 052 008 581

Phone: 13 66 33

1/502 Hay Street, Subiaco WA 6008

15 October 2013

Rules of interpretation and capitalised terms used in this Service Description are defined in the General Terms of our CRA or our Master Services Agreement (as applicable), or in the body of this Service Description.

1. ABOUT THE VIRTUAL PRIVATE SERVER SERVICE DESCRIPTION

- 1.1 The terms and conditions contained in this Service Description are additional to, and should be read in conjunction with, our CRA or Master Services Agreement (as applicable).
- 1.2 Use of the Internode Virtual Private Server Service (**Service**) is subject to this Service Description and:
- (a) the General Terms of our CRA, including the other documents listed in clause 1.2 of the General Terms; or
 - (b) our Master Services Agreement (as applicable).

2. INTERNODE VIRTUAL PRIVATE SERVER

Definitions

Fault, for the purposes of our guarantee to meet the Availability Target and Restore Target (as set out in our CRA or Master Services Agreement (as applicable)), means a failure of the Service where: (a) the Service is unusable or unavailable, (b) there is significant impact on you, and (c) there is no bypass or workaround available.

Service Equipment means all hardware and software used in providing the Service.

System Software means all software installed on and operated using the Service Equipment that has been installed by us or our TP Suppliers including the operating system, monitoring and backup software.

TP Supplier means a third party supplier that supplies us with goods and/or services (including wholesale telecommunications services) that are necessary for our provision of the Service to you (including a supplier which provides us with goods or services for re-supply to you).

Virtual Data Centre (VDC) or a **Virtual Private Data Centre** is a virtual container in which VPS(s) are deployed. This container is where some services are connected which can include firewall services, private VLAN, Internet connectivity and

IINET GROUP CRA – INTERNODE VIRTUAL PRIVATE SERVER SERVICE DESCRIPTION

Internode Business Connect (**IBC**) connectivity. Once these services are connected they can be made available to the VPS(s) within the VDC.

Virtual Private Server (VPS), also referred to as **Virtual Dedicated Server (VDS)** is a method of dividing underlying hardware server resources into virtual servers, where resources can be allocated in a way that does not directly reflect the underlying hardware. Each virtual server can run its own full-fledged operating system, applications and each virtual server is an independent environment that can be independently rebooted, stopped, or started.

The Service

- 2.1 The Service comprises a Virtual Private Server in a Virtual Data Centre, associated System Software and other ancillary services which can be accessed either via the Internet or IBC dependent on the service ordered.
- 2.2 The Service provides a cost-effective and scalable option for customers requiring dedicated server solutions. It delivers the superior bandwidth and high availability benefits of data centre hosting; combined with the flexibility and security of a dedicated device. Key issues of redundancy, firewalling, monitoring and management of both hardware and operating systems are all addressed as part of this comprehensive solution set.

General

- 2.3 We reserve the right to change the products purchased by you as part of the Service in circumstances where these products are either no longer available or out of date and in such circumstances we agree to provide an alternative product which, in our reasonable opinion, fulfils the Service obligations within our CR or Master Services Agreement (as applicable). We will give you 30 days' notice of any such changes to products. We will not make any change to Services being provided during the contract term (as indicated on your Application) unless it is no longer possible to provide the relevant Services. Where products are changed in the above mentioned circumstances there may be a change in the price for the Service. You agree to accept any changes to the price in these circumstances.
- 2.4 Where pricing information is identified in your Application for the Service, this pricing will be reviewed by us on an annual basis and can be increased by us to reflect any market changes (including increases in prices charged by our TP Suppliers) that arise in our reasonable opinion. Any increase in pricing will apply to the Service 30 days from the date of notice provided to you. A Service will not be affected by a pricing change during the contract term of the Service as agreed in the Application (excluding services (such as software licensing) that are identified as services whose price is subject to change from time to time. We will provide 30 days' written notice where pricing changes are required for those services).
- 2.5 Solely in order to satisfy regulatory obligations and licensing requirements, where necessary, we and/or our TP Suppliers and/or the third party owners of any intellectual property rights contained in any part of the Service, reserve the right at any time to monitor and audit your use the Service. You must provide reasonable assistance where required so as to reasonably comply with any regulatory obligations or licensing requirements.
- 2.6 Unless purchased from us as part of the Service, you must ensure all components of your Service are patched regularly and appropriate virus scanning and removal

