



IT LOGIC PTY LTD - Internet Services Terms and Conditions

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Distribution: **Public**

1. Term

1.1 This Agreement and the rights granted to the Client by IT Logic Pty Ltd under this Agreement shall commence on the Commencement Date of the Internet Service and continue for the Term, subject to the rights of early termination set out in this Agreement.

1.2 At the Client's written request given no later than 30 days before the expiration of the Term, the Client may renew this Agreement for a further Term. If the Client does not notify IT Logic Pty Ltd of its intention to either renew or end this Agreement, the Client will be deemed to have renewed on a monthly basis after the expiration of the Term, subject to the rights of termination contained in this Agreement.

2. Refusal of application

IT Logic Pty Ltd reserves the right to refuse an Application after the Client has accepted the terms and conditions of this Agreement.

3. Provision of service

3.1 IT Logic Pty Ltd shall provide the Client with the Service in accordance with the terms and conditions of this Agreement by such means as IT Logic Pty Ltd acting in reasonably good faith determines.

3.2 IT Logic Pty Ltd will use all reasonable efforts to ensure the continuity and efficiency of the Service. If, due to the negligent act or omission of IT Logic Pty Ltd, the Client is unable to access the Service during the term of this Agreement, IT Logic Pty Ltd will at its sole discretion issue an amount of credit equal to the extent in time that the Client could not access the Service, as a percentage of the total hours available for the current Billing Period or as provided for in any relevant Service Level Agreement.

4. Log-in information

4.1 IT Logic Pty Ltd shall provide the Client with identification and log-in information required for connection to the system and access to the Internet Service upon accepting the Application and initial User Charge, if any.

4.2 The Client is responsible for maintaining the secrecy and confidentiality of identification and log-in information required to access the Service. The Client will not disclose to any other person, corporation, entity or organisation any identification or log-in information, whether in use or not.

4.3 The Client is liable for the payment of all User Charges resulting from access of the Service through use of its identification or log-in information, whether authorised by the Client or not, except to the extent such access is as a result of the acts or omissions of IT Logic Pty Ltd or its agents or employees.

5. Client obligations

The Client agrees that:

1. if required by IT Logic Pty Ltd, the Client shall provide its own equipment necessary to access the Service;
2. any invoice for User Charges raised by IT Logic Pty Ltd shall be deemed to be correct and prima facie evidence of all connection, access and usage of the Service contained therein;
3. IT Logic Pty Ltd may at its discretion and at any time require the Client to disconnect its equipment or any part of it from accessing and using the Service if, in the reasonable opinion of IT Logic Pty

- Ltd, such equipment is or has been the cause or is likely to be the cause of failures, interruptions, errors or defects in the Service;
4. the Client shall be responsible for all maintenance of its equipment;
 5. the Client shall not use its equipment when accessing the Service in a manner inconsistent with this Agreement;
 6. the Client warrants that in accessing and using the Service it will only use software and hardware that it is legally entitled to use;
 7. the Client is responsible for preparing and maintaining sufficient back-up files and data storage capacity for all its data, including electronic messages;
 8. IT Logic Pty Ltd has no responsibility to provide training in the use or access of the Service pursuant to this Agreement;
 9. the Client is not relying on the Service having any particular performance characteristics, response times or availability unless specified in any relevant Service Level Agreement.

6. Use of the service

6.1 The Client shall comply with all reasonable directions that IT Logic Pty Ltd may issue from time to time with respect to the use of the Service.

6.2 The Client shall not engage in or permit disruptive activities which may include, but are not limited to, the circulation of any unsolicited publicity or advertising material, propagation of computer worms and viruses, use of the Service to gain unauthorised access to any other computer system, the sending of harassing, obscene, offensive or threatening electronic mail, forgery of electronic mail and the placement or transmission or storage of any defamatory or pornographic material on the Internet.

