

Aykira Pty Ltd Web Site Hosting Agreement Terms and Conditions

1. Definitions

- (1) **The Client** : The company or individual requesting the services of Aykira Pty Ltd;
- (2) **Aykira Pty Ltd**: Primary designer/site/server operator & employees or affiliates. ABN 60 122 345 702;
- (3) **We, our and us** refer to Aykira Pty Ltd;
- (4) **You and your** refer to The Client who orders the website hosting services.
- (5) **Confidential Information** means any information of a confidential nature which is the property of, concerns or is in any way connected with a party (including, without limitation, any trade secrets, confidential or proprietary technical information, trading and financial details and any other information of commercial value) and which is disclosed to or otherwise learnt by the other party under or in connection with this Agreement;
- (6) **Content** includes any data, text, emails, files, names, likenesses, logos, artwork, graphics, video, audio, HTML or other web design code, image maps or software applications uploaded, sent or communicated by you or on your behalf or your customers to the website hosting services, the website or the domain name;

2. General

2.1 Aykira Pty Ltd will carry out work only where an agreement is provided either by email, mail or fax. An 'order' is deemed to be a written contract between Aykira Pty Ltd and the client, this includes email agreements.

3. Services

3.1 We may provide services directly or via a third party. Third party services may be subject to specific agreements as supplied by them. By applying or using any service offered by us you must agree to this agreement and any agreement of our third party suppliers.

3.2 We provide under this agreement a website hosting service which may be subject to:

- a) Bandwidth, memory, disk space and CPU time/usage limitations either set out on the Aykira website and/or in your order;
- b) An agreed monthly bandwidth limit for outbound website traffic. If the traffic exceeds this limit we will charge an excess bandwidth charge of \$5 per 1GB per month (billed in arrears).

4. Hosting Set Up

4.1 It is your responsibility to ensure that any applied hosting package application is completed and activated ready for full use. Quoted times for account activation are estimates and we do not guarantee or imply activation within the quoted time frame. We may delay or refuse activation if:

- a) Payment is not cleared or received in full;
- b) We believe the order, information or payment is fraudulent;
- c) You have any funds outstanding with relation to any other account;
- d) The domain name quoted does not exist, is in a non-usable state (e.g. pending renew) or deemed to be proposed for a use that voids our Acceptable Use Policy;

- e) There is any other reason which we deem satisfactory.

4.2 We may send notification of hosting activation, however:

- a) Your contact details must be correct and up to date;
- b) This is not final word that your hosting is fully active and ready for use, you must ensure the hosting is fully functional.

4.3 You release us of any claim arising from failed hosting activation whether at fault of our system, our staff or any other factor out of our reasonable control.

5. Loss of service

5.1 We will endeavour to maintain network stability and satisfactory service levels, however:

- a) We may from time to time perform routine maintenance, service and upgrades. We will endeavour to act on such instances at the most convenient times and provide reasonable notice by any means we deem satisfactory;
- b) We may experience outages beyond our control caused by any of the following; force majeure (any 'act of god' including those induced by negative human activities), war, invasion, act of hostilities, civil war, rebellion, military power or confiscation, terrorist activities, nationalism, governmental/quasi-governmental sanction, restraint, embargo, prohibition or intervention, blockage, labour dispute, general strike, lockout or failure of utilities (electricity, telephone, etc.), failure of hardware (our hardware as well as third party), failure of software, failed software or hardware upgrade or any other failure as caused by Aykira Pty Ltd, our suppliers or any third party;
- c) We may, at our discretion provide notification of outages whether planned or unplanned
- d) You release us from any claim or potential claim with relation to outages and any loss of business/service suffered by you or any third party.

6. Payment

6.1 We are entitled to recover (on a full indemnity basis) any costs, fees and charges (including legal costs) incurred in recovering any amounts owing by you to Aykira Pty Ltd. Without limitation to the above, we may charge an administration fee of \$50.00 for any dishonoured cheques.

6.2 You acknowledge that should we not receive renewal payment prior to the date of expiry we reserve the right to suspend services immediately without notice. We may provide a 30 day grace period whereby we will hold your information and data on our servers. Should this period expire without payment we reserve the right to purge all data pertaining to your account with us and terminate the account.