IINET GROUP CRA – INTERNODE VIRTUAL PRIVATE SERVER SERVICE DESCRIPTION

tools are installed and operational. You will be liable for the cost of mitigating or eradicating any viruses found on your Service that have not been introduced by us or our TP Suppliers.

- 2.7 If you have purchased a level of management that includes patching, we or our TP Suppliers may, in the event of an urgent advisory or incident, install critical security patch updates to the Virtual Private Server and/or System Software with minimal or no notice to you where we or our TP Suppliers deem appropriate.
- 2.8 The IP addresses allocated to you with the Service are the property of us and/or our TP Suppliers and are allocated on a temporary basis and are not portable. We may change these on reasonable notice, and where we do so, we will seek to minimise any inconvenience to you. You will have no right to use these IP addresses following termination of the Service. Any change that you need to make to your IP addresses following termination is your sole responsibility.
- 2.9 Whilst you are the sole owner of your data, you do not own nor have any right, title or claim whatsoever to any of the software, equipment (including hardware), facilities, documents, data, drawings, specifications, computer programs, object code, source code, network designs, sketches or discoveries developed or utilised for the benefit of you by us or our TP Suppliers (**Components**). We and/or our TP Suppliers retain all right, title and ownership of Components under our CRA or Master Services Agreement (as applicable), including any adaptations and improvements. Such right and title vests in and remains the sole and exclusive property of us and our TP Suppliers. You agree, at our request, to take all such actions and execute all such documents as may in our or our TP Suppliers' reasonable opinion be necessary to enable us or our TP Suppliers' to obtain, defend or enforce our rights in this regard and you must not do or fail to do any act which would or might prejudice our or our TP Suppliers' right under this clause.
- 2.10 Your agreement to our CRA or Master Services Agreement (as applicable) will continue in full force and effect after the expiration of the contract term (as indicated on the Application) until terminated by you or us, either pursuant to our CRA or Master Services Agreement (as applicable) or for any reason by giving the other party 3 months' written notice. You must pay us all fees arising until the end of the above mentioned notice period.
- 2.11 During the contract term (as indicated on the Application), the applicable early termination charges are the fees owing for the remainder of the contract term from the date of cancellation. The parties acknowledge and agree that the early termination charges are a genuine pre-estimate of the loss that we will suffer if our CRA or Master Services Agreement (as applicable) terminates early and is not a penalty.
- 2.12 You:
- (a) acknowledge that we and our TP Suppliers exercise no control over the content of information passing through their sites, facilities and equipment. You agree it is your sole responsibility to ensure that the information you transmit and receive complies with all applicable laws and regulations;
 - (b) agree that you are responsible for the content of all postings, data or transmissions arising from the usage of the Service by you, any third party you permit to use the Service or any third party who uses the Service through your access information (whether authorised by you or not);

IINET GROUP CRA – INTERNODE VIRTUAL PRIVATE SERVER SERVICE DESCRIPTION

- (c) warrant that neither you nor any third party you permit to use the Service nor any third party who uses the Service through your access information (whether authorised by you or not) will use the Service for an unlawful purpose or interfere or disrupt other network users, network services or equipment. The definition of disrupt is very broad and includes, but is not limited to, unsolicited advertising, falsification of identity, harassment of other users or compromising the security or integrity of passwords or network information; and
- (d) agree that you will comply with the terms of all third party software licensing terms and conditions provided by us from time to time (including updates) concerning the use of Service.

