entitydata®

Standard Terms & Conditions

1. Definitions & Interpretation

1.1 Terms capitalised throughout this Agreement have the meanings set out in Clause 21 of this Agreement.

1.2 This Agreement will be interpreted in accordance with the provisions of Clause 21 of this Agreement.

2. Provision of Services

2.1 In consideration of the payment by the Client of the Charges, ENTITY DATA will provide the Services to the Client.

2.2 The Client acknowledges that it has independently determined that the Services to be supplied by ENTITY DATA will meet the Client's requirements.

3. Charges and Payment

3.1 The Client will pay the Charges for the provision of the Services at the rate and in the manner specified on the ENTITY DATA Web Site or as otherwise agreed between the parties in writing.

3.2 The Charges will be based on prices specified in the price list located on the ENTITY DATA Web Site which vary from time to time.

3.3 In the event that:

(a) ENTITY DATA is required to perform the Services in circumstances other than those expressly or reasonably anticipated; or

(b) there is a change in the timing or complexity of the Services; and such circumstances are not the result of a breach of this Agreement by ENTITY DATA, then ENTITY DATA will notify the Client of any additional fees payable by the Client as a result of such changes.

3.4 Payment of the Charges will be due in advance of provision of the Services unless otherwise agreed by ENTITY DATA in writing.

3.5 ENTITY DATA reserves the right to charge the Client interest on any outstanding amounts under this Agreement.

3.6 Where the Services include domain name registration:

(a) ENTITY DATA will raise an invoice for payment to the appropriate naming authority for the hosting of that name specifying the date by which payment by the Client must be made; and

(b) failure for any reason by the Client to make payment before the specified date will entitle ENTITY DATA to release the Client's domain name without any liability for loss suffered by the Client howsoever arising.

(c) ENTITY DATA will not be held liable for domains that are registered by a third party in the time between when an order is submitted and when ENTITY DATA actions the order.

(d) ENTITY DATA will not be held liable for accidental loss of a customer domain name resulting from failure of a third party system, software application or integration.

3.7 ENTITY DATA reserves the right to charge the Client for any excess data usage above the Client's prepaid data allocation at the rate specified on the ENTITY DATA website.

4. Monitoring of Bandwidth

4.1 The Client's subscription to the Services covers permitted bandwidth (monthly transfer limit) as stated under the Clients chosen hosting plan and found on the Entity Data Website.

4.2 ENTITY DATA reserves the right to:

(a) monitor the Client's monthly bandwidth usage;

(b) implement restrictions on available bandwidth in order to protect all Services using the ENTITY DATA Servers from time to time when necessary; and

(c) make additional charges for usage above the limit at the prevailing rate as stated on the ENTITY DATA Website.

5. Domain Name Registration

5.1 The Client is responsible for checking the accuracy and correct spelling of the Client's domain name and its ownership entitlement as identified on ENTITY DATA documents sent to the Client and will notify ENTITY DATA within 24 hours of any corrections required.

5.2 Upon registration of the Client's domain name, the Client shall at all times comply with the terms and conditions for the registration of domain names published by the relevant naming authority and generally to the terms and conditions of any such authority having similar force and to which the Client may become subject as a result of the provision of the Services by ENTITY DATA.

5.3 The Client agrees to indemnify ENTITY DATA, its employees and agents and shall hold them harmless from and against all loss, penalties, damages, liability, claims or expenses whatsoever arising from any claims by third parties as to ownership or other rights to use a domain name where one has been registered by or transferred to ENTITY DATA or arising in any way by the Client infringing (whether innocently or knowingly) third party rights.

6. Unauthorised Use By Client

6.1 ENTITY DATA enforces 'Good Netiquette' practice and all Clients using Services and facilities offered by ENTITY DATA are obliged to comply with this Code of Practice and the ENTITY DATA Acceptable Use Policy annexed to this Agreement.

6.2 The Client must comply with any directions regarding the Services given to the Client from time to time by ENTITY DATA, including, but not limited to procedures imposed from time to time to prevent unauthorised use of or access to the Services.

