

This Master Services Agreement (the "Agreement") is between Down Under On Line Pty Ltd, a Queensland proprietary limited company, doing business as DUO WEB HOSTING ("DUO"), and the person (individual or legal person, hereinafter referred to as "Customer") whose name appears on the signature line of the Agreement or on any document that incorporates the Agreement by reference or who otherwise accepts these terms in connection with obtaining Services from DUO ("Acceptance") and is effective on the Effective Date.

1. **Defined Terms.** Capitalized terms shall have the following meanings or the meanings assigned to them in the other Sections of the Agreement:

"**Agreement**" shall mean the Service Order Form(s), this Master Services Agreement, the Service Level Agreement, any DUO Addendum to this Master Services Agreement, and the AUP, collectively. Any conflict among these documents shall be resolved by reading the documents in the foregoing order of precedence.

"**Annual Term**" shall mean the Initial Term of this Agreement and each succeeding twelve month period.

"**AUP**" shall mean DUO's Acceptable Use Policy, posted on the Effective Date at www.downunderonline.net as it may be amended from time to time in accordance with this Master Services Agreement.

"**Business Day**" shall mean Monday through Friday, 8:00 a.m. to 5:00 p.m., eastern standard time, excluding any day that banks in Australia are required or permitted to be closed.

"**Effective Date**" shall mean the day that Customer accepts the Agreement, either by signing DUO's Service Order Form or a copy of this Master Services Agreement, or by using the Service, or through other means of signifying Acceptance.

"**Hosting Service Level Agreement**" shall mean the Hosting Service Level Agreement incorporated by reference in the Service Order Form, as it may be amended from time to time by written agreement of the parties.

"**Managed Hosting Service**" shall mean hosting and operating Customer's web site on DUO's security and environmentally controlled computer servers and providing Customer and Customer's clients with on-line, real time access and use of the web-site via the internet on a continuous, 24 hour per day x 7 days per week x 365 days per year basis, except for the service interruptions described below.

"**Service**" or "**Services**" shall mean the Managed Hosting Service and any Supplemental Service(s) (as defined in Section 3) provided by DUO to Customer pursuant to the Agreement.

"**Service Commencement Date**" shall mean the date DUO generates an e-mail message to Customer that provides access codes and passwords for use in connection with the Managed Hosting Service.

2. **Term.** The initial term of this Agreement shall begin on the Service Commencement Date and continue for a period of one year (the "Initial Term"). This Agreement shall automatically be extended for an additional one year term upon the anniversary date of the Initial Term or any extension thereof, and **PROVIDED THAT CUSTOMER IS THEN CURRENT ON ITS ACCOUNT WITH DUO INCLUDING THE ANNUAL FEE**, unless either party terminates the Agreement, for any reason, upon 30 days written notice to the other party.

3. **Services.** Contingent upon the Customer's satisfaction of DUO's credit approval requirements and on DUO's verification of the information provided by Customer for the purpose of establishing the Service, DUO agrees to provide the Managed Hosting Service in accordance with the terms of the Agreement. In addition, DUO may from time to time perform certain additional services on an hourly fee basis (the "Supplemental Services"), including customization of the Managed Hosting Service at the Customer's request, services described in the AUP, and other professional technical services. Supplemental Services will be performed only on Customer's advance approval and will be invoiced at DUO's then-published rates or other rates approved in advance in writing by Customer. However DUO may perform Supplemental Services for the fees stated in the AUP as necessary to remedy problems caused by AUP violations without obtaining advance Customer consent.

4. **Server Capacity and Availability.** DUO shall maintain sufficient server capacity to allow for reasonable access to Customer's website consistent with anticipated and historic access volume. DUO shall provide continuous access to Customer's website, except for:

(i) scheduled downtime not to exceed four (4) hours per calendar month and at such time which, in the sole opinion of DUO, is the most convenient to all of DUO's customers, for the purpose of maintenance or replacement of software or hardware;

(ii) any outages caused by the co-location facility housing the servers from where the Customer's website is hosted;

(iii) any outages caused by any person or event beyond the control of DUO.