2.13 In addition to other rights of termination, we may immediately terminate the Service without penalty by written notice to you if any of the following occurs:

- (a) we or our TP Suppliers become aware or are advised by any regulatory authority that applicable laws, rules or decisions (of a court, tribunal or government) prohibit the provision of the Service;
- (b) cancellation, termination or expiration of any lease or licence governing the site or sites from which the Service is provided, or where the Service Equipment is located;
- (c) the supplier of services to our TP Suppliers suspends, cancels, terminates or does not renew its supply of products and services to our TP Suppliers (through no fault of the relevant TP Supplier), and as a result, seriously impairs or prevents our TP Suppliers from delivering products and services to us that are required to provide the Service to you;
- (d) any permit, licence or consent required for the provision of the Service cannot reasonably be obtained by us or our TP Suppliers.

Although we have the right to immediately terminate under this clause, we will endeavour to provide notice where this is reasonably practicable.

2.14 If you are purchasing a product that is licensed from Microsoft then you agree to the following:

- (a) you hereby acknowledge that your use of Microsoft products accompanying the computer equipment rented or leased in connection with the Service is governed by the End User License Terms, a copy of which is attached hereto (as Appendix A);
- (b) Microsoft may change products or pricing at any time and consequentially both are subject to change from time to time. We have no control over the above and will provide 30 days' written notice to you where pricing changes are required; and
- (c) Microsoft's Service Provider Use Rights (**SPUR**) and Microsoft End User License Agreement (Appendix A) terms apply. Pricing is updated annually by Microsoft on 31st of January. SPUR is available from Microsoft's website
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<http://www.microsoft.com/serviceproviders/licensing/default.msp>.

IINET GROUP CRA – INTERNODE VIRTUAL PRIVATE SERVER SERVICE DESCRIPTION

3. INTERNODE HELP DESK

Contact Number: 13-NODE (13 66 33)

Hours of Coverage to Respond	24 x 7 (including Public Holidays)
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Response Target:	30 Minutes
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Hours of Coverage to Restore	24 x 7 (including Public Holidays)
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Customer Update Period	2 Hours then every 2 Hours
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Restore Target	2 Hours
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Availability Target	99.9%
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Availability Guarantee	YES
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3.1 To be read in conjunction our CRA or Master Services Agreement (as applicable).

3.2 All times quoted as CST.

IINET GROUP CRA – INTERNODE VIRTUAL PRIVATE SERVER SERVICE DESCRIPTION

APPENDIX A - END USER LICENSE TERMS

TERMS AND CONDITIONS REGARDING USE OF MICROSOFT SOFTWARE

This document governs the use of Microsoft software, which may include associated media, printed materials, and “online” or electronic documentation (individually and collectively, “**Licensed Products**”) provided by us (hereinafter referred to as “**Customer**”). Customer does not own the Licensed Products and the use thereof is subject to certain rights and limitations of which Customer must inform you. Your right to use the Licensed Products is subject to the terms of your agreement with Customer, and to your understanding of, compliance with, and consent to the following terms and conditions, which Customer does not have authority to vary, alter, or amend.

1. DEFINITIONS.

“**Client Software**” means software that allows a Device to access or utilize the services or functionality provided by the Server Software.

“**Device**” means each of a computer, workstation, terminal, handheld PC, pager, telephone, personal digital assistant, “smart phone,” server or other electronic device.

“**Server Software**” means software that provides services or functionality on a computer acting as a server.

“**Software Documentation**” means any end user document included with server software.

“**Redistribution Software**” means the software described in Paragraph 4 (“Use of Redistribution Software”) below.

2. OWNERSHIP OF LICENSED PRODUCTS.

The Licensed Products are licensed to Customer from an affiliate of the Microsoft Corporation (collectively “**Microsoft**”). All title and intellectual property rights in and to the Licensed Products (and the constituent elements thereof, including but not limited to any images, photographs, animations, video, audio, music, text and “applets” incorporated into the Licensed Products) are owned by Microsoft or its suppliers. The Licensed Products are protected by copyright laws and international copyright treaties, as well as other intellectual property laws and treaties. Your possession, access, or use of the Licensed Products does not transfer any ownership of the Licensed Products or any intellectual property rights to you.

