

EZHost Terms and Conditions

This Agreement is made and entered into by and between EZHost (ABN 16 667 211 968) (**EZHost**) and the Customer (referred to as '**the Customer**', '**you**' or '**your**').

TERMS AND CONDITIONS

1. INTRODUCTION

- (a) During the Contract Period, EZHost will provide the Services to you subject to the terms of this Agreement.
- (b) This Agreement includes the terms of the Service Level Agreement provided at Schedule 2 and the Acceptable Use Policy provided at Schedule 3.
- (c) In addition to the terms defined in the Agreement Details, capitalised terms are defined in clause 11.1.

2. PAYMENT TERMS AND PRICING

This section sets out your primary payment obligations to EZHost under this Agreement.

2.1 Payment Terms

- (a) The Setup Fee and first instalment of the Monthly Fee are due and payable on the Commencement Date.
- (b) You must pay the Setup Fee and ongoing Monthly Fees as described in, and within the time specified in, the Agreement Details.

2.2 Automated Payments

- (a) If you provide EZHost with your credit card or direct debit details, you hereby authorise EZHost to charge all recurring Monthly Fees and charges to the credit card, or bank account, on file with EZHost on or around the due date of the invoice.
- (b) You will receive a notice by email if your payment is declined for any reason.
- (c) EZHost may then make one final attempt to charge your credit card, or bank account, on or around the due date of the invoice if that payment is declined for any reason.

2.3 Invoice Payments

An account keeping fee of \$4.40 is payable per Billing Term for payments by cheque, money order and BPAY.

2.4 Late Payments

For any payments made over 14 days past the due date of the invoice, you are liable to pay EZHost:

- (a) an \$11 late payment fee; and
- (b) interest calculated monthly on the amount outstanding at the rate of 12% annually from the due date of the invoice.

2.5 GST

All payments required by this Agreement are inclusive of GST, which you are responsible for and must pay in full.

2.6 Pricing Disputes

You must notify EZHost in writing of any disputed charges within 60 days of the date of the billing for such charges and you agree not to withhold any disputed amount. All accounting issues should be directed to accounts@ezhost.net.au.

2.7 Suspension and Termination of Services

- (a) EZHost may suspend or terminate Services on any account that is not paid by its due date by disabling telnet, ssh, rdp, vnc, ftp, http access and/or disabling the connection to the Dedicated Server.
- (b) If the Services are suspended or terminated pursuant to this clause 2.7, you must pay EZHost a fee of \$150 to reinstate the Services (**Reinstatement Fee**).
- (c) After receiving payment of the Reinstatement Fee and any other amounts outstanding under this Agreement in full, EZHost will reactivate the Services during EZHost's normal business hours.
- (d) EZHost may send all accounts that have not been fully paid to a debt collection agency or a solicitor and you are responsible for paying all costs of collection including, but not limited to, legal and collection agency fees.

3. MAINTENANCE AND SUPPORT

This section sets out the scope of the Services and what is and is not included in the Services (including Additional Services) provided by EZHost to you.

3.1 Ordering Maintenance & Support Services

EZHost will provide you with the Hardware Maintenance and Support and the Managed Services (or parts of them), if such services are specified in the Agreement Details or if they are later requested by you and agreed in writing.

3.2 Exclusions and Indemnity

The Hardware Maintenance and Support, the Managed Services and the Firewall does not include services for problems arising out of:

- (a) tampering, modification, alteration, or addition to the Hardware, or the Cabinet Hardware, which is undertaken by persons other than EZHost or its authorised representatives; or
- (b) problems with the System Software, software or hardware which is supplied by you.

You indemnify EZHost against any claim whatsoever for loss or damage in relation to any problem arising out of items (a) or (b) above.

3.3 Bandwidth

- (a) Bandwidth is measured using SNMP or Netflow data directly from the routers, and is calculated as all traffic in and out.
- (b) Your use of Bandwidth is counted from the first to the last day of the calendar month. In the first partial calendar month of service, Bandwidth quota is pro-rated from the day the Service was ordered to the last day of the month.
- (c) Use of Bandwidth to and from backup servers inside the EZHost Network is not counted against your Bandwidth use.
- (d) Bandwidth may be purchased in advance prior to the commencement of the monthly bandwidth cycle at the rate listed on EZHost's website. If Bandwidth is purchased after the Commencement Date, then a standard overage rate of \$1.00/GB excluding GST will apply.
- (e) Unused Bandwidth does not carry over to the next month.
- (f) EZHost will audit your Bandwidth use on the first business day for the previous calendar month. Overage will be automatically invoiced and charged to your account.

