

Terms and Conditions of Service

1. Definitions and Interpretation

In this Agreement, unless the context indicates the contrary:

'Account Data' means the account and contact information submitted to the Services by Customer or End Users.

'Agreement' means this agreement and the Proposal.

'Confidential Information' means all information provided by one party to the other in connection with this Agreement where such information is identified as confidential at the time of its disclosure or ought reasonably be considered confidential based on its content, nature or the manner of its disclosure, but excluding:

- (a) information that enters the public domain or is disclosed to a party by a Third Party, other than through a breach of this Agreement, and
- (b) information developed independently by a party.

'Customer' means the customer (or any person acting on behalf of and with the authority of the Customer) as described on any quotation, work authorisation, Proposal or any other document as provided by the Supplier to the Customer.

'Customer Data' means Stored Data and Account Data.

'Disbursements' means any unforeseen significant costs, charges, expenses or liabilities incurred by the Supplier and owed to Third Parties, which are not specified in the Proposal and are billable directly to the Customer.

'End Users' means the users of the Customer's Services account.

'Force Majeure Event' means any event beyond the control of the relevant party.

'GST' has the meaning given in *A New Tax System (Goods and Services Tax) Act 1999* (Cth), or any other similar tax.

'Intellectual Property Rights' means all intellectual property rights, including all copyright, patents, trade marks, design rights, trade secrets, domain names, know how and other rights of a similar nature, whether registrable or not and whether registered or not, and any applications for registration or rights to make such an application.

'Payment Schedule' means the table outlining the due dates for payment of the Service Fee, as outlined in the Proposal.

'Proposal' means any sales document, quotation or service proposal provided by the Supplier to the Customer in respect of the Services.

'Stored Data' means the files and data submitted to the Services by Customer or End Users.

'Supplier' means Webics Pty Limited (ACN 154 748 508) its successors and assigns or any person acting on behalf of and with the authority of Webics Pty Limited.

'Services' means the services to be provided by the Supplier to the Customer in accordance with the Proposal and this Agreement.

'Service Fee' means the amount detailed in the Proposal and set out in the Supplier's tax invoices.

Third Party means an entity other than Webics Pty Limited (ACN 154 748 508) or its subsidiaries.

Unless the context requires otherwise:

- (a) a reference to a person includes a corporation or any other legal entity;
- (b) the singular includes the plural and vice versa;
- (c) headings are for convenience and do not form part of this Agreement or otherwise affect the interpretation of this Agreement;

- (d) the term "includes" (or any similar term) means "includes without limitation"; and
- (e) a reference to any statute includes references to any subsequently amended, consolidated or re-enacted version of that statute and all delegated legislation or other statutory instruments made under it.

2. Acceptance

- 2.1 Any instructions (whether electronic, written, oral or by conduct) received by the Supplier from the Customer for the provision of Services constitute acceptance of the terms and conditions contained in this Agreement.
- 2.2 Where more than one Customer has entered into this Agreement, the Customers shall be jointly and severally liable for all payments of the Service Fee.
- 2.3 Upon acceptance of these terms and conditions by the Customer, the terms and conditions are binding and can only be amended with the written consent of the Supplier.
- 2.4 The Customer must give the Supplier not less than 14 days prior written notice of any proposed change of ownership of the Customer or any change in the Customer's name and/or any other change in the Customer's details (including but not limited to, changes in the Customer's address, facsimile number, email address or business practice). The Customer shall be liable for any loss incurred by the Supplier as a result of the Customer's failure to comply with this clause.
- 2.5 Services are provided by the Supplier only on the terms and conditions of trade herein to the exclusion of anything to the contrary in the terms of the Customer's order notwithstanding that any such order is placed on terms that purport to override these terms and conditions of Service.
- 2.6 None of the Supplier's agents, employees, contractors, sub-contractors or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the Supplier in writing and the Supplier is not bound by any such unauthorised statements.

3. Supplier Services

- 3.1 In consideration of the payment of the Service Fee, the Supplier will provide the Services to the Customer in accordance with this Agreement and the Proposal.
- 3.2 The Services to be provided to the Customer are detailed in the Proposal.
- 3.3 The Supplier may engage Third Party service providers in the provision of the Services pursuant to this Agreement and the Proposal. The Customer acknowledges and agrees that the provision of the Services may be subject to the acceptance of Third Party terms and conditions of services by the Customer.
- 3.4 The Supplier may upgrade the Services from time to time by informing the Customer via the email address associated with the Customer's account.