5. **Payments.**

(a) **Fees.** The Customer agrees to pay the annual (Annual Fee) and set up fees stated in the DUO Hosting Invoice and DUO's standard fees for Supplemental Services, if any, as described in Section 3 (Services) above. The Annual Fee is non-refundable.

Fees payable to DUO are payable on receipt of DUO's invoice. After the Service Commencement Date, the Annual Fee shall be invoiced in advance on or around 30 days before expiration of the current term. Invoices for Supplemental Services, excess data transfer, reinstatement of service, switching and upgrade fees and other non-recurring amounts will be invoiced as they are incurred by the Customer. The Customer acknowledges that it is responsible for excess data transfer fees that may result from a denial of service or other attack on DUO's servers. Payments must be made in Australian dollars. DUO may charge interest on amounts that remain outstanding at the expiry of ten (10) days or more, at the lesser of 1.5% per month or the maximum non-usurious rate under applicable law. DUO may suspend any or all Services if payment for any Service is overdue. The Customer agrees to pay DUO's current reinstatement fee at the time of reinstatement of service following a suspension of service for non-payment or an AUP violation investigation.

(b) **Early Termination.** The Customer acknowledges that the Annual Fee is payable in advance and is non-refundable. In the event DUO terminates the Agreement for the Customer's breach of the Agreement in accordance with Section 14 (Termination), or the Customer terminates the Managed Hosting Service no fees due under the Agreement will be refunded or prorated to date of termination.

(c) **Termination Notices.** DUO shall provide notice to the Customer of the expiry of the Annual Term 45 days or more prior to expiry of the Annual Term and shall further provide a 30 day invoice for payment of the Annual Fee. The Customer acknowledges that notice must be given to DUO 30 days prior to the expiry of the Annual Term, or the Customer is financially liable for full payment of the Invoice that was issued for the next hosting term.

(d) **Default Accounts.** Unpaid invoices for any fees or services payable to DUO under the Agreement will be considered in default if not paid within 30 days of receipt. If the Customer in default maintains any information or files on its web space, DUO may, at its discretion, remove all such material from its Web space. Removal of such material does not relieve the Customer of its obligation to pay any outstanding charges owing by the Customer.

Customers with accounts in default agree to indemnify DUO for DUO's reasonable expenses, including but not limited to debt collection fees, legal fees on a party-party basis, and court costs, incurred in enforcing payment of fees under the Agreement.

(e) **Taxes.** Customer shall remit to DUO all GST imposed on the provision of the Services, regardless of whether DUO fails to collect the tax at the time the related Services are provided.

6. **Customer Obligations.** The Customer agrees to do all of the following at the Customer's expense:

(a) **Security Precautions.** Use reasonable security precautions in connection with its use of the Services ;

(b) **Data Back Up.** Notwithstanding any agreement by DUO to provide data storage or back up services, create and maintain a current copy of all customer's content stored on DUO servers or otherwise provided to DUO, and store the copy in a reasonably secure location other than a DUO server or location;

(c) **Compliance with Laws and AUP.** Comply with laws applicable to Customer's use of the Services and with DUO's AUP and

(d) **Investigation of AUP.** Cooperate with DUO's investigation of any suspected violation of the AUP.

7. **AUP.** The Customer agrees that DUO may, in its reasonable commercial judgment consistent with

industry standards, amend any part of the Agreement from time to time to further detail or describe reasonable restrictions and conditions on Customer's use of the Hosting Services or DUO's commercial trading terms. Amendments to the Agreement are effective on the earlier of DUO's publication on the DUO website that an amendment has been made, or the beginning of any Renewal Term or Extended Term.