(g) EZHost does not monitor Bandwidth consumption or provide usage level warnings throughout the month. It is your responsibility to monitor your Bandwidth use.

3.4 IP Addresses

(a) EZHost may designate for your use IP Addresses specified in the Service Specification from the address space allocated to EZHost by Asia-Pacific Network Information Centre (APNIC) or EZHost's IP Address Partners.

(b) IP Addresses are the sole property of EZHost and are designated to you for use on a temporary basis and are not portable. EZHost reserves the right to change the IP Addresses' designations at any time but will use reasonable endeavours to minimise inconvenience to you, and will give you reasonable notice of changes.

(c) On termination of this Agreement for any reason you will have no right to use IP Addresses assigned to you, and you acknowledge that any change in IP Addresses you may need to make after termination of this Agreement will be your sole responsibility.

4. CUSTOMER'S DUTIES AND ACKNOWLEDGEMENTS

This section sets out your responsibilities in relation to the Services, including your use of the Services, the information you must provide EZHost and the roles you need to perform which are not included in the Services.

4.1 Acceptable Use Policy

For the term of this Agreement, you must comply, and will ensure that Users comply, with EZHost's Acceptable Use Policy provided at Schedule 3.

4.2 Record Keeping and Reporting

In respect of each of the Hardware Maintenance and Support and the Managed Services, you will:

(a) document and promptly report all errors or malfunctions of the Hardware, Firewall, Cabinet Hardware or System Software to EZHost within a reasonable time; and

(b) maintain a current offsite archive copy of all software and data stored on the Dedicated Server.

4.3 Disaster Recovery Measures

(a) In the event of a critical system failure, including but not limited to malfunction of hardware, as covered by your election of the Hardware & Cabinet Maintenance and Support and this failure involves replacement of Hardware, Firewall or Cabinet Hardware; EZHost will restore the Services according to the original configuration as at the Commencement Date. You are responsible for restoring all data.

(b) Disaster recovery measures are a Professional Service charged at additional hourly rates. You also acknowledge and agree that if you do not use:

- (i) a RAID capable system; and/or
- (ii) the Managed Backup; and/or
- (iii) Outsourced Backup Services; and/or
- (iv) independent disaster recovery measures,

you may increase your risk of data loss of both configuration and content with potentially no means of data recovery in the event of hard drive failure.

4.4 Security Measures

(a) You are responsible for Network Security Measures and Application Security Measures.

(b) If you do not use TCP/IP Packet Filtering Technologies or any other technologies which could prevent system penetration, the Dedicated Server and Application may be vulnerable to network attacks.

(c) If you elect to use a Firewall and Firewall Management service, you acknowledge that EZHost supplies these in consultation with you, under your instruction and/or based on an assumption of what is the best possible configuration based on information supplied by you.

4.5 Third Party Software

Microsoft Windows and Linux operating systems and other third party software may not be free from defects and their performance is not guaranteed by EZHost.

4.6 Internet Access

You are responsible for maintaining Internet access and all necessary telecommunications equipment, software and other materials at your facilities necessary for Users to access their information and materials through the Services.

4.7 Customer Representatives

You will nominate the Customer Representative as at the Commencement Date and promptly notify EZHost of all changes to the Customer Representative. EZHost will confirm in writing that changes have been received and updated.

4.8 Support

You will follow support procedures as outlined on the EZHost website from time to time when support is required.

4.9 Systems Administrator

You are responsible for the role of Systems Administrator, even if you have elected to receive the Systems Administration Services.

4.10 Technical Support

- (a) Technical support included with Hardware & Cabinet Maintenance and Support is limited to failures of the Hardware, Cabinet Hardware or the EZHost Network.
- (b) Technical support relating to use of any software or code (including the Applications), is a Professional Service charged at additional hourly rates.