6.3 The Client shall not knowingly engage in, permit or be involved personally or as a server connected to the Service in: (a) using unsolicited commercial email (UCE) as a means of advertising on the Internet; (b) being the source, intermediary or destination electronic mail or Internet address involved in the transmission of spam, chain letters, mail-bombs or similar things; (c) being listed in any spammed message as the source, intermediary or reply-to-address; or (d) delivering harassing electronic mail, whether through language, art form, repetition, frequency or size of electronic mail.

6.4 The Client will not knowingly access, nor permit any other party to access the Service for any purpose or activity of an illegal or fraudulent nature. The Client will not use the Service to contribute to or aid the commission of a crime or to infringe the rights of a third party.

6.5 If IT Logic Pty Ltd considers on reasonable grounds that the Client has breached its obligations in clauses 6.1, 6.2, 6.3 or 6.4, IT Logic Pty Ltd may (but is not obliged to) and without prejudice to any other right, claim or action it may have against the Client, refuse the Client's access to the Service or immediately terminate this Agreement without notice. If IT Logic Pty Ltd refuses access to the Service, the Client must pay IT Logic Pty Ltd's reasonable costs within fourteen (14) days of receipt of an invoice for those costs.

6.6 The Client must comply with all obligations that may be imposed upon it in relation to the collection and use of personal information as provided for in the Privacy Act 1988 (Cth) and applicable regulations.

7. Varying a service

7.1 The Client may make reasonable requests in writing for IT Logic Pty Ltd to vary its access to the Service. Within a reasonable time after receiving such a request, IT Logic Pty Ltd will notify the Client whether: (a) IT Logic Pty Ltd accepts the request, in which case IT Logic Pty Ltd will inform the Client of any consequential variations to charges or other terms of this Agreement; or (b) IT Logic Pty Ltd rejects the request, in which case IT Logic Pty Ltd will provide details of the reasons for the rejection and the terms and conditions of this Agreement will remain unchanged.

7.2 IT Logic Pty Ltd may propose variations to any other terms of this Agreement by giving the Client written notice of those variations.



7.3 When accepting a request under clause 7.1 or giving notice under clause 7.2, IT Logic Pty Ltd will inform the Client of the method by which this Agreement is to be varied, including: (a) execution by both parties of a variation agreement, in which case the variation will become effective from the execution date; or (b) automatically on expiry of the period specified in the IT Logic Pty Ltd notice under clause 7.2, which is not to be less than 30 days.

7.4 If IT Logic Pty Ltd provides written notice of a proposed variation to a term or condition under clause 7.3: (a) the Client may notify IT Logic Pty Ltd that it does not agree to the variation; and (b) if the parties do not agree on the variation within the 30-day notice period specified in clause 7.3, either party may terminate the Service within a further fourteen (14) days by providing the other party with written notice.

8. Protection of intellectual property

8.1 The Client will not knowingly reproduce, distribute, transmit, publish, copy, transfer or commercially exploit any information, data, images or programs accessed through or received from the Service that would infringe the intellectual property rights of any other person.

8.2 The Client shall be responsible for obtaining any consent, approval or licence from the holders of any intellectual property rights required to enable the Client to deal with any relevant data or to do any act or thing in relation to those intellectual property rights.

9. System availability

9.1 IT Logic Pty Ltd shall use all reasonable endeavours to provide the Service on a continuous basis during the term of this Agreement, provided however that IT Logic Pty Ltd may without notice suspend all or part of the Service immediately, including where: (a) there is a malfunction or breakdown of any equipment or IT Logic Pty Ltd is required to undertake repair, maintenance or service of any part of the Service; (b) there is an electrical storm, fire, tempest, electrical short circuit, power failure or telecommunications failure or fault; (c) there is an industrial dispute or lockout; (d) it is reasonably required to reduce or prevent fraud or interference within the Service; (e) IT Logic Pty Ltd is required to comply with an order, instruction or request of government, the Australian Communications and Media Authority (ACMA), emergency services or other competent authority; (f) there is a failure by the Client to pay any charges due to IT Logic Pty Ltd; or (g) any act of God, war, government action, or any other circumstance beyond IT Logic Pty Ltd's reasonable control occurs.

