

1.0 Definitions

- 1.1 "The Provider" means the company, its successors or assigns who supply Internet access services
- 1.2 "The Service" is the provision of the facility by the Provider to allow the subscriber access to the Internet and provision of on-line services.
- 1.3 "The Subscriber" is the legal entity or person who enters into this agreement with the Provider.
- 1.4 "Access" means a network connection to world-wide computer network known as the Internet through the Provider.
- 1.5 "Access Level" means the level of Access the Subscriber has agreed to subscribe to under the Particulars.
- 1.6 "Equipment" means computer hardware, components or parts of components and operating manuals.
- 1.7 "Fee" means that amount in respect of providing Access as specified in the Particulars.
- 1.8 "Term" means the period of time from execution of this Agreement until the expiration of the Access Term specified in the Particulars.
- 1.9 "Traffic" means the sum of all inbound and outbound data for the Subscriber Access, unless otherwise specified in the Service Agreement.
- 1.10 "Spam" means unsolicited and/or unwelcome advertising material or information, usually sent via e-mail or newsgroup.

2.0 Grant of Licence

- 2.1 The Provider grants the Subscriber a license to Access the Provider's online Internet Service ("the Service") in accordance with the provisions of the Agreement.

3.0 Term

- 3.1 The Provider shall begin to provide the Service to the Subscriber as soon as it is practicable on or after a date to be set by the mutual agreement of the Parties ("the Commencement Date").
- 3.2 The Service shall be provided to the Subscriber on an ongoing basis once the Subscriber has established an account with the Provider.
- 3.3 The level of Service Access shall be corresponding with that agreed to (see the Service Agreement).
- 3.4 Except as otherwise provided under this Agreement, the Provider shall continue to provide the Service for a period of time set by the mutual agreement of the Parties ("the Service Period").
- 3.5 Prior to the expiration of any Service Period, the Parties may agree to continue the Service for an additional Service Period of duration to be agreed by the Parties. Such agreement shall be subject to any variations in the Terms and Conditions previously communicated between the parties in accordance with this Agreement.
- 3.6 Access shall be available 24 hours a day, seven days a week except during operational faults or scheduled service times.

4.0 Charges and Payments

- 4.1 The Subscriber agrees to pay any amounts levied pursuant to this Agreement ("Charges"), including but not limited to, Connection fees, Access Fees, Time Charges (if applicable) and Traffic (if applicable) as they fall due.
- 4.2 Any Access Fees and Connections Fees levied by the Provider pursuant to this Agreement are payable in advance of the Service Period. Where the term is monthly the Subscriber must pay for the first two months access in advance.
- 4.3 If the Subscriber supplies credit card details, the Subscriber authorises the Provider to debit the credit card for all valid cards when they become due (including Excess Traffic or time).
- 4.4 If the Subscriber fails to make payment to the Provider within the specified time period the Provider may immediately and without notice withdraw Access to the Service.
- 4.5 The Provider reserves the right to vary the Fee and conditions associated with the Access from time to time. The Provider shall give the Subscriber one month's notice of any such variation.
- 4.6 The Subscriber may make payments of the Fee by use of cash, credit card, cheque, money order, postal order, or any other payment method deemed suitable by the Provider.
- 4.7 Should the Subscriber continue to make use of the Service beyond the expiration of the Service Period, the Provider shall be entitled to levy on a pro-rata basis any applicable Charges relating to the Subscriber's continued use of the Service.
- 4.8 The Subscriber agrees to fully compensate the Provider for any Goods and Services Tax liability which may arise pursuant to this Agreement.
- 4.9 Unused time or data is not cumulative from month to month and is not redeemable in any way.
- 4.10 If Access is terminated under this Agreement for any reason whatsoever except for reason of breach by the Provider of any of the Provider's obligations herein, the remainder of the Fee in respect of the Term shall become due and payable by the Subscriber to the Provider within seven days of the date of termination.
- 4.11 All expenses in relation to the recovery of monies outstanding by the Subscriber are to be borne by the Subscriber.
- 4.12 All charges for the Service are at the rates published on paper and electronically on-line (see Clause 4.5 above).
- 4.13 The Fee for establishing a Subscriber account is not refundable.
- 4.14 The non-refundable fee for accessing the Service is applied to the Subscriber's account periodically in advance, until the account is terminated.
- 4.15 The establishment fee must be paid if a terminated account is to be re-established.