However, if:

- (i) the amendment would materially and adversely affect the Customer, and
- (ii) the Customer provides DUO with a written notice describing its objection to the amendment in reasonable detail within five (5) Business Days of the effective date of the amendment, and
- (iii) DUO does not agree to waive the amendment as to the Customer within five (5) Business Days of the Customer's notice, then the Customer may terminate the Agreement without liability as provided in Section 13 (a)(iv) (Termination)

8. Suspension of Service. The Customer agrees that DUO may suspend Services to the Customer without notice and without liability if:

- (i) DUO reasonably believes that the Services are being used in violation of the AUP or
- (ii) the Customer fails to cooperate with any DUO investigation of any suspected violation of the AUP or
- (iii) there is a denial of service attack on the Customer's content or other event for which DUO reasonably believes that the suspension of Services is necessary to protect its network or its other customers; or
- (iv) as requested by a law enforcement or government agency.

Information on DUO's servers will be unavailable during any suspension of Services.

9. Warranties.

(a) **Reciprocal.** DUO represents and warrants to the Customer, and if the Customer is not an individual, the Customer represents and warrants to DUO, that:

- (i) it has the power and authority and the legal right to enter into the Agreement and to perform its obligations under the Agreement;
- (ii) it has taken all necessary action on its part to authorize the execution and delivery of the Agreement; and, (iii) the execution and delivery of the Agreement and the performance of its obligations hereunder do not conflict with or violate applicable laws or regulations, and do not conflict with or constitute a default under its charter documents.

If the Customer is an individual, the Customer represents and warrants to DUO that he or she is at least 18 years of age.

(b) **Customer.** The Customer represents and warrants to DUO that:

- (i) the information the Customer has provided and will provide to DUO for the purposes of establishing and maintaining the Service is accurate;
- (ii) Customer will not use the Services for the development, design, manufacture, production, stockpiling, or use of nuclear, chemical or biological weapons, weapons of mass destruction, or missiles, and
- (iii) Customer shall not provide access to the Service to any person (including any natural person or government or private entity) that is located in or is a national of any embargoed or highly restricted country under Australia Export Regulations.

10. Unauthorized Use of Service. The Customer shall be responsible for any unauthorized use of the Services by any person, and shall pay all fees incurred for its account by any person using the Services, unless such unauthorized use results from DUO's failure to perform its obligations under the Agreement.

11. Indemnification. The parties agree that the indemnification obligations defined in this Section where possible shall be in lieu of and supersede any indemnification obligations that may otherwise exist by law.

(a) **Customer.** The Customer agrees to indemnify and hold harmless DUO, DUO's affiliates, and each of their respective officers, directors, attorneys, agents, and employees from and against any and all claims, demands, liabilities, obligations, losses, damages, penalties, fines, punitive damages, amounts in interest, expenses and disbursements of any kind and nature whatsoever (including reasonable attorneys' fees) brought by a third party under any theory of legal liability arising out of or related to:

- (i) the actual or alleged use of the Services in violation of: (A) the Agreement or (B) applicable law, by any person regardless of whether such person has been authorized to use the Services by the Customer, except for unauthorized use that results from DUO's failure to perform its obligations under the Agreement, or

(ii) any dispute regarding the control of Customer's account with DUO.

Without limiting any of the above, the Customer shall pay DUO \$250.00AUD per hour for time reasonably spent by DUO personnel to respond to third party complaints regarding Customer's use or alleged use of the Services in violation of the AUP.

(b) **Reciprocal.** Each party agrees to indemnify and hold harmless the other party, the other party's affiliates, and each of their respective officers, directors, attorneys, agents, and employees from and against any and all claims, demands, liabilities, obligations, losses, damages, penalties, fines, punitive damages, amounts in interest, expenses and disbursements of any kind and nature whatsoever (including reasonable attorneys' fees) brought by a third party arising out of or related to the indemnifying party's actual or alleged infringement or misappropriation of a third party's copyright, trade secret, patent, trademark, or other proprietary right.