4.11 Remote Access Passwords

- (a) You will provide EZHost with the root level/administrator password for the purpose of remotely accessing the Dedicated Server, and inform EZHost if the root level/administrator password changes.
- (b) If you change the root level/administrator password or make other changes which prevent EZHost from remotely accessing the Dedicated Server, you waive all right to receive Hardware Maintenance and Support.

5. SOFTWARE AND LICENCES

This section sets out the primary terms on which you may use the System Software provided by EZHost.

5.1 Operating System and Web Server Software Licence

During the term of this Agreement, EZHost grants to you a limited, non-transferable, non-exclusive licence to use the System Software, for the sole purpose of using the System Software in conjunction with the Services and on the Hardware provided.

5.2 Software Licence Restrictions

You will ensure that Users will not, directly or indirectly:

- (a) copy the System Software, except to the extent necessary to install the System Software on the Hardware and for internal, archival purposes;
 - (b) sell, lease, licence, transfer, give possession of, or sub-licence the System Software or its documentation to others; or
 - (c) write or develop any derivative or other software programs, based, in whole or in part, upon the System Software.
- If you make copies of the System Software in accordance with clause 5.2(a), you must reproduce all proprietary notices on such copies.

5.3 Proprietary Rights

This Agreement does not confer any ownership or proprietary right in or to the System Software, the Hardware, the Firewalls or any related documentation, or any right, title, or interest in or to any copyright, patents or trademarks embodied or used in connection with the foregoing.

5.4 Microsoft EULA

Your use of the System Software is subject to the Microsoft Volume Licensing End User Licence Terms as updated from time to time and provided at Schedule 1, and you hereby agree to comply with those terms.

6. CONFIDENTIAL INFORMATION

This section sets out the terms on which both you and EZHost can use each other's Confidential Information.

6.1 Confidential Information

Each party agrees:

- (a) to keep confidential all Confidential Information of the other party; and
- (b) to use the other party's Confidential Information solely for the purposes of this Agreement.

Each party may disclose Confidential Information of the other party only to those of its employees, directors, consultants and contractors:

- a) who have a need to know for the purposes of this Agreement (and only to the extent that each has a need to know); and
- (c) who have undertaken in writing to keep Confidential Information confidential.

A party may disclose Confidential Information if legally compelled to do so by any judicial or administrative body, in which case that party must promptly inform the other party and take all reasonably available legal measures to restrict such disclosure.

7. WARRANTIES

This section sets out the fact that EZHost makes limited promises in relation to the Services, but does not affect any statutory consumer rights you may have.

7.1 Exclusions

- (a) Except for the Service Level Agreement provided at Schedule 2 and to the maximum extent permitted by law, the Services are provided on an "as is" basis, and your use of the Services is at its own risk.
- (b) Except as otherwise provided in this Agreement, any written materials provided by EZHost, or information on EZHost's website, are for informative purposes only and, whether communicated to you before or after the Commencement Date, will not create any express or implied warranties, guarantee of performance, or contractual obligations on the part of EZHost.
- (c) To the maximum extent permitted by law:
 - (i) EZHost does not make, and hereby disclaims, any and all other express and/or implied warranties, including, but not limited to any warranties arising from a course of dealing, usage, or trade practice; and
 - (ii) EZHost does not warrant that the Services will be uninterrupted, error-free, or completely secure.

(d) Nothing in this clause 7 purports or attempts to exclude, restrict or modify any Prescribed Terms.

8. LIMITATION OF LIABILITY

This section sets out limitations on EZHost's liability to you under this Agreement.

(a) To the maximum extent permitted by law, EZHost's liability (including, for the purpose of this clause 8 only, the liability of EZHost's employees, agents and representatives) to you and any other User arising out of or relating to this Agreement or the provision of any Services is limited to an amount equal to the Fees paid by you to EZHost under this Agreement in the year preceding the date you claim the liability arose.

(b) To the maximum extent permitted by law, EZHost will not be liable for any indirect or consequential loss or damage, including without limitation loss of data, loss of profits, loss of business opportunity or any other special, punitive or incidental damages arising out of or in relation to the supply of Services under this Agreement, howsoever caused, and whether or not EZHost has been advised of the possibility of such loss.