5.0 Subscriber's Undertakings

- 5.1 The Subscriber shall not use the Service in any manner involving illegal activity. This includes but is not limited to illegal transactions or illegal entry to unauthorised sites anywhere on the Internet
- 5.2 The Subscriber shall not use the Service, specifically e-mail and other on-line communications, to harass, menace, upset, annoy or inconvenience any person. Furthermore, the Subscriber shall not transmit any message using the Service which is offensive, indecent or obscene.

- 5.3 The Subscriber shall maintain the confidentiality of passwords and other access codes to the Service, and take reasonable precautions to avoid the disclosure of these and other confidential information relating to the Service.

- 5.4 The Subscriber shall not transfer their right to use the Service to any other party.
- 5.5 The Subscriber shall not in any way resell or redistribute the Service to any other party.
- 5.6 The Subscriber shall not use the Service to transmit unsolicited email commonly called SPAM. As well, the Subscriber will not forge email headers.

- 5.7 The Subscriber is expected to exercise good net-etiquette and refrain from abusing the network.

- 5.8 The Subscriber agrees to comply with the Provider's Acceptable Use Policy (as amended from time to time) and to comply to any reasonable requests made by the Provider in relation to the Subscriber's use of the Service. The Provider's Acceptable Use Policy can be found on the Provider's Website.

- 5.9 The Subscriber certifies that they have attained the age of 18 years and agrees to provide proof of age should the Provider request such proof.

- 5.10 The Subscriber is solely responsible for supervising and/or restricting the activities of any person under the age of 18 years whom the Subscriber allows, by any act or omission, whether negligent or otherwise, to access the Subscriber's account.

- 5.11 The Subscriber shall be solely responsible for any use of their account whether this use is deliberate and/or negligent.

- 5.12 The Subscriber agrees to indemnify the Provider against any actions brought against the Provider in respect of the Subscriber's actions brought against the Provider in respect of the Subscriber's acts and omissions, including, but not limited to, actions for defamation or breach of copyright arising from such acts or omissions.

- 5.13 Unless otherwise specified in the Service Agreement, the Subscriber is solely responsible, at their own expense, to acquire and maintain the necessary equipment, software, telecommunications services and other such items and/or services as may be required to make use of the Service.

- 5.14 Unless otherwise specified in the Service Agreement, the Subscriber is solely responsible for all costs associated with the use of any telecommunications services required to make use of the Service, including but not limited to, the cost of any telephone calls to the Provider's facilities. While the Provider may from time to time offer general guidance in good faith, it is the responsibility of the Subscriber to verify this information directly with the supplier of such services.

- 5.15 Unless otherwise specified in the Service Agreement, the Subscriber hereby agrees that the Provider is not responsible for any faults or error in the Subscriber's equipment and system or telecommunication connection. No extensions of account Term, refunds or reimbursements shall be given to the Subscriber due to such faults and errors.

6.0 Provision of Service

- 6.1 The Subscriber undertakes and agrees with the Provider that the Provider does not and cannot monitor or control the content and information accessed via the Internet and the Provider shall not be held responsible in any way for the loss for any content or information accessed via the Internet.

- 6.2 The Provider disclaims any and all liability for the contents of material that the Subscriber may find inappropriate, offensive, inflammatory or adult in nature.

- 6.3 The Provider shall not be responsible for any data which is stored on or transmitted through its network.

- 6.4 The Provider reserves the right to deny Access to any potential Subscriber at its absolute discretion.

- 6.5 The Service may be unavailable at times either due to scheduled maintenance upgrades, operational reliability or due to factors beyond the Provider's control. The Provider makes no guarantee as to the availability of the Service at any time and shall not be liable for any claims against it from the Subscriber due to the lack of availability of the Service. Nor shall the Provider be held responsible for any loss or inconvenience suffered by the Subscriber due to lack of availability of the Service. The Provider will use its best endeavours to provide at least twenty four (24) hours notice of any disruption to the Service. The Subscriber acknowledges that it may not be possible for the Provider to supply any notice at all under some circumstances.