9.2 IT Logic Pty Ltd will use its best efforts to meet its obligations under any Service Level Agreement entered into in conjunction with this Agreement (if any) and as varied from time to time.

9.3 If IT Logic Pty Ltd's licence or authority to provide the Service is withdrawn, restricted or altered in such a way that IT Logic Pty Ltd considers it is not commercially viable or is impractical or impossible to continue to provide the Service, IT Logic Pty Ltd may elect to discontinue the Client's access to the Service, provided IT Logic Pty Ltd will endeavour to provide prior written notice where it is reasonable and practicable to do so.

9.4 IT Logic Pty Ltd will use its reasonable endeavours to: (a) except in an emergency situation, provide the Client with seven days' notice of any scheduled maintenance of the Service; and (b) ensure that any scheduled maintenance is carried out between the hours of midnight and 7.00am.

9.5 The Client has no claim against IT Logic Pty Ltd in respect of any loss of access or functionality to the Service referred to in this clause, whether such claim lies in contract, tort or otherwise, unless specifically provided for in any relevant Service Level Agreement.

10. User charges

10.1 The Client agrees to pay IT Logic Pty Ltd the User Charges as specified in the Application in the manner provided for in this Agreement and the Application.



10.2 The User Charges do not include taxes. Accordingly, the Client must pay any applicable taxes on the User Charges (including GST as provided for in clause 17) at the same time as paying the User Charges.

10.3 The Client acknowledges and agrees that any initial User Charge required by IT Logic Pty Ltd to process the Application and provide initial access to the system is non-refundable and payable in advance of IT Logic Pty Ltd processing the Application.

10.4 IT Logic Pty Ltd reserves the right to charge an amount in addition to the initial User Charge where required as a result of circumstances not reasonably anticipated by IT Logic Pty Ltd or not disclosed by the Client prior to accessing the Service.

10.5 IT Logic Pty Ltd will invoice the Client for the User Charges and the Client shall pay all amounts within the payment term specified in the Application, but in any event by the date specified on the invoice. If IT Logic Pty Ltd has omitted charges from an invoice, IT Logic Pty Ltd may include those charges in a later invoice.

10.6 The Client acknowledges and agrees that IT Logic Pty Ltd is not liable for any bank charges or costs incurred by the Client as a result of the Client's bank account becoming overdrawn or credit card exceeding its limit when IT Logic Pty Ltd, by the Client's authority, processes a User Charge. The Client shall reimburse IT Logic Pty Ltd immediately upon demand for any such charges incurred.

10.7 IT Logic Pty Ltd may vary the User Charges from time to time by giving the Client thirty (30) days written notice of any intended variation.

10.8 The Client will not receive a reduction or refund of any amount paid or owing if this Agreement is terminated.

10.9 Without relieving the Client of the obligation to pay any User Charges under this Agreement, the Client shall pay interest at the rate of 12% per annum calculated daily on all accounts due and not paid on the expiration of the due date specified on the invoice.

10.10 IT Logic Pty Ltd may terminate this Agreement after seven (7) days without notice to the Client if the Client does not pay any User Charges by the date specified on the invoice.

10.11 If the Client has not notified IT Logic Pty Ltd in writing within seven (7) days of the invoice date of a dispute in relation to any User Charges, the Client shall be deemed to have accepted the invoice amount in full and must pay it in full by the due date.

11. IT Logic Pty Ltd's rights

11.1 IT Logic Pty Ltd may at any time: (a) intercept the Service, or the data being transmitted over that Service, for the purposes of complying with its legal obligations; (b) monitor the Client's use of the Service, the messages sent or received through it, and the data stored on IT Logic Pty Ltd servers for the purposes of complying with its legal obligations or the lawful exercise of its right to enforce this Agreement; (c) delete any transitory data stored on IT Logic Pty Ltd servers which has been stored for more than thirty (30) days or such other period specified in any relevant Service Level Agreement.