3. USE OF CLIENT SOFTWARE.

You may use the Client Software installed on your Devices by Customer only in accordance with the instructions, and only in connection with the services, provided to you by Customer. The terms of this document permanently and irrevocably supersede the terms of any Microsoft End User License Agreement that may be presented in electronic form during your use of the Client Software.

4. USE OF REDISTRIBUTION SOFTWARE.

In connection with the services provided to you by Customer, you may have access to certain “sample,” “redistributable” and/or software development (“**SDK**”) software

IINET GROUP CRA – INTERNODE VIRTUAL PRIVATE SERVER SERVICE DESCRIPTION

code and tools (individually and collectively “Redistribution Software”). YOU MAY NOT USE, MODIFY, COPY, AND/OR DISTRIBUTE ANY REDISTRIBUTION SOFTWARE UNLESS YOU EXPRESSLY AGREE TO AND COMPLY WITH CERTAIN ADDITIONAL TERMS CONTAINED IN THE SERVICES PROVIDER USE RIGHTS (“**SPUR**”) APPLICABLE TO CUSTOMER, WHICH TERMS MUST BE PROVIDED TO YOU BY CUSTOMER. Microsoft does not permit you to use any Redistribution Software unless you expressly agree to and comply with such additional terms, as provided to you by Customer.

5. COPIES.

You may not make any copies of the Licensed Products; provided, however, that you may (a) make one copy of Client Software on your Device as expressly authorized by Customer; and (b) you may make copies of certain Redistribution Software in accordance with Paragraph 4 (Use of Redistribution Software). You must erase or destroy all such Client Software and/or Redistribution Software upon termination or cancellation of your agreement with Customer, upon notice from Customer or upon transfer of your Device to another person or entity, whichever occurs first. You may not copy any printed materials accompanying the Licensed Products.

6. LIMITATIONS ON REVERSE ENGINEERING, DECOMPILE AND DISASSEMBLY.

You may not reverse engineer, decompile, or disassemble the Licensed Products, except and only to the extent that applicable law, notwithstanding this limitation, expressly permits such activity.

7. NO RENTAL.

You may not rent, lease, lend, pledge, or directly or indirectly transfer or distribute the Licensed Products to any third party, and may not permit any third party to have access to and/or use the functionality of the Licensed Products except for the sole purpose of accessing the functionality of the Licensed Products in the form of software services in accordance with the terms of this agreement and any agreement between you and Customer.

8. TERMINATION.

Without prejudice to any other rights, Customer may terminate your rights to use the Licensed Products if you fail to comply with these terms and conditions. In the event of termination or cancellation of your agreement with Customer or Customer’s agreement with Microsoft under which the Licensed Products are licensed, you must stop using and/or accessing the Licensed Products, and destroy all copies of the Licensed Products and all of its component parts.

9. NO WARRANTIES, LIABILITIES OR REMEDIES BY MICROSOFT.

Any warranties, liability for damages and remedies, if any, are provided solely by customer and not by Microsoft, its affiliates or subsidiaries.

10. PRODUCT SUPPORT.

Any support for the Licensed Products is provided to you by Customer and is not provided by Microsoft, its affiliates or subsidiaries.

IINET GROUP CRA – INTERNODE VIRTUAL PRIVATE SERVER SERVICE DESCRIPTION

11. NOT FAULT TOLERANT.

The licensed products may contain technology that is not fault tolerant and are not designed, manufactured, or intended for use in environments or applications in which the failure of the licensed products could lead to death, personal injury, or severe physical, property or environmental damage.

12. EXPORT RESTRICTIONS.

The Licensed Products are of U.S. origin for purposes of U.S. export control laws. You agree to comply with all applicable international and U.S. laws that apply to the Licensed Products, including the U.S. Export Administration Regulations, as well as end-user, end-use and destination restrictions issued by the U.S. and other governments. For additional information, see <http://www.microsoft.com/exporting/>.

13. LIABILITY FOR BREACH.

In addition to any liability you may have to Customer, you agree that you will also be legally responsible directly to Microsoft for any breach of these terms and conditions.