(c) Notwithstanding clause 8(a), except as required by any Prescribed Terms, all conditions, warranties, terms and obligations expressed or implied by law or otherwise relating to the performance of EZHost's obligations under, or any other services supplied by EZHost in connection with, this Agreement are excluded.

(d) Where any Prescribed Terms apply, the liability of EZHost to you for a breach of a Prescribed Term implied into this agreement is limited to the maximum extent permitted by law, and in the case of Prescribed Terms under the Australian Consumer Law, to at EZHost's option:

(i) in the case of any good supplied under this agreement to be limited to the replacement of the goods or the supply of equivalent goods; the repair of the goods; the payment of the cost of replacing the goods or of acquiring equivalent goods, or the payment of having the goods repaired; and

(ii) in the case of any services supplied under this agreement, be limited to performing the services, or re-performing any defective services or paying for the cost of having equivalent services to the services performed.

9. TERM AND TERMINATION

This section sets out the circumstances under which you and EZHost may terminate this Agreement, and the consequences of termination.

9.1 Term

This Agreement commences on the Commencement Date and continues in force for the Contract Period or until terminated in accordance with this clause 9.

9.2 Termination for Upgrade

You may terminate this Agreement with immediate effect, if you enter into a new agreement for Services with EZHost which has a higher Monthly Fee than this Agreement.

9.3 Termination with Notice

- (a) You may terminate this Agreement by giving EZHost 30 days' prior written notice.
- (b) EZHost may terminate this Agreement by giving you 14 days' prior written notice.
- (c) If this Agreement is terminated by you pursuant to this clause 9.3(a), then:
 - (i) if the effective date of termination is on or before the end of the Contract Period, all amounts due from you to EZHost for the entire Contract Period are immediately due and payable; and
 - (ii) if the effective date of termination is after the end of the Contract Period, only those amounts due from you to EZHost for the period up to and including the effective termination date are payable.
- (d) If this Agreement is terminated by EZHost pursuant to clause 9.3(b), then only those amounts due to EZHost for the period up to and including the effective termination date will be payable by you.

9.4 Termination for Breach

Either party has the right to terminate this Agreement immediately by notice in writing if the other party breaches any material term or condition of this Agreement and fails to remedy such breach within 30 days of receipt of written notice of the breach, calling for it to be remedied. Your failure to pay Fees invoiced by EZHost must be remedied within seven days of receipt of written notice from EZHost requiring payment.

9.5 Termination for Insolvency

Either party has the right to terminate this Agreement immediately by giving the other party notice in writing if:

- (a) the other party becomes the subject of a voluntary petition in bankruptcy or any voluntary proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors; or
- (b) the other party becomes the subject of an involuntary petition in bankruptcy or any involuntary proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors, if such petition or proceeding is not dismissed within 60 days of filing.

9.6 Termination for Other Reasons

Without limiting the generality of any other clause in this Agreement, EZHost may terminate this Agreement immediately by giving the other party notice in writing if:

- (a) you are a partnership and either dissolve, threaten to dissolve or are at risk of dissolving;
- (b) you, being a natural person, die;
- (c) you cease or threaten to cease conducting business in a normal manner;
- (d) there is service on either party of a notice from a court or tribunal of competent jurisdiction with an order that one or a number of your websites that are loaded onto Dedicated Server be unloaded, taken down or removed from the Internet;
- (e) there is an occurrence of any malicious, reckless or negligent activity (including DOS attacks, hacking or virus) which causes or is likely to cause a risk to the stability of the EZHost Network and/or the EZHost IP Network Infrastructure; or
- (f) there is any over-loading of the Dedicated Server and/or the EZHost Network beyond its reasonable capacity including, but not limited to, stress-testing it by sending a large number of contemporaneous requests via the Dedicated Server.

9.7 Remedies arising from Termination

If notice is given to you pursuant to clause 9.3(b) or clause 9.4 EZHost may, in addition to terminating this Agreement:

- (a) retain any moneys paid by you;
- (b) charge a reasonable sum for work performed in respect of which work no sum has been previously charged to you;
- (c) be regarded as discharged from any further obligations to you under this Agreement; and
- (d) pursue any additional or alternative remedies provided by law against you.