11.2 Commonwealth legislation allows the Australian Communications and Media Authority (ACMA) to direct IT Logic Pty Ltd to remove certain Internet content from its servers or prevent users from accessing certain Internet content. IT Logic Pty Ltd may take any steps necessary to ensure compliance with any relevant industry code of practice, notification or direction from the ACMA, including without limitation: (a) removing any content from its servers; (b) terminating the Service; or (c) restricting access to a particular website. IT Logic Pty Ltd may take these steps immediately without notice. The Client indemnifies IT Logic Pty Ltd for any costs reasonably incurred in ensuring compliance with any relevant industry code of practice, notification or direction from the ACMA in relation to content accessed or hosted by the Client using the Service.



12. Termination

12.1 IT Logic Pty Ltd may terminate this Agreement immediately if the Client: (a) does not pay any of the User Charges under this Agreement within thirty (30) days from the date that the User Charges fall due; (b) is in breach of clauses 5, 6, or 8; or (c) appears likely to become insolvent or have a receiver, manager, administrator or liquidator appointed.

12.2 This Agreement shall automatically terminate if the Client becomes insolvent or has a receiver, manager, administrator or liquidator appointed. Termination according to this clause is self-executing and does not require any action on the part of IT Logic Pty Ltd.

12.3 IT Logic Pty Ltd reserves the right to terminate this Agreement at any time by giving at least thirty (30) days notice in writing to the Client. If the Client is not in breach of any of the terms and conditions of this Agreement, any User Charges paid will be refunded on a pro-rata basis for any unused credit.

12.4 The Client may terminate this Agreement at any time after the expiration of the Term by giving at least thirty (30) days notice in writing to IT Logic Pty Ltd, provided all outstanding User Charges have been paid in full.

12.5 Upon termination of this Agreement for any reason, the Client shall immediately cease any type of access to the Service.

12.6 Any termination of the Agreement shall not affect any accrued rights or liabilities of either party, nor shall it affect any provision of this Agreement which is expressly or by implication intended to continue in force after such termination.

13. Assignment

13.1 The Client shall not be entitled to assign its rights or obligations under this Agreement without the prior written consent of IT Logic Pty Ltd, which consent may not be unreasonably withheld. An assignee must sign IT Logic Pty Ltd's current Application for the Service and pay any initial User Charge that applies.

13.2 IT Logic Pty Ltd can assign its rights and obligations under this Agreement at its discretion without the Client's consent and upon such assignment shall have no further liability to the Client pursuant to this Agreement.

14. IT Logic Pty Ltd not an essential service

The parties acknowledge and agree that the performance of the obligations of IT Logic Pty Ltd pursuant to this Agreement does not constitute an essential service for the purposes of the law relating to insolvency. If IT Logic Pty Ltd is found to be providing an essential service in a relevant sense and is required by any person or court of competent jurisdiction to continue to abide by its obligations under this Agreement despite the Client being in breach, the Client acknowledges that the User Charges will be charged at IT Logic Pty Ltd's Short Term Rates immediately upon written notification to that effect.

15. Third party contract liability

The Client shall at all times release and indemnify IT Logic Pty Ltd, its servants and agents from and against any claims and loss (including reasonable legal costs and expenses) or liability whatsoever incurred by IT Logic Pty Ltd with third parties in reliance on this Agreement or to support IT Logic Pty Ltd's obligations under this Agreement, including but not limited to commitments made to third parties that exceed the Client's requirements but which IT Logic Pty Ltd has deemed in its absolute discretion were reasonably necessary or desirable in connection with this Agreement.

16. General

16.1 Each party signing this Agreement warrants to the other party that the signatory has the full power and authority to execute this Agreement on behalf of that party.