6.3 The Client must not engage in or otherwise permit, any unauthorised use of ENTITY DATA facilities or Services by the Client, its employees, contractors, customers or third parties and in particular, the Client must not:

(a) serve more than one discrete destination website from a single hosting package (excluding business and cloud servers);

(b) permit any third party to use or to access any of the Services for any purpose without the prior written consent of ENTITY DATA;

(c) serve information in the form of text or graphics from ENTITY DATA Servers which may:

(i) directly or indirectly lead to a contravention of any law; or

(ii) bring ENTITY DATA into disrepute or call into question any action taken by ENTITY DATA on the Client's behalf;

(d) use the ENTITY DATA Servers to either send bulk unsolicited e-mail, or append a domain name or e-mail address which has its mx record or DNS pointing to the ENTITY DATA Servers to such bulk unsolicited e-mail; or

(e) use or attempt to use protocols, procedures or scripts which in the unfettered opinion of ENTITY DATA have the effect of degrading or the potential to degrade the Services and facilities offered by ENTITY DATA.

6.4 The Client agrees to immediately inform ENTITY DATA if it becomes aware of any unauthorised use of all or any of the Services by any person.

7. Suspension of Services

7.1 ENTITY DATA may suspend access to the Services:

(a) to preserve data and integrity;

(b) if there is a security breach; or

(c) if there is a malfunction in the Services.

7.2 ENTITY DATA reserves the right to terminate or suspend the Services to the Client indefinitely and without refund or compensation in the event that:

(a) the Services are used, or appear to ENTITY DATA to be intended to be used, by a Client or a customer of the Client in a manner deemed inappropriate by ENTITY DATA;

(b) the provision of the Services is likely to expose ENTITY DATA to any liability as a result of a breach of any law or any third party rights; or

(c) the Client otherwise breaches this Agreement.

7.3 Suspension of Services by ENTITY DATA will continue until the problem or breach is rectified or until otherwise agreed.

7.4 ENTITY DATA will not be liable to the Client, its employees, contractors, customers or agents as a result of taking the action referred to in this Clause 7 where such action is taken on a view which is formed on a reasonable basis by ENTITY DATA.

8. Loss of Data

8.1 ENTITY DATA will take all reasonable steps to safeguard the ENTITY DATA Servers and the data contained therein, however ENTITY DATA will not be responsible for any loss of Client data stored or intended to be stored on the ENTITY DATA Servers or back-up devices and the Client will not be entitled to any form of compensation from ENTITY DATA in the event of loss of data; unless otherwise agreed by ENTITY DATA in writing.

9. Interruptions to Service

9.1 ENTITY DATA takes no responsibility for any delay, malfunction, non-performance, or other degradation of performance of any of the Services caused by or resulting from any alteration, modifications or amendments due to changes and specifications requested or implemented by the Client whether or not beyond the Services already supplied.

9.2 In the event of total systems failure resulting in the disruption of service to the Internet from ENTITY DATA Servers, ENTITY DATA will endeavour to repair and reinstate the service as quickly as humanly possible.

9.3 If failure is caused by the Client or any agent or customer of the Client to whom access to ENTITY DATA Servers was given, the Client shall pay all costs to reinstate and/or repair the Client server.

9.4 Where a service interruption is not the fault of the Client or any agent or customer of the Client to whom access to ENTITY DATA serves was given;

(a) The Client may be entitled to compensation as prior agreed by ENTITY DATA in writing or as stated on the Service Level Agreement (SLA) annexed to the Client's hosting service.

(b) Compensation paid by ENTITY DATA to the Client relevant to clause (a) above will not exceed the amount paid by the Client to ENTITY DATA for services in any given billing cycle.

10. Client Deliverables

10.1 The Client will provide ENTITY DATA with the Client Deliverables in accordance with the time frames agreed between the parties.

10.2 ENTITY DATA will not be responsible for any deficiency or alleged deficiency in the Services which is attributable to:

(a) incorrect information provided by the Client; or

(b) failure by the Client to provide the Client Deliverables or other relevant information.

10.3 The Client will have no remedy against ENTITY DATA in relation to any delay or failure to complete the Services, where such delay or failure is the direct or indirect result of any act or omission of the Client or a breach by the Client of this Agreement.

11. Imdemnity

11.1 The Client warrants that:

(a) it owns, or has a licence to use the Intellectual Property Rights in any Client Deliverables provided to ENTITY DATA, including any trade marks;

(b) ENTITY DATA's provision of Services to the Client will not infringe any third party's Intellectual Property Rights.11.2 The Client indemnifies ENTITY DATA against all expenses, losses, damages and costs (on a solicitor and own basis and whether incurred by or awarded against ENTITY DATA) which ENTITY DATA may sustain or incur as a result, whether directly or indirectly, of:

(c) any breach of this Agreement or the warranties contained herein by the Client including, but not limited to, a breach, in respect of which ENTITY DATA exercises an express right to terminate this Agreement; and

(d) any claim by any person arising out of a breach of any of the warranties contained in Clause 11.1.