(c) **Procedures.** A party seeking indemnification under this Section shall provide prompt notice of its claim for indemnification to the indemnifying party. However, failure to give prompt notice shall not affect the indemnifying party's obligations under this Section unless and to the extent that the failure materially prejudices the defense of the matter. The indemnified party will have the right to select their legal representatives to defend it in respect of any indemnified matter under this Section; provided, however, that the legal representatives selected must be reasonably satisfactory to the indemnifying party. The indemnified party will keep the indemnifying party informed of the status of any litigation or dispute resolution procedure, will give reasonable consideration to the suggestions and requests of the indemnifying party with respect to the conduct of the litigation or dispute resolution procedure, and will not settle any matter covered by this Section without the prior consent of the indemnifying party, which shall not be unreasonably withheld. Notwithstanding anything in this Section to the contrary, if the indemnifying party is indemnifying multiple persons related to the subject matter of the indemnification, the indemnifying party shall have the right to seek consolidation of all such actions and to select counsel to defend the actions. Amounts due under this Section shall be paid as incurred and may be offset against other amounts due under the Agreement

12. Disclaimer of Warranties.

DUO DOES NOT WARRANT OR REPRESENT THAT THE SERVICES WILL BE UNINTERRUPTED, ERROR-FREE, OR COMPLETELY SECURE. THE CUSTOMER ACKNOWLEDGES THAT THERE ARE RISKS INHERENT IN INTERNET CONNECTIVITY THAT COULD RESULT IN THE LOSS OF CUSTOMER'S PRIVACY, CONFIDENTIAL INFORMATION, AND PROPERTY.

TO THE EXTENT PERMITTED BY APPLICABLE LAW, DUO DISCLAIMS ANY AND ALL WARRANTIES NOT EXPRESSLY STATED IN THE AGREEMENT INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PURPOSE, AND NONINFRINGEMENT. THE CUSTOMER IS SOLELY RESPONSIBLE FOR THE SUITABILITY OF THE SERVICES CHOSEN. ALL GOODS AND SERVICES ARE PROVIDED ON AN "AS IS" BASIS, EXCEPT AS EXPRESSLY STATED IN THE SERVICE LEVEL AGREEMENT OR OTHER PORTION OF THE AGREEMENT.

13. **Limitation of Damages.** The parties agree that the allocations of risk made in this Section are reasonable and that they would not enter into the Agreement without these limitations on liability.

TO THE EXTENT PERMISSIBLE BY LAW, THE CREDITS DESCRIBED IN THE AGREEMENT ARE THE CUSTOMER'S SOLE REMEDIES FOR DUO'S FAILURE TO MEET A GUARANTEE AND/OR WARRANTY, HOWEVER, THIS PROVISION DOES NOT LIMIT THE CUSTOMER'S RIGHT TO TERMINATE THIS AGREEMENT AS PROVIDED IN SECTION 13 (TERMINATION) IF SUCH FAILURE(S) CONSTITUTE A MATERIAL BREACH OF THIS AGREEMENT.

EXCEPT AS DESCRIBED IN THE AGREEMENT, DUO SHALL NOT BE LIABLE TO THE CUSTOMER FOR HARM CAUSED BY OR RELATED TO CUSTOMER'S USE OF THE SERVICES OR INABILITY TO USE THE SERVICES UNLESS THE HARM WAS CAUSED BY DUO'S NEGLIGENCE OR MISCONDUCT.

EXCEPT IN CASES OF INTENTIONAL TORTS DUO AND THE CUSTOMER SHALL NOT BE LIABLE TO EACH OTHER FOR ANY LOST PROFITS, OR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE LOSS OR DAMAGE OF ANY KIND, OR FOR DAMAGES THAT COULD HAVE BEEN AVOIDED BY THE USE OF REASONABLE DILIGENCE, ARISING IN CONNECTION WITH THE AGREEMENT, EVEN IF THE PARTY HAS BEEN ADVISED OR SHOULD BE AWARE OF THE POSSIBILITY OF SUCH DAMAGES.