4. Variation

- 4.1 If the Customer requires any changes to the scope and nature of the Services to be provided as outlined in the Proposal, which the Supplier advises requires additional time, material or resources to be provided by the Supplier, such changes will occur as follows:
 - (a) the Customer will notify the Supplier of any changes it requires; and
 - (b) following notification, the Supplier may (at its sole discretion) provide the Customer with notice of:
 - (i) the changes required to the Proposal;
 - (ii) the additional services required by such changes; and
 - (iii) the additional fees required to undertake such additional services.
- 4.2 If the Customer notifies the Supplier of any changes which it requires to the Services, the Proposal will be considered varied to include such changes as agreed by the parties if the Supplier agrees to the changes to the Proposal.

- 4.3 The Customer acknowledges and agrees that any changes to the Services or Proposal will incur additional fees.

5. Customer's obligations

- 5.1 The Customer must provide all required material and access to Customer Data to assist the Supplier in the provision of the Services. All materials supplied by the Customer must be provided in a form suitable for incorporation into the Services without any modification by the Supplier.
- 5.2 The Customer is solely responsible for use of the Services by its End Users.
- 5.3 The Client may specify End Users as "Administrators" through the administrative console. Administrators may have the ability to access, disclose, restrict or remove Client Data in or from Services accounts. Administrators may also have the ability to monitor, restrict, or terminate access to Services accounts.
- 5.4 If any person makes any claim alleging that the materials supplied by the Customer or any use of it by the Supplier in accordance with this Agreement, infringes any Intellectual Property Rights or any other right of any person, the Customer must indemnify and hold harmless the Supplier from and against any such claim and from and against any loss (including reasonable legal fees) arising in connection with the claim.
- 5.5 The Customer must not:
- (a) use, and must not attempt to use, the Services in a manner which violates any applicable laws and/or regulations;
 - (b) use 25% or more of the system resources for longer than 90 seconds, including but not limited to running CGI scripts, scripts, FTP, PHP, HTTP and mail;
 - (c) run any real-time chat applications (or equivalent applications) which require server resources;
 - (d) run stand-alone, unattended server-side processes at any point in time on the server, including but not limited to any and all daemons, such as IRCD;
 - (e) run any software that interfaces with an IRC network;
 - (f) run any gaming servers/services;
 - (g) any activity which causes the server to crash/restart; and/or
 - (h) check emails more than once every 3 minutes.
- 5.6 The Customer acknowledges that the Supplier's responsibilities do not extend to the internal management or administration of the Services. The Customer is responsible for:
- (a) maintaining the confidentiality of passwords and Administrator accounts;
 - (b) managing access to Administrator accounts; and
 - (c) ensuring that Administrators' use of the Services complies with this Agreement.
- 5.7 The Customer agrees that it must not sell, resell, or lease the Services.
- 5.8 If the Customer or the Supplier uses any Third Party service which interacts with the Services, the Customer agrees that the Supplier will not be responsible for any act or omission of the Third Party, including the Third Party's access to or use of Customer Data and the Supplier does not warrant or support any service provided by the Third Party.

6. Payment

- 6.1 The Customer must pay for, and authorises the Supplier to charge using Customer's selected payment method, all applicable fees and Disbursements to give effect to the Services and this Agreement.
- 6.2 The Customer agrees to make payment of the Service Fee in accordance with the Payment Schedule outlined in the Proposal. Time for payment of the Service Fee shall be of the essence.

- 6.3 At the Supplier's sole discretion, the Supplier may require the Customer to make a prepayment or deposit towards the Service Fee as specified in the Proposal.
- 6.4 If requested by the Supplier, the Customer agrees to execute a direct debit request form and enter into a separate direct debit agreement with a Third Party service provider engaged by the Supplier. Where the Customer has executed a direct debit request form, the Customer authorises the Service Fee to be debited from their nominated bank account in accordance with the terms of payment outlined in the Proposal.
- 6.5 The Supplier may suspend or terminate the Services if fees have not been paid by the Customer within seven (7) days of the due date of payment in accordance with the Payment Schedule outlined in the Proposal. The Supplier may delete Customer Data stored by it, at its sole discretion for non-payment by providing the Customer with thirty (30) days' written notice.
- 6.6 The Supplier may provide the Customer with a tax invoice setting out the Service Fee and any additional fees and Disbursements from time to time required to be paid by the Customer. The Customer must pay the Supplier the amounts set out in the tax invoice within fourteen (14) days of the date of invoice. Time for payment of the Service Fee shall be of the essence.
- 6.7 Interest on overdue tax invoices shall accrue daily from the date when payment becomes due, until the date of payment at a rate of ten percent (10%) per annum after as well as before any judgment.
- 6.8 If the Customer defaults in payment of any invoice when due, the Customer agrees to indemnify the Supplier from and against all costs and Disbursements incurred by the Supplier in pursuing the debt including legal costs on a solicitor and own client basis.
- 6.9 The Customer agrees that any credit information provided to the Supplier may be used and retained by the Supplier for the purpose of marketing its services, daily operation of the Customer's account, collecting amounts outstanding or obtaining a consumer credit report about the Customer.
- 6.10 The Supplier may revise the fees by providing the Customer at least thirty (30) days' notice in writing.