12. Implied Terms

12.1 Subject to Clause 12.2, any condition or warranty which would otherwise be implied in this Agreement is hereby excluded.

12.2 In the event that a condition or warranty cannot be excluded by law, the liability of ENTITY DATA for any breach of such condition or warranty will be limited, at the option of ENTITY DATA, to:

(a) the supplying of the Services again; or

(b) the payment of the cost of having the Services supplied again.

13. Limitation of Liability

13.1 ENTITY DATA will be under no liability to the Client, or any customers of the Client, in respect of any loss of profits or data, consequential loss or damage which may be suffered or incurred or which may arise directly or indirectly in respect of:

(a) goods or Services supplied pursuant to this Agreement;

(b) failure or omission on the part of ENTITY DATA to comply with its obligations under this Agreement; or

(c) supply of Client Deliverables by the Client which are incomplete, inaccurate, illegible, out of sequence, in the wrong form or arising from late arrival or non-arrival or any other fault by the Client.

13.2 The Client warrants that it has not relied on any representation made by ENTITY DATA which has not been stated expressly in this Agreement.

13.3 The Client will at all times indemnify and hold harmless ENTITY DATA and its officers, employees and agents ('those indemnified') from and against any loss (including reasonable legal costs and expenses) or liability reasonably incurred or suffered by any of those indemnified arising from any proceedings against those indemnified where such loss or liability was caused by:

(a) a breach by the Client of its obligations under this Agreement; or

(b) any wilful, unlawful or negligent act or omission of the Client.

14. Confidential Information

14.1 Each party will use the Confidential Information of the other party only for the purposes of this Agreement.

14.2 Neither party to this agreement will disclose to any third party (other than its employees or contractors in their capacities are such) any Confidential Information of the other party which information is not lawfully in the public domain.

14.3 Any lawfully required disclosure of Confidential Information to any governmental or other controlling body will be limited to essential information only and, if possible, made subject to a confidentiality order.

15. Term

15.1 The "Initial Term" for each Order begins on the date ENTITY DATA make the Services available to the Client and continues for the period stated in the Order and/or Quote. If no period is stated in the Order and/or Quote, then the initial term shall be one [1] month. Upon expiration of the initial term, the Order will automatically renew for successive renewal terms of one [1] month each.

15.2 Subject to Clause 15.3, following the expiry of the Initial Term, this Agreement will continue until terminated by either party pursuant to Clause 16 of this Agreement.

15.3 The Client may elect to terminate this Agreement after the Initial Term by providing ENTITY DATA with a cancellation request for all products and services subscribed to the client and allowing up to 45 days for ENTITY DATA to process the cancellations.

16. Termination

16.1 Either party may terminate this Agreement with immediate effect by giving notice to the other party if:

(a) the other party breaches any of its obligations under this Agreement and fails to remedy that breach within 14 days after receiving notice requiring it to do so; or

(b) any event referred to in Clause 16.2 occurs.

16.2 Each party will notify the other immediately if:

(a) it ceases to carry on business;

(b) it disposes of the whole or any part of its assets, operations or business other than in the ordinary course of business;

(c) any step is taken to enter into any arrangement between that party and its creditors;

(d) any step is taken by a mortgagee to enter into possession or dispose of the whole or any part of its assets or business; or

(e) any step is taken to appoint a receiver, a receiver and manager, a trustee in bankruptcy, a liquidator, a provisional liquidator or other like person of the whole or any part of its assets or business.

16.3 Termination of this Agreement will not affect the accrued rights or remedies of either party.

16.4 In the event that the Client wishes to terminate a product or service, the Client will;

(a) submit a cancellation request to ENTITY DATA at least 7 days before the billing cycle of the respective product or service ends; in the event that the cancellation request is received in the last 7 days of the current billing cycle the product or service will be cancelled at the end of the next cycle.

(b) contact ENTITY DATA billing department if there is an invoice due for the cancelled service.

17. Force Majeure

17.1 Neither party will be in default under this Agreement by reason of its delay in performance of or failure to perform any of its obligations, if such delay or failure is caused by declaration of war, strikes, Acts of God or the public enemy, riots, interference by civil or military authorities, compliance with Governmental laws, rules and regulations, delays in transit or delivery, inability to secure necessary governmental priorities or any fault beyond its control and without its fault or negligence.

18. Disputes

18.1 In the event of any dispute between the parties arising out of or in connection with this Agreement ('Dispute'), the parties will use their best endeavours to settle such dispute amicably by negotiation after issuing a 'Dispute Notice' indicating that there is a serious dispute to be resolved.