NOTWITHSTANDING ANYTHING ELSE IN THE AGREEMENT TO THE CONTRARY, THE MAXIMUM AGGREGATE LIABILITY OF DUO AND ANY OF ITS EMPLOYEES, AGENTS OR AFFILIATES, UNDER ANY THEORY OF LAW (INCLUDING BREACH OF CONTRACT, TORT, STRICT LIABILITY, AND INFRINGEMENT) SHALL BE A PAYMENT OF MONEY NOT TO EXCEED THE AMOUNT PAID BY CUSTOMER FOR THE

MANAGED HOSTING SERVICE FOR THE THREE MONTHS PRIOR TO THE OCCURRENCE OF THE EVENT(S) GIVING RISE TO THE CLAIM.

14. Liquidated Damages. In the event Customer causes or is responsible for the infringement or unauthorized use of DUO's software or other DUO intellectual property, the Customer shall immediately cease and desist from further infringement or unauthorized use of DUO's intellectual property, upon receipt of notice from DUO, and respond to DUO within two (2) days, in writing, stating the specific steps taken to cure the violation of DUO's intellectual property rights.

If applicable, the Customer shall similarly cause any third parties to whom Customer has allowed access to DUO's intellectual property, to likewise cease and desist from the unauthorized use of DUO's intellectual property.

The parties agree that in such event, actual damages to DUO will be difficult to determine and therefore agree that liquidated damages, in an amount equal to DUO's original invoice to Customer for the creation and development of Customer's website, shall apply for each violation of DUO's intellectual property rights and Customer shall pay DUO such liquidated damages within five (5) days of being found in breach of this contract or otherwise held to be responsible for the infringement or unauthorized use of DUO's intellectual property by a court of competent jurisdiction.

15. Termination.

(a) **Customer.** The Agreement may be terminated by the Customer 30 days prior to the expiration of the Initial Term, any Renewal Term, or Extended Term without liability (except for amounts due for Services through the effective date of termination) as follows:

(i) DUO fails in a material way to provide the Managed Hosting Service in accordance with the terms of the Agreement and does not cure the failure within ten (10) days of Customer's written notice describing the failure in reasonable detail,

(ii) DUO materially violates any other provision of the Agreement and fails to cure the violation within thirty (30) days of Customer's written notice describing the violation in reasonable detail, or

(iii) as provided in Section 6 (AUP) upon thirty (30) days advance written notice. , in which case there is no refund prorated or otherwise of the Annual Renewal Fee already remitted.

(iv) This Agreement will be automatically renewed at the end of the initial term for the same term specified by you unless you provide thirty (30) days written notice to DUO Hosting of termination of this Agreement.

(b) **DUO.** The Agreement may be terminated by DUO prior to the expiration of the Initial Term, any Renewal Term, or Extended Term, without liability as follows: (i) if Customer is overdue on the payment of any amount due under the Hosting Agreement; (ii) Customer materially violates any other provision of the Agreement, including the AUP, and fails to cure the violation within thirty (30) days of a written notice from DUO describing the violation in reasonable detail; (iii) upon one (1) Business Days notice if Customer's Service is used in violation of a material term of the AUP more than once; or (iv) upon reasonable notice if DUO is threatened with a legal claim for copyright or patent infringement related to the provision of the Service and is unable to modify the Service in a way that avoids an ongoing risk of liability.

(c) **Website Ownership at Termination.** DUO hereby agrees to assign the Copyright to any website it has created and developed for Customer to the Customer under the terms of a separate Assignment of Copyright and Agreement, sometimes referred to as a "Waiver", which may be executed at any time during or after the term of this Agreement. Customer specifically understands and acknowledges that without such assignment, the Copyright Act 1968 will otherwise bestow ownership of Copyright to DUO.

