

1. Definitions

"Account" means a right to use the Services which is uniquely identified to You and any Designated User.

"Commencement Date" means the date on which we commence providing you with the Services as outlined in clause 2.2.

"Hacking" means unauthorized entry by any means into another computer to observe restricted or sensitive information or to copy or damage information on that computer or interfere with the use, operation or efficiency of that computer. "Megabyte" or "MB" means 1,000,000 bytes

"Quotation" means the document provided to you outlining the costs of the service.

"Services" or "Service" means the Internet services specified by you in the attached Application Form which We agree to provide to You, or any other services that We may further agree in writing to provide to You.

"Supplier" means a supplier of telecommunications services or other Internet services to Us.

"Us", "We" or "Our" includes our servants, agents, employees, licensees, franchisees, successors, substitutes or permitted assigns.

"You" or "Your" means the person or legal entity named on the "Quotation"

2. Services

2.1 We will provide You with the Services in conjunction with Your Account.

2.2 We will commence providing You with the Services when You are granted an Account.

2.3 An Account will be granted to You as soon as possible after We receive Your Application Form and You pay any fees, which You may be required to pay prior to the granting of the Account.

3. Charges

3.1 Subject to any special conditions to the contrary, We expect You to pay any application or connection fee and all further charges within fourteen days nett of the date specified on any invoice or account given to You. Invoices or accounts will be rendered in accordance with the pricing model indicated on the "Quotation". Invoices, unless agreed otherwise may be sent via electronic means and the onus is on You to ensure that You can retrieve and read these electronic invoices in a timely manner.

3.2 You will pay Us the price of the Services by way of credit card, cash or cheque or such other method of payment as shall be agreed. If you nominate credit card payment, you are authorizing us to debit your card with the appropriate amount each billing cycle. Credit card payments will incur a 1.7% surcharge.

3.3 Unless otherwise agreed in writing, after the expiry date of the contract We may vary our charge for any Service by providing 30 days notice in writing of the variation to You.

3.4 Interest may be charged by Us on any amount You owe Us which is not paid by the due date specified in our invoice, at the ANZ Bank Corporate Overdraft Reference Rate most recently published before that date. In addition, failure to pay an invoice on the due date may result in a \$5.50 late payment fee. Any late payment is a serious breach of these terms and conditions and may also result in termination or suspension of the Services. All outstanding amounts owing must be paid prior to the restoration of any suspended or terminated services. In the event of termination a re-installation charge of \$350.00 will be incurred by You to re-connect the services. In the event of a suspension a re-activation charge of \$60.00 will be incurred by You.

3.5 A security deposit may be required if paying cash or cheque.

3.6 We reserve the right to recover any costs incurred in the recovery of debt due to non-payment of an account rendered by Us to you.

3.7 A charge of \$0.60 may be incurred where an invoice is required to be sent in hard copy and posted using a mail service.

3.8 Termination of your services before the end of the minimum commitment contracted period may incur a fee payable to Us by way of liquidated damages, that is the equivalent of the sum of the fixed charges calculated to the expiry date of the contract, which the parties acknowledge is a genuine pre-estimate of the losses which We will suffer as a result of early termination of that Contract.

4. Duration

This Agreement commences on the Commencement Date and will remain in force until terminated in accordance with clause 11.

5. Your Use of the Services

5.1 All users of the service must be 18 years of age or older.

5.2 Your use of the service must at all times be lawful under the jurisdiction of the Commonwealth of Australia and the respective State of where that use is being carried out.

5.3 You agree not to exchange information via the service, that gives advice, assistance or any other kind of feedback about or concerning Hacking to any person or virtual entity either directly or indirectly.

5.4 You agree not to store on or to allow to electronically pass through the service any data that You know or reasonably ought to know is subject to copyright where You do not own or have a license to use that data.

5.5 You agree to make reasonable efforts to avoid establishing hypertext links to material, which promotes or facilitates copyright infringement or contravention of any law of any country or state.

5.6 You agree not to upload to any hardware through which We provide the Services any virus, worm or other program You know or suspect may have a detrimental effect upon any computer or virtual service.

5.7 You agree not to store nor allow to electronically pass through Our hardware, any data that would contravene Australian laws relating to production and distribution of pornographic material, any stolen information or offensive literature.

5.8 You agree not to redistribute any end user software provided by Us to You.

5.9 You agree to take full responsibility for data owned by You that is stored on Our system or any data You have caused to be transferred to Our system.

5.10 You are responsible for the selection and use of security features, nondisclosure of personal log-in information and back up of any information. Disclosure or loss of log-in information or Service misuse is Your responsibility and should be reported to Us immediately.

5.11 You will not send harassing or threatening e-mail or forgery (or attempted forgery) of e-mail and You will refrain from mass posting of messages to inappropriate Usenet newsgroups and mass, unsolicited e-mailings. You agree to post advertisements only where appropriate and in venues that specifically encourage or allow advertising.

5.12 You agree to take full responsibility for the installation and use of telephone lines and all other equipment that we advise you that is needed to access the Service.

5.13 You will ensure that each user of your Service complies with this Agreement and, in particular, the obligations set out in clause 6.

5.14 If You require a domain name, You warrant that the information provided to Us when ordering Your domain name is true and correct and You indemnify Us against any loss, which we may incur as a result of You breaching this warranty.

5.15 Any equipment We use to supply the services which is under Your control must kept in a clean and dry environment with a temperature of between -10 and 45 degrees Celsius. We may hold You liable for any damage to such equipment due to Your negligence.