16.2 This Agreement is governed by and shall be construed in accordance with the laws of the State of New South Wales. The parties submit to the non-exclusive jurisdiction of the Courts of New South Wales.

16.3 The provisions of this Agreement shall be construed so as not to infringe the provisions of any applicable Act or Regulation. If any provision on its true interpretation does infringe any applicable Act or Regulation or is void, invalid or unenforceable, that provision shall be read down to such extent as may be necessary to give it a valid operation and if it cannot be so read down, it shall be deemed void and severable from this Agreement.

16.4 This Agreement may be signed or executed in a number of counterparts, with the same effect as if the signatures to each counterpart were on the same instrument. Electronic execution and signatures shall be treated as originals and binding.

16.5 No variation of this Agreement nor consent to a departure by a party from a provision shall be of effect unless it is in writing and signed by the parties or, in the case of a waiver, by the party giving it.

16.6 The non-exercise of or delay in exercising a right of a party shall not operate as a waiver of that right, nor does a single exercise of a right preclude another exercise of it or the exercise of other rights. A right may only be waived by notice signed by the party to be bound by the waiver.

16.7 Each party to this Agreement shall do all things and sign, execute and deliver all deeds and other documents as may be legally necessary or reasonably required to carry out and give effect to the terms and intentions of this Agreement.

16.8 If a party consists of more than one person: (a) an obligation of those parties is a joint obligation of all of them and a several obligation of each of them; (b) a right given to those parties is a right given jointly and severally to each of them; and (c) a representation, warranty or undertaking made by those parties is made by each of them.

16.9 This Agreement shall, so far as possible, be interpreted and construed so as not to be invalid, illegal or unenforceable in any respect.

16.10 Except as otherwise expressly provided for in this Agreement, IT Logic Pty Ltd shall not be liable to the Client in contract or in tort arising out of, or in connection with, the use of the Service or any breach of the conditions of this Agreement.

16.11 IT Logic Pty Ltd shall be under no liability to the Client in respect of any loss or damage (including consequential loss or damage) which may be suffered or incurred by the Client or which may arise directly or indirectly in respect of services supplied pursuant to this Agreement or in respect of a failure or omission on the part of IT Logic Pty Ltd to comply with its obligations under this Agreement.

16.12 IT Logic Pty Ltd gives no warranties to the Client, express or implied, in respect of services supplied pursuant to this Agreement, subject to clause 16.13.

16.13 Where legislation implies in this Agreement any condition or warranty and that legislation avoids or prohibits provisions excluding or modifying the application of such condition or warranty, the condition or warranty shall be deemed to be included in this Agreement. However, the liability of IT Logic Pty Ltd for any breach of such condition or warranty shall be limited, at the option of IT Logic Pty Ltd, to one or more of the following: (a) if the breach relates to goods: (i) the replacement of the goods or the supply of equivalent goods; (ii) the repair of such goods; (iii) the payment of the cost of replacing or acquiring equivalent goods; or (iv) the payment of the cost of having the goods repaired; and (b) if the breach relates to services: (i) the supplying of the services again; or (ii) the payment of the cost of having the services supplied again.

16.14 The Client shall at all times release and indemnify IT Logic Pty Ltd, its servants and agents from and against any loss (including reasonable legal costs and expenses) or liability incurred by IT Logic Pty Ltd arising from any claim, demand, suit, action or proceeding by any person against IT Logic Pty Ltd where such loss or liability arose out of, in connection with, or in respect of: (a) the Client's access and use of the Service; (b) any information, data or material obtained, accessed or published by the Client; (c) any breach by the Client of any term or condition of this Agreement; (d) any omission or failure by the Client to perform its obligations contained in this Agreement; (e) any material accessed through the Service which is in any



way defamatory; (f) any dealing with data in which the Client holds any copyright or other intellectual property right.