16. Confidentiality.

(a) **Confidential Information.** Confidential Information is: (i) with respect to DUO, DUO's unpublished prices for services, audit and security reports, server configuration designs and other proprietary technology, (ii) with respect to Customer, content transmitted to or from, or stored by Customer on, DUO's servers, and (iii) with respect to both parties, other information that is conspicuously marked as "confidential" or if disclosed in non-tangible form, is verbally designated as "confidential" at the time of disclosure and confirmed as confidential in a written notice given within one (1) day of disclosure; but excluding any information which is independently developed by a non-disclosing party as shown by such party's written business records, is or becomes generally available to the non-disclosing party or the public other than through violation of the Agreement, or is required to be disclosed by law or regulation. Each party agrees not to disclose the other's confidential information to any third party except to its service providers, agents and representatives who need to know the information to represent or advise it

with respect to the subject matter of the Agreement; and provided that such service providers, agents and representatives are bound by confidentiality restrictions at least as stringent as those stated in the Agreement.

(b) **DUO's Use of Customer's Name.** The Customer agrees that DUO may publicly disclose that DUO is providing services to the Customer and may include the Customer's name in promotional materials, including press releases and on DUO's Web site. Neither party may publicly use the other party's logo or other trade or service mark without that party's permission.

(c) **Requests for Customer Information.** Notwithstanding anything to the contrary above, the Customer agrees that DUO may, without notice to the Customer,
(i) report to the appropriate authorities any conduct by Customer or any of Customer's customers or end users that DUO believes violates applicable law, and
(ii) provide any information, including Confidential Information, it has about Customer or any of its customers or end users in response to a formal or informal request from a law enforcement or government agency. DUO may provide any information, including Confidential Information, it has about Customer or its customers or end users in response to a formal request in a civil action that on its face meets the requirements for such a request

17. **Software.** The Customer agrees not to remove, modify or obscure any copyright, trademark or other proprietary rights notices that appears on any software provided by DUO. Customer may not reverse engineer, decompile, or disassemble any DUO provided software, except and only to the extent that such activity is expressly permitted by applicable law notwithstanding this limitation, or is permitted by the terms of any "open source" license that governs the use of the software.

18. **Third Party Products.** As a convenience to the Customer, DUO may from time to time arrange for the Customer's purchase or license of third party software, services, and other products not included as part of the Service, and/or may provide support to Customer in relation to those products. DUO MAKES NO REPRESENTATIONS OR WARRANTY WHATSOEVER REGARDING SUCH THIRD PARTY PRODUCTS AND RELATED SUPPORT SERVICES AND THEY ARE PROVIDED "AS IS." Customer's use of third party software, services, and other products is governed by the terms of any license or other agreement between the Customer and the third party.

19. **Notices.** Notices to DUO under the Agreement shall be given in writing via email: hosting@downunderonline.net.au.

Notices to the Customer shall be given via electronic mail to the individual designated as the Contact on the Service Order Form or by means reasonable under the circumstances, including an e-mail to a known contact. Notices are deemed received on the day delivered, or if that day is not a Business Day, on the first Business Day following the day delivered.

20. **Miscellaneous.**

(a) **Solicitation of DUO Employees.** The Customer agrees that it shall not solicit any DUO employee with whom the Customer has had direct contact in connection with this Agreement for employment with the Customer or any other person during the term of this Agreement and for twelve (12) months following termination of this Agreement. Notwithstanding the foregoing, Customer shall not be precluded from (i) hiring an employee of DUO who independently approaches the Customer, or (ii) conducting general recruiting activities, such as participation in job fairs or publishing advertisements in publications or on Web sites for general circulation.

DUO and the Customer acknowledge that this restriction on the Customer's ability to solicit staff is reasonable in the circumstances in order to protect the viability of DUO's business.

In the event of a violation of this provision, in addition to any other right DUO may have at law or in equity, the Customer shall make a one-time payment to DUO in the amount of fifty percent (50%) of the employee's base salary for one year.