6. Our Rights

6.1 We may monitor or keep any records that We deem necessary of Your use of the Service.

6.2 Although We will at all usual times respect Your privacy, You agree that we may act in any appropriate manner to curtail any of the matters prohibited by this Agreement or by law, including viewing any of Your electronic mail and files reasonably suspected to contain information about such matters.

6.3 We may add Services, discontinue Services, or make alterations to current Services at Our discretion; however, we will give You reasonable prior notification of any such changes.

6.4 We reserve the right to refuse any application for an Account and You agree that there is no obligation on Us to furnish a reason for any refusal of an Account.

6.5 We may revoke Your Account without refund if You are in material breach any of these terms and conditions.

7. Special Conditions.

7.1 The parties agree to be bound by any special conditions specified on Your Application Form or "Quotation" or subsequently notified and to the extent that these terms and conditions are inconsistent with the special conditions, the special conditions will prevail.

7.2 Excess Charge Calculations

Data transfer will be measured for Download into the customer equipment only. Data is charged at a rate per megabyte stipulated on your Quotation or Invoice. However if the Upload traffic into Our network is greater than three times the download data, an additional per megabyte charge will be incurred for the total upload amount at the rate of 100% of the download rate for that plan. (gigabyte=1,000 megabytes)

8. Credit Checks

8.1 You authorize Us to conduct all relevant credit checks and searches and to use any information obtained to enable Us to establish Your credit worthiness.

8.2 You agree that We may obtain personal information about You in relation to your credit worthiness from any relevant reporting agency and we may disclose to such agencies any personal information or other assessment made in relation to Your credit worthiness.

9. Limitation of Liability

9.1 We cannot and do not warrant or guarantee that the Services provided will be free of delays or faults although we will use our best efforts to restore all faults within a reasonable time. Also, we do not generally monitor Your use of e-mail or data transmission. Accordingly, the use of the Services is at Your sole risk and We are not and will not be liable for any direct or indirect, special or consequential loss or damage however caused which may be suffered or incurred by You or which may arise in respect of Your use of or interruption to the Services.

9.2 Subject to clauses 9.3 and 9.4, all warranties, undertakings, inducements and representations whether express or implied, statutory or otherwise relating to the provision of the Services are excluded.

9.3 We take all reasonable steps to ensure that any of Your data, which is held by Us and is confidential remains confidential, however, we are not and will not be responsible for release of such data through unauthorized entry to our system or Hacking, which is beyond Our control.

9.4 Where a term, condition or warranty is implied by law, it is deemed to be included in these terms and conditions, however Our liability for breach of such implied term, condition or warranty will be limited at Our option to supply of the Services again or the payment of the cost of having the Services supplied again.

10. Indemnity

Unless otherwise required by law, You indemnify and shall keep Us indemnified in respect of any loss or damage, action, claim, suit or proceeding against Us by any person in respect of the use by You or a Designated User of the Services including but not limited to the transmission of any illegal, defamatory, misleading, deceptive and/or fraudulent material which You or a Designated User transmit or cause to be transmitted or downloaded using the Services.

11. Termination

11.1 Either party may terminate this Agreement by giving 30 days written notice to the other within the terms of the contract.

11.2 We may terminate this Agreement immediately by notice to You if You have breached or failed to properly observe these terms and conditions You enter into liquidation or provisional liquidation, become insolvent, enter into any form of external insolvency administration or have a corporate controller or any receiver and/or manager or administrator appointed.

11.3 These terms and conditions will automatically be terminated in relation to a particular Service or the Services as a whole if We are unable to provide a Service or Services due to their termination or withdrawal by a Supplier that is providing them.

11.4 You remain liable for all charges owing under this Agreement in respect of Services used by You up to and including the date of termination of this Agreement, and any charges stipulated in clause 3.

12. General

12.1 Any notice, approval, consent or other communication under this Agreement must be in writing and must be forwarded to Us or Our duly appointed agent or Franchisee by hand delivery, post, facsimile or electronic mail. All such notices and communications shall be deemed to have been duly given or made (i) when delivered if sent by hand or (ii) the business day three days following posting if sent by post or (iii) the business day following the date of transmission if sent by facsimile or (iv) the business day following the date of transmission if sent by electronic mail.

12.2 The parties to this Agreement shall not be liable for any delay or failure to perform their obligations, except the obligation to pay any moneys validly owing, if that failure or delay is due to any cause or condition beyond the reasonable control of that party.

12.3 The failure or omission of a party at any time to enforce or require the strict observance of or compliance with any provision of this Agreement or exercise any election or discretion under this Agreement, shall not operate as a waiver of any of those rights of a party, whether express or implied, arising under this Agreement. A right created under this Agreement may not be waived except in writing signed by the party granting the waiver.

12.4 If any part of this Agreement or its application to any party or any circumstance is or becomes unenforceable, void or illegal, then unless that part is fundamental to the operation of the Agreement or contrary to public policy, the remaining terms and conditions of this Agreement will not be affected but will remain in full force and effect.

12.5 We may subcontract Our performance of this Agreement or any part of it.

12.6 Except as otherwise expressly provided, these terms and conditions shall ensure to the benefit of and be binding upon the successors, assigns, heirs, executors and administrators of the parties.

12.7 This Agreement is governed by the laws of the State of Victoria, Australia.

12.8 These Terms and Conditions may reasonably be changed by providing 30 days notice to You. You agree to be bound by those changes by continuing to use your service and making any further payments for the service after the date of the notice.

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