- 6.6 The Provider may, without notice, deny or restrict Access to the Service at any time should the Subscriber fail to make full payment of any outstanding monies by the date on which such payment falls due.

- 6.7 The Provider may, without notice, deny or restrict Access to the Service at any time should it reasonably believe that the Subscriber has failed to comply with the terms of this Agreement or the Acceptable Use Policy.

- 6.8 Any advice provided by an employee of the Provider is provided in good faith. Any Subscriber who acts on such advice does so at their own risk, and indemnifies the Provider against any problems which may arise from acting upon that advice.

- 6.9 The Service cannot be used by any individual or group of persons for any activities of an illegal or fraudulent nature, including any activities prohibited under the Australian Commonwealth Government Telecommunications Act 1989.

- 6.10 All software supplied by the Provider is used by the Subscriber at their own risk. The Provider will not be held liable for any damage to any software or hardware resulting from the use of the software provided.

- 6.11 Any Equipment leased or provided to the Subscriber by the Provider is and remains the sole exclusive property of the Provider and the Subscriber will have no right, title or interest therein unless otherwise specified.

- 6.12 The Subscriber undertakes and agrees with the Provider that the Provider may undertake email scans for the sole purpose of detecting incoming spam. Also, the Subscriber undertakes and agrees with the

Provider that if spam email is detected, the spam email will be quarantined and not delivered to the Subscriber's email mailbox. The Subscriber also agrees that if this scan of email is not wanted, the Subscriber needs to notify the Provider of this requirement. The Subscriber also agrees with the Provider that the detection of spam email is not 100% accurate and some non-spam email may be inadvertently detected as spam and quarantined.

- 6.13 The Provider shall not be held responsible for the false detection and subsequent quarantine of emails.

7.0 Termination

- 7.1 The Subscriber is responsible for giving written notice of their intention to terminate this Agreement if the Service is not longer required. Termination shall take effect from midnight on the last day of the current Service Period. Should the Subscriber choose not to make use of the Service for the duration of the Service Period, they shall not be entitled to any credit or refund for any unused period.

- 7.2 This Agreement shall remain in place until it is terminated by the Provider by giving one month's written notice to the Subscriber or the contracted Term has expired. The Provider reserves the right to terminate the Access without notice if, in the opinion of the Provider the Subscriber misuses or abuses the Access or has breached its obligation herein. What constitutes misuse or abuse of the Access is determined by the Provider.

- 7.3 There shall be no refunds or reimbursements of charges and fees in respect of early termination of accounts for any reason whatsoever.

8.0 General

- 8.1 This Agreement constitutes the entire Agreement between the Subscriber and the Provider and supersedes any prior arrangements.
- 8.2 All notices served pursuant to this Agreement or alterations to this Agreement shall be notified in writing.

- 8.3 The Provider may vary this Agreement by providing the Subscriber with 30 days written notice of any such variations.

9.0 Limitation of Liability

- 9.1 The Provider does not warrant that the Access will be uninterrupted or error free, nor does the Provider make any warranty as to the results obtained from the Access. The Access is provided without warranties of any kind, either express or implied, other than those warranties implied into this Agreement by legislation and which cannot be excluded.

- 9.2 To the extent permissible by law, the Provider excludes all liability for any direct, indirect, special or consequential damages arising out of the supply or use of the Access or inability to effect the Access and where such liability cannot be excluded the Provider limits its liability, at its option, to the resupply of cost of resupply of the Access.

10.0 Force Majeure

- 10.1 The Provider shall not be liable for any breach of these Terms and Conditions caused by an Act of God, national or local emergency, acts of government, acts of war or civil disorder, military operations, industrial disputes, fire, flood, lightning strike, weather damage, subsidence or earthquake, or acts or omissions of persons or entities for whom the Provider is not responsible.

11.0 Interpretation

- 11.1 Any reference to written notice or written authority within this Agreement shall be construed to include communication by email between the Parties.

- 11.2 This Agreement shall be construed in accordance with the laws of Western Australia and the parties shall submit to the jurisdiction of the Courts of Western Australia.

- 11.3 The headings contained within this Agreement are intended for ease of reference only and do not form part of the Agreement between the Parties.

12.0 Execution

- 12.1 The Terms and Conditions of Service are deemed to have been executed and agreed upon the Subscriber's use of the Service.