16.15 The Client acknowledges that it has relied upon its own judgment to evaluate the suitability of the Service for the purpose for which it requires the Service.

16.16 By applying for these Services the Client authorises IT Logic Pty Ltd to exchange with its Related Bodies Corporate and professional advisers the customer information provided in the Application and in the course of receiving the Service.

17. Australian Goods and Services Tax (GST)

17.1 All amounts expressed or described in this Agreement are GST exclusive amounts. If any GST is payable by any party in respect of the supply of any goods or services to another party, the amount expressed in this Agreement is to be increased so that the supplier receives an amount which, after subtracting the GST liability, results in the supplier retaining the original amount after payment of that GST liability.

17.2 The supplier will do all things reasonably available to it to assist the recipient to claim on a timely basis any input tax credits the recipient may be entitled to claim. This includes the supplier maintaining its registered status for GST purposes and issuing tax invoices for supplies made under this Agreement on a timely basis as reasonably requested by the recipient.

18. Extension via applications

After the Commencement Date the Client may engage IT Logic Pty Ltd to provide other or additional services not specified in the Application. The parties may arrange for the provision of any number of new services by executing further Applications. The combination of an executed Application and these terms and conditions shall constitute an entire new agreement. Any breach of a new agreement shall be deemed to be a breach of this Agreement and any other agreements, entitling the non-breaching party to exercise their rights under each agreement. Where a further Application is not entered into, the provision of services in circumstances not specifically contemplated by any existing Application shall be governed by these terms and conditions.

19. Definitions

In this Agreement, unless the contrary intention appears:

Application means the application form completed by the Client after accepting the terms and conditions of this Agreement, or which is accepted in accordance with any online-based procedures which may apply.

Billing Period means the billing term and cycle accepted in the Application for which the User Charges accrue.

Claim means, in relation to a person, a claim, demand, remedy, suit, injury, damage, loss, cost, liability, action, proceeding, right of action, claim for compensation or reimbursement or liability incurred by or to be made or recovered by or against the person, however arising and whether ascertained or unascertained, or immediate, future or contingent.

Commencement Date means the date that IT Logic Pty Ltd allows the Client to access the system or service, continuing for the Term subject to the terms of this Agreement and the rights of early termination.

Data means publicly available data, programs, information and other works and materials accessible on the Internet Service including without limitation websites, web pages and web-delivered software and other applications.

Equipment means the Client's equipment used to access the system, including any necessary software and hardware.



Identification means the identification provided to the Client by IT Logic Pty Ltd as specified on the Application or any other identification that IT Logic Pty Ltd provides at its discretion at any time.

Internet means the world-wide connection of computer networks providing for the transmittal of electronic mail, online information, information retrieval and file transfer protocol.

Internet Service means interactive access to the Internet Access Service Network allowing the Client access to Data and Resources.

Log-In means the password to be used in conjunction with the Identification when accessing the Service. IT Logic Pty Ltd reserves the right to ask the Client to reset or alter its Log-In at its discretion at any time.

Resources means those services that IT Logic Pty Ltd makes available to the Client, including but not limited to electronic mail, newsgroups, information, databases and the Internet.

Right includes a legal, equitable, contractual, statutory or other right, power, authority, benefit, privilege, remedy, discretion or cause of action.

Service means the service specified in the Application.

Short Term Rates means the rates charged by IT Logic Pty Ltd from time to time for supply of the Services on a thirty (30) day basis, including amortisation of third-party long-term contracts incurred by IT Logic Pty Ltd and such other additional costs and expenses as determined by IT Logic Pty Ltd from time to time.

SPAM means any unsolicited message in the mediums of electronic mail, newsgroups or web hosting.

Term means the period of twelve (12) months from the date on which IT Logic Pty Ltd notified the Client that it accepts the Application, or as selected in the Application, subject to the rights of early termination.

User Charges means the amount payable by the Client in accordance with the scale of fees accepted in the Application.