7. Suspension and cancellation

7.1 We reserve the right to suspend/cancel any/all service, including all domain names if:

- a) You have any outstanding invoice or account;
- b) Your account is in dispute or dispute resolutions procedure, court order, judgement, findings or determination;
- c) You fail to comply with any provision in this agreement or those referenced in this agreement;
- d) There is evidence of fraudulent, illegal, defamatory, offensive activities, or any activity in breach of a third party's rights;
- e) We deem your use of our services may jeopardize the operation of the service, Aykira Pty Ltd or our suppliers;
- f) We deem any other reason as satisfactory to protect Aykira Pty Ltd, our staff and/or our suppliers.

7.2 Any suspension or cancellation is subject to our Refunds Policy.

7.3 If your account is cancelled under this agreement:

- a) You must pay all outstanding charges to us immediately;
- b) We may revoke/terminate any license issued to or by you in relations to the services as of the date of cancellation;
- c) We may immediately delete all data held prior to cancellation;
- d) Any facilities, services or resources bought for your sole behalf and not paid for in full by you remain the sole property of Aykira Pty Ltd;
- e) We reserve the right to replace the hosted website(s) under the cancelled account with an Aykira website hosting service holding page;
- f) We may perform any action without notice.

8. Acceptable Use Policy (AUP)

8.1 It is your responsibility at all times to:

- a) Use our service and services in a manner which does not violate any applicable laws or regulations;
- b) Respect the legal protection afforded by copyright, trademarks, license rights and other laws to materials accessible via our service;
- c) Respect the privacy of others;
- d) Use the service in a manner which does not interfere with or disrupt other network users, services or equipment; and
- e) Refrain from acts that waste resources or prevent other users from receiving the full benefit of our services;
- f) Ensure your use of our services remains ethical and in accordance with accepted community standards.

8.2 You must at all times comply with law. You will be in breach of this policy on violation of state, federal or international laws.

8.3 It is not acceptable to use our service(s) to:

- a) Violate copyright or other intellectual property rights;
- b) Illegally store, use or distribute software; transmit threatening, obscene or offensive materials;
- c) Engage in electronic 'stalking' or other forms of harassment such as using abusive or aggressive language;
- d) Misrepresent or defame others;
- e) Commit fraud;
- f) Gain unauthorised access to any computing, information, or communications devices or resources, including but not limited to any machines accessible via the Internet;
- g) Damage, modify or destroy the files, data, passwords, devices or resources of Aykira Pty Ltd, other users or third parties;
- h) Engage in misleading or deceptive on-line marketing practices;
- i) Conduct any business or activity or solicit the performance of any activity that is prohibited by law;
- j) Make an unauthorised transmission of confidential information or material protected by trade secrets;
- k) "Spam" or engage in "spamming" activities;
- l) Provide or deliver obscene speech or materials, this includes, advertising, transmitting, storing, posting, displaying or otherwise making available: child pornography, offensive sexual content or materials or any other obscene speech or material;
- m) Post or transmit defamatory, harassing, abusive or threatening language;
- n) Create, distribute or provide information/data regarding how to employ, develop or design: Internet viruses, worms, Trojan horses, ping, flooding, ransomware, mail-bombing or denial of service attacks;
- o) Facilitate a violation of this Acceptable Use Policy.

- p) Perform any other action through utilization of any service which we deem unsatisfactory.
- q) Attempt to do any of the above.

8.4 You also agree not to attempt any of the following:

- a) Use 25% or more of system resources for longer than 90 seconds. There are numerous activities that could cause such problems; these include: CGI scripts, scripts, FTP, PHP, HTTP, Mail, etc.;
- b) Run any type of interactive real-time chat applications that require server resources. Remotely-hosted services are fully allowed;
- c) Run stand-alone, unattended server-side processes at any point in time on the server. This includes any and all daemons, such as IRCD;
- d) Run any software that interfaces with an IRC (Internet Relay Chat) network;
- e) Run any gaming servers/services;
- f) Run any bit torrent application, tracker or client;
- g) Participating in file sharing or other peer to peer sharing activity;
- h) Any activity which causes the server to crash / restart.