18.2 If the Dispute cannot be settled within 21 days of issuance of the Dispute Notice, the parties will attempt to settle the Dispute by mediation in Brisbane, Australia to be conducted by a mediator independent of the parties.

18.3 If the Dispute is not settled pursuant to Clause 18.2, then any party involved in the Dispute may, within 28 days of the Dispute Notice, give notice ['Arbitration Notice'] to the other party requiring that the Dispute be dealt with pursuant to Clause 18.4.

19. General

19.1 Severance

(a) If any part of this Agreement is deemed unenforceable then:

(b) if the provision would not be illegal or unenforceable if a word or words were omitted, that word or those words are severed; or

(c) in any other case the provision is severed; then the rest of this Agreement will continue to be legal and enforceable.

19.2 Waiver

The failure of a party at any time to insist on performance of any obligation under this Agreement of the other party is not a waiver of its right:

(a) to insist on performance of, or claim damages for breach of, that obligation unless that party acknowledges in writing that the failure is a waiver; and

(b) at any other time to insist on performance of that or any other obligation of the other party under this Agreement.

19.3 Notices

(a) Each party notifying or giving notice under this Agreement will do so:

(i) in writing;

(ii) addressed to the address of the recipient; and

(iii) hand delivered or sent by prepaid post to that address or sent by e-mail or facsimile transmission to the other party's e-mail address or facsimile number.

(b) A notice given in accordance with Clause 19.3[a] is deemed received:

(i) if hand delivered, on the date of delivery;

(ii) if sent by prepaid post, 4 days after the date of posting within Australia and 7 days after the date of posting outside Australia; and

(iii) if sent by facsimile transmission, on the day the transmission is sent (but only if the sender has a confirmation report specifying a facsimile number of the recipient, the number of pages sent and the date of transmission).

19.4 Sub-Contracting

ENTITY DATA may sub-contract the performance of any of the Services but will remain primarily responsible for the performance of its obligations under this Agreement.

19.5 Entire Agreement

This Agreement forms the entire agreement between the parties in respect of the subject matter of this Agreement.

20. Governing Law

This Agreement is governed by the laws of the State of Queensland.

21. Definitions and Interpretations

21.1 In this Agreement, the following terms will have the following meanings:

'Acceptable Use Policy' means the policy governing acceptable use of the ENTITY DATA Services annexed this Agreement as updated from time to time and posted on the ENTITY DATA Web Site;

'Agreement' means this agreement, including the Acceptable Use Policy, governing the provision of the Services by ENTITY DATA to the Client as may be varied from time to time by the parties in writing;

'Charges' means the amount payable for provision of the Services as prior agreed between the parties in writing;

'Client' means the party who has entered into this Agreement for Services with ENTITY DATA;

'Client Deliverables' means all information and materials to be provided by the Client to ENTITY DATA under the terms and conditions of this Agreement as agreed between the parties or as otherwise provided by the Client to ENTITY DATA from time to time;

'Confidential Information' of a party means all information disclosed by a party to the other party and nominated as confidential (including, but not limited to, confidential information in machine readable form) but does not include information which is already in the public domain;

'GST' means any goods or services tax, charge, impost or duty payable in respect of this Agreement or the supply of any goods or services made under or in respect of this Agreement;

'ENTITY DATA Servers refers to all Software Processing Units belonging to ENTITY DATA that are connected to the Internet;

'ENTITY DATA Web Site' means the web site maintained by ENTITY DATA and located at http://www.entitydata.com.au or any other URL notified by ENTITY DATA to the Client from time to time;

'Intellectual Property Rights' means all intellectual property rights including, but not limited to:

(a) patents, copyright, circuit layout rights, designs, trademarks ; and

(b) any application or right to apply for any of the rights referred to in paragraph (a);

'Internet' means the world wide connection of computer networks providing for the transmittal of electronic mail, on-line information, and information retrieval and file transfer protocol;

'Services' means those Services which the Client and ENTITY DATA agree are to be provided to the Client by ENTITY DATA in accordance with the package descriptions and payment details set out on the ENTITY DATA Web Site;

21.2 In this Agreement:

(a) clause headings have been inserted for convenience only and will not be taken into account in interpreting the Agreement;

(b) words importing the singular will include the plural and vice versa;

(c) words importing natural persons will include firms and corporate bodies or other legal persons and vice versa;

(d) reference to a party to this Agreement includes reference to that party's successors and assigns.