7. GST

- 7.1 Unless otherwise stated, all amounts payable under this Agreement are expressed exclusive of GST.
- 7.2 In respect of any taxable supply, the Customer must pay to the Supplier an additional amount equal to the prevailing GST rate, payable at the same time and in the same manner as the Service Fee.

8. Intellectual property

- 8.1 The parties acknowledge that future Intellectual Property Rights in the Services including the design and content provided under this Agreement, other than the materials provided by the Supplier, will vest in the Customer.
- 8.2 The parties agree that this Agreement does not grant the Supplier any Intellectual Property Rights in the Customer Data.
- 8.3 The Customer grants the Supplier the limited rights that are reasonably necessary for the Supplier to offer the Services (including but not limited to the rights required to host Customer Data).

9. Confidentiality

- 9.1 A party must not, without the prior written consent of the other, use or disclose the other party's Confidential Information unless expressly permitted by this Agreement or required to do so by law or any regulatory authority.
- 9.2 A party may:
 - (a) use the Confidential Information of the other party solely for the purposes of complying with its obligations and exercising its rights under this Agreement; and

- (b) disclose the Confidential Information to its personnel or advisers to the extent necessary for them to know the information for purposes related to this Agreement, but only if reasonable steps are taken to ensure that the confidentiality of the information is retained.
- 9.3 Each party must implement and maintain effective security measures to prevent unauthorised use and disclosure of the other party's Confidential Information whilst it is in the receiving party's possession or control.
- 9.4 Each party must return, or at the other party's option destroy, all Confidential Information of the disclosing party in the receiving party's possession or control, on the earlier of the Supplier's request or on termination of this Agreement for any reason.
- 9.5 Where the Supplier engages Third Party service providers in the provision of the Services, the Customer agrees that the Supplier may disclose the Customer's Confidential Information for the purposes of complying with its obligations and exercising its rights under this Agreement.

10. Warranties

- 10.1 The Customer acknowledges and agrees that the Supplier makes no representation or warranty that:
 - (a) the Services provided will be error-free and free from defects;
 - (b) that access to the website will be timely, secure, uninterrupted and/or error-free;
 - (c) the domain name applied for by the Customer will be registered in the Customer's name, or is capable of being registered by the Supplier.
 - (d) that the website or the server which stores and transmits the website is free from viruses or any other harmful components;
 - (e) the Services will render the results in accordance with any prior representations made, or specifications provided, by the Supplier to the Customer prior to the date of this Agreement; or
 - (f) the Services will deliver the outcomes substantially in accordance with the Customer's specifications.

11. Liability

- 11.1 The Customer expressly acknowledges that it is solely responsible for maintaining and backing up any Customer Data.
- 11.2 To the full extent permitted by the Australian Consumer Law contained in Schedule 2 of *Competition and Consumer Act 2010* (Cth), the Supplier excludes all liability in respect of loss of Customer Data, interruption of business or any consequential or incidental damages (including due to negligence) incurred by the Customer in relation to the provision of Services.
- 11.3 To the full extent permitted by law, the Supplier excludes all representations or terms (whether express or implied) other than those expressly set out in this Agreement.
- 11.4 If the Services supplied under this Agreement are supplied to the Customer as a 'consumer' of services within the meaning of that term in the Australian Consumer Law, the Supplier limits its liability in respect of all claims, at its option, to
 - (a) the supply of the Services again; or
 - (b) the payment of the cost of having the Services supplied again.
- 11.5 The Customer agrees that the Supplier's total aggregate liability for all claims relating to this Agreement is limited to the \$100.00.
- 11.6 The Customer agrees to indemnify the Supplier in relation to all claims, actions, liabilities, costs and expenses (including legal costs on a full indemnity basis) resulting from the Supplier's failure to comply with this Agreement.
- 11.7 The Customer agrees that the Supplier is not liable for Third Party claims.

12. Sub-contractors

12.1 The Supplier may appoint sub-contractors to perform the Services under this Agreement.

13. Security and Charge

13.1 Despite anything to the contrary contained herein or any other rights which the Supplier may have, where the Customer is the owner of land, realty or any other asset capable of being charged, the Customer agrees to mortgage and/or charge all of its joint and/or several interest in the said land, realty or any other asset to the Supplier or the Supplier's nominee to secure all amounts and other monetary obligations payable under this Agreement. The Customer acknowledges and agrees that the Supplier (or the Supplier's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be withdrawn once all payments and other monetary obligations payable hereunder have been met.