8.5 Unless by express written permission from Aykira Pty Ltd, you may not:

- a) Sub license, sell, lease or loan the website hosting service to any other person or legal entity;
- b) Deploy the website hosting service for rental or commercial bureau services, applications services or hosting activities.

8.6 In the event that you are expressly entitled to resell the website hosting service under this Agreement, you are liable for the acts or omissions of any person to whom the website hosting service is resold, as if they were your acts or omissions.

8.7 Any breach of our AUP can result in immediate termination of services and loss of all data held on provided services. You release us, our staff and our suppliers of any liability resulting in such instances.

9. Confidentially, privacy and the Spam Act

9.1 Each party must take reasonable steps to keep the other party's Confidential Information confidential, must not disclose such Confidential Information to any third party other than those of the party's employees, agents and subcontractors who are reasonably required to receive, use and consider the information for the purposes of this Agreement, and must use such Confidential Information solely for the purposes of this Agreement. You acknowledge that we use third party subcontractors in the provision of the website hosting services.

9.2 We may disclose any Content, records or information concerning your account(s) or the website hosting services to the extent that we are obliged by law or order of any court or tribunal to make such disclosure, or as required to satisfy any request to do so by any government or law enforcement body, agency or authority.

9.3 Each party must return to the other party all Confidential Information of the other whether in written or tangible form or in any other media on the termination of this Agreement.

9.4 You acknowledge and agree that we and our affiliates may collect data in connection with the licensing and provision of the website hosting services, and may use information compiled from that data to govern this agreement, improve our products and services, and provide customized services or technologies to you. This information will not be disclosed by us or our affiliates in a form that personally identifies you.

9.5 You must comply with the Privacy Act (1988), any other applicable Australian statute, regulation, code of conduct or law concerning privacy.

9.6 You are responsible for sending mail in accordance with any relevant legislation, including but not limited to the Commonwealth Spam Act (2003) and for sending the same in a secure manner. In the event of deliberate transmission of unsolicited commercial email (UCE) from your site, Aykira Pty Ltd reserves it right to terminate services without prior notification.

10. Intellectual Property Rights

10.1 Other than the rights expressly granted to you under this Agreement, you have no right, title or interest in or to the website hosting service or any other information, data, software, code, material, hardware or content (Materials) developed, supplied or made available by us to you under or in connection with this Agreement. All right title and interest (including all Intellectual Property Rights) in and to the Hosting Services and the Materials are retained by and vest in us and our licensors.

10.2 Subject to clause 10.1, all right title and interest in the Content and any data generated by you as a direct result of using the website hosting service is retained by you.

11. Data Retention

11.1 In order to provide continuation of service in the event of prolonged system or network failures, your website and associated files, databases and configuration information are archived to a secure remote site. We reserve the right to archive such information, either in part or whole for a maximum of one year, after which it will be destroyed. Remote copies of the website and associated files, databases and configuration information will only be kept as a whole for a maximum of 4 weeks.

11.2 Upon termination of this agreement all archived data associated with it will be immediately deleted.

12. Security

12.1 You will keep secure any identification, password and other confidential information relating to your account(s) and you will notify us immediately of any known or suspected unauthorised use of your account(s), or any known or suspected breach of security, including loss, theft or unauthorised disclosure of your password information. Notwithstanding such notification you will be liable for any and all uses of your account(s) notwithstanding any fraudulent or improper use of your password or any other access to any of the facilities we offer which is not unauthorised use or access by us.

12.2 Whilst we shall use reasonable endeavours to ensure the integrity and security of the hosting environment, we do not guarantee that the hosting environment will be free from unauthorised users or hackers, including degraded network connectivity as a result of any type of malicious denial of service attack.

12.3 We do not warrant whatsoever that any hosted virus protection services will stop every virus from reaching your computer network. We make no warranty that the service will be error free or free from interruption of failure, and the company expressly disclaims any express or implied warranty regarding system and/or service availability, accessibility, or performance.