(b) **Ownership.** Each party acknowledges and agrees that the other party retains exclusive ownership and rights in its trade secrets, inventions, copyrights, and other intellectual property. DUO shall own any intellectual property that it may develop in the course of performing the Services. Such ownership includes the copyright interest in the design, template, layout, composition, presentation, and appearance of any website created and developed for Customer which are DUO's original works ("Copyright"). The Customer does not acquire any ownership interest or rights to possess DUO's server(s) or other hardware, and has no right of physical access to the hardware. Upon termination of the Agreement, the Customer agrees to promptly release any Internet protocol numbers, addresses or

address blocks assigned to the Customer in connection with the Service (but not any URL or top level domain or domain name) and agrees that DUO may take steps to change or remove any such IP addresses.

(c) **Governing Law, Jurisdiction, Venue.** The Agreement shall be governed by the laws of the State of Queensland, and the laws of Australia, as applicable, exclusive of its choice of law principles. The Agreement shall not be governed by the United Nations Convention on the International Sale of Goods. The parties agree that any litigation arising out of the Agreement should be commenced in courts situated in the Cairns District.

(d) **Arbitration.** In lieu of submitting any claims arising out of this Agreement to a court of law, the parties may agree to submit such claims to a mutually acceptable arbitrator for binding arbitration from which only the enforcement of the arbitrator's decision may be submitted to a court of law.

(e) **Validity.** If any provision of this Agreement shall be deemed invalid or unenforceable by a court of competent jurisdiction, such invalidity or unenforceability shall not invalidate or render unenforceable the remaining provisions of this Agreement.

(f) **Privacy and Copyright Acts.** The Parties shall abide by the Privacy Act of 1968 and the Copyright Act of 1968.

(g) **Headings and Captions.** The headings and captions in the Agreement are not part of the Agreement, but are for the convenience of the parties.

(h) **Counterparts.** Any documents signed in connection with the Agreement may be signed in multiple counterparts, which taken together will constitute one original.

(i) **Survival.** The following provisions will survive expiration or termination of the Agreement: fees, indemnity obligations, confidentiality obligations, provisions limiting liability and disclaiming warranties, provisions regarding ownership of intellectual property, these miscellaneous provisions, and other provisions that by their nature are intended to survive termination of the Agreement.

(j) **Force Majeure.** Neither party shall be in default of any obligation under the Agreement if the failure to perform the obligation is due to any event beyond that party's control, including, without limitation, significant failure of a portion of the power grid, significant failure of the Internet, natural disaster, war, riot, insurrection, epidemic, strikes or other organized labor action, terrorist activity, or other events of a magnitude or type for which precautions are not generally taken in the industry.

(k) **No Third Party Beneficiaries.** There are no third party beneficiaries to the Agreement. Neither insurers nor the customers of resellers are third party beneficiaries to the Agreement.

(l) **Severability.** In the event any term of this Agreement is held unenforceable by a court having jurisdiction, the remaining portion of the Agreement will remain in full force and effect, provided that the Agreement without the unenforceable provision(s) is consistent with the material economic incentives of the parties leading to the Agreement.

(m) **Relationship Between the Parties.** The parties are independent contractors and not partners or a joint venture. Neither party is the agent of the other and neither party may represent to any person that it has the power to bind the other on any agreement. The Agreement is non-exclusive. DUO may provide service to any person, including a competitor of the Customer.

(n) **Assignment.** The Customer may not transfer the Agreement without DUO's prior written consent. DUO's approval for assignment is contingent on the assignee meeting DUO's credit approval criteria. DUO may assign the Agreement in whole or in part.

(o) **Agreement.** The Service Level Agreement, the AUP, and any DUO Addendum to this Master Services Agreement accepted by Customer are hereby incorporated in this Master Services Agreement by reference and together collectively constitute the Agreement. The Agreement is the complete and exclusive agreement between the parties regarding its subject matter and supersedes and replaces any prior agreement, understanding or communication, written or oral. The terms on either party's purchase order or other business forms are not binding on the other party unless they are expressly incorporated into a formal written agreement signed by both parties.