13.2 Should the Supplier elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Customer agrees to indemnify the Supplier from and against all the Supplier's costs and Disbursements including legal costs on a solicitor and own client basis.

13.3 The Customer agrees to irrevocably nominate, constitute and appoint the Supplier or the Supplier's nominee as the Customer's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause.

14. Domain Names

14.1 The Supplier is a reseller for the auDA accredited registrars Synergy Wholesale and TPP Wholesale and also a reseller for the registrar Enom Inc.

14.2 The Supplier accepts no responsibility in respect of the use of a domain name by the Customer. Any dispute between the Customer and a Third Party regarding a domain name must be resolved between the parties concerned and the Supplier will take no part in any such dispute. The Supplier reserves the right, on or becoming aware of such a dispute, at the Supplier's sole discretion and without giving any reason, to either suspend or cancel the domain name, and/or to make appropriate representations to the relevant naming authority.

14.3 The Customer agrees that the Supplier is not obliged to renew the Customer's domain name if the Customer does not confirm to the Supplier that the domain name should be renewed. The Supplier is not liable for any loss or damage resulting from non-renewal of the Customer's domain name. The Supplier may not renew the Customer's domain name where the Customer has unpaid invoices or is in breach of this Agreement.

14.4 The Customer acknowledges that the Supplier's primary method of communication for domain renewal purposes is via email. The Supplier will not be held responsible for the non-renewal of the Customer's domain name if the Customer's email contact details are not kept up to date.

15. Termination

15.1 A party may terminate this Agreement by written notice to the other if any of the following events has occurred in respect of the other party:

- (a) a material breach of this Agreement which is not remediable or if capable of remedy, where the other party fails to remedy within 21 days of written notice; or
- (b) an insolvency event occurs, other than an internal reconstruction with notice to the other party.

15.2 The Supplier may terminate this Agreement in its sole discretion, immediately without notice if:

- (a) The Customer breaches a term of this Agreement;
- (b) The Customer engages in fraudulent, illegal, defamatory, offensive activities or any activity in breach of the Supplier or a Third Party's rights; or
- (c) The Customer's use of the Services adversely affects the operation of the Service as determined by the Supplier in its sole discretion.

16. Consequences of Termination

- 16.1 If this Agreement is terminated or expires for any reason, then, in addition and without prejudice to any other rights or remedies available:
- (a) the parties are immediately released from their obligations under the Agreement except those obligations listed in clauses 6, 7, 8, 9, 10 11 and 13 and any other obligations that, by their nature, survive termination;
 - (b) each party retains the claims it has against the other;
 - (c) the Customer must immediately pay all outstanding Service Fee; and
 - (d) the Supplier may delete all of the Customer Data in its sole discretion by providing the Customer with thirty (30) days' written notice.

17. Notices

- 17.1 All notices must be in writing and can be given by:
- (a) hand delivery during normal business hours;
 - (b) ordinary post;
 - (c) registered post;
 - (d) facsimile; or
 - (e) electronic mail.

18. General provisions

- 18.1 The Customer must not assign or otherwise deal in any other way with any of its rights under this Agreement without the prior written consent of the Supplier.
- 18.2 Nothing contained in this Agreement creates any relationship of partnership or agency between the parties.
- 18.3 If a provision of this Agreement is invalid or unenforceable it is to be read down or severed to the extent necessary without affecting the validity or enforceability of the remaining provisions.
- 18.4 Each party must at its own expense do everything reasonably necessary to give full effect to this Agreement and the events contemplated by it.
- 18.5 This Agreement (and any documents executed in connection with it) is the entire Agreement of the parties about its subject matter and supersedes all other representations, arrangements or agreements. Other than as expressly set out in this Agreement, no party has relied on any representation made by or on behalf of the other.
- 18.6 This Agreement may be amended only by a document signed by all parties and in accordance with the terms of this Agreement.
- 18.7 A provision of or a right under this Agreement may not be waived or varied except in writing signed by the person to be bound.
- 18.8 This Agreement may be executed in counterparts which will be taken together to constitute one document.
- 18.9 A party will not be responsible for a failure to comply with its obligations under this Agreement to the extent that failure is caused by a Force Majeure Event, provided that the party keeps the other closely informed in such circumstances and uses reasonable endeavours to rectify the situation.
- 18.10 Without limiting any other right to terminate under this Agreement, if a Force Majeure Event affects a party's performance under this Agreement for more than thirty (30) consecutive days, the other party may immediately terminate this Agreement by written notice.
- 18.11 This Agreement is governed by the laws of New South Wales and each party submits to the jurisdiction of the courts of New South Wales.