12.4 We reserve the right to modify your website or server configuration without notification as required to:

- a) Deny Denial of Service and associated attacks;
- b) Prevent or stop the spread of viruses;
- c) Deny security probes; and
- d) Deny misconfigured crawlers and associated scripts.

12.5 We reserve the right without prior notification to modify the website hosting technology to:

- a) Remove security weaknesses; and
- b) Improve efficiency of operation.

13. E-Commerce Services

13.1 Any transactions within your hosted website(s) which are contracts for the sale of goods or services will be between you as the merchant and your end-user customer and you agree that we may include an exclusion of our liability in respect of such purchases and transactions in such form as we deem appropriate.

14. Website Hosting Service Level Agreement (SLA)

14.1 Other than as provided in this SLA, Aykira Pty Ltd shall not be liable for failure or delay in performing its obligations hereunder if such failure or delay is due to circumstances beyond its reasonable control, including, without limitation, acts of any government authority, war, sabotage, fire, flood, strike or other labour disturbance, interruption of or delay in transportation, unavailability of or delay in telecommunications or third party services, failure of third party software or inability to obtain raw materials, supplies, or power used in or equipment needed for provision of Website Hosting Services.

14.2 99.9% Website Hosting Uptime Guarantee

14.2.1 If during a calendar quarter there is greater than 3 hours of Downtime (where Downtime is defined as a failure to be able to serve your website(s) for longer than 90 seconds during an unplanned outage) Aykira will refund in full all hosting fees for the month(s) within which the Downtime occurred.

14.2.2 Excluded from the Uptime Guarantee are any failures to serve your website(s) caused by:

- a) Misconfigured DNS (Domain Name Server) records which fail to correctly point your website entry to our website hosting services hosting your website(s);
- b) Broken web pages or associated code and files which you or an agent acting on your behalf supplied;
- c) Any third party network system failures beyond our ability to control and rectify (such as proxy's, gateways, routers, switches, network segments, filters, etc.);
- d) Browser and Browser Operating System updates or changes.

15. Liability and indemnity

15.1 You agree that we shall have no liability to you or any other person with respect to any loss of service, data, business, indirect, incidental, consequential, special, exemplary or punitive damages, including loss of profit/goodwill for any matter whether such liability is asserted on the basis of contract, tort, breach of warranties either expressed or implied.

15.2 You agree to defend, indemnify, save and hold us, our staff and suppliers from any and all demands, liabilities, losses, costs and claims, including reasonable legal fee's asserted against us, our agents, our clients, our offices and employees, that may arise or result from any service provided, performed or agreed to be performed or any product sold by a customer, their agents and employees.

15.3 You agree to defend, indemnify, and hold us harmless against liabilities arising out of:

- a) Any injury to person or property caused by any products sold or otherwise distributed in connection with Aykira Pty Ltd;
- b) Any material supplied by the customer infringing or allegedly infringing on the proprietary rights, legal and/or civil rights of a third party;
- c) Any breach of any representation or warranty provided herein;
- d) Any negligence or wilful misconduct by you;
- e) Any allegation that your account infringes a third person's copyright, trademark, or intellectual property right, or misappropriates a third person's trade secrets;
- f) Any defective products sold to customers from our server.

15.4 By accessing any service hosted on our network you understand, agree and are bound to this indemnification and any other indemnification mentioned in our service agreement and agreements referenced to therein.

15.5 Should we be notified of pending legal action or intention to seek legal advice, we may seek written confirmation from you concerning your obligation to indemnify Aykira Pty Ltd. Failure to provide such confirmation may be considered a breach of this agreement.

15.6 We cannot be held responsible for any damages your business/operation may suffer. We provide no warranties, expressed or implied, for service we provide. Nor do we guarantee your web site or applications will be error free on our servers. We are not responsible for loss of data resulting from delays, software

incompatibility, hardware or software issues, outages, failed deliveries and any service interruption caused by Aykira Pty Ltd, our employees or our suppliers.

15.7 Should any part of this policy be made invalid by relevant legislation, the remainder of the policy shall remain in force.