10. GENERAL

This section sets out general and miscellaneous terms, and interpretation principles, governing this Agreement.

10.1 Force Majeure

Except for the obligation to pay money, neither party will be liable for any failure or delay in its performance under this Agreement due to any cause beyond its reasonable control (an event of force majeure), provided that the delayed party:

- (a) gives the other party prompt notice of such cause; and
- (b) uses its reasonable commercial efforts to promptly correct such failure or delay in performance.

10.2 Marketing

EZHost may refer to your trade name and trade mark, and may briefly describe your business in EZHost's marketing materials and on the EZHost Website, subject to EZHost obtaining the prior written approval of an authorised officer.

10.3 Non-Solicitation

Should you or any of your related bodies corporate or its affiliates, directly or indirectly, solicit or attempt to solicit for employment any persons employed by EZHost during the period beginning on the Commencement Date and ending one year after the termination or expiration of this Agreement in accordance with its terms, you must pay EZHost an amount equal to 35% of EZHost's total salary package for that employee.

10.4 Governing Law

This Agreement is made under, governed by and construed in accordance with the laws of the state of Queensland, Australia, and the parties submit to the non-exclusive jurisdiction of the courts of that state.

10.5 Waiver

The waiver of any breach or default of this Agreement will not constitute a waiver of any subsequent breach or default, and will not act to amend or negate the rights of the waiving party.

10.6 Assignment

(a) You may not assign your rights or delegate your duties under this Agreement either in whole or in part without the prior written consent of EZHost. You may assign this Agreement in whole as part of a corporate reorganisation, consolidation, merger, or sale of substantially all of your assets.

(b) EZHost may assign this Agreement in whole or part.

10.7 Notices

(a) Any notice or communication required to be given under this Agreement may be delivered by EZHost to you by hand, or sent by overnight courier, confirmed facsimile, or registered or certified mail, in each case to your address indicated in the Agreement Details, or at such other address as may be given to EZHost by you in writing. Such notice will be deemed to have been given as of the date it is delivered.

(b) Any notice or communication you are required to make under this Agreement to EZHost must be delivered by email to EZHost's email address provided in the Agreement Details. Such notice will be deemed to have been given as at the date EZHost provides a return receipt by email.

10.8 No Agency

EZHost and the Customer are independent contractors and nothing in this Agreement is intended to, or shall operate to, create a partnership between the parties, or to authorise either party to act as agent for the other. Neither party shall have the authority to act in the name or on behalf of the other, or otherwise to bind the other in any way.

10.9 Entire Agreement

This Agreement, including the Agreement Details and the contents of the Schedules, constitutes the entire agreement between the parties with respect to its subject matter, and replaces any and all prior or contemporaneous discussions, negotiations, understandings and agreements.

10.10 Counterparts

This Agreement may be executed in two or more counterparts, each of

which will be deemed an original, but all of which together will constitute one and the same instrument.

10.11 Severability

The provisions of this agreement are severable. If any provision of this Agreement is found or held to be invalid or unenforceable, that provision will be construed, to the extent feasible under the applicable law, to render the provision enforceable. If no feasible interpretation would save such provision, it is to be severed from the remainder of this agreement which is to remain in full force and effect and will be interpreted so as to achieve the commercial intentions of the parties.

10.12 Substitution

EZHost may substitute, change or modify the System Software or Hardware at any time, but in doing so will not substantially alter the Services without your prior consent.

10.13 Release of Information

EZHost reserves the right to release your contact information to administrators at other sites when there are violations of system security, in order to assist them in resolving security incidents. EZHost will also fully co-operate with any government departments in investigations of suspected violations of law. EZHost's [Privacy Policy](#) forms part of this agreement.

10.14 Precedence

Where any conflict occurs between the provisions contained in two or more of the documents forming this Agreement, the document lower in the order of precedence will where possible be read down to resolve such conflict. If the conflict remains incapable of resolution by reading down, the conflicting provisions will be severed from the document lower in the order of precedence without otherwise diminishing the enforceability of the remaining provisions of that document.

11. DEFINITIONS AND INTERPRETATION

This section sets out the meaning of certain defined terms used in this Agreement.

11.1 Definitions

In addition to the terms defined in the Agreement Details, unless the context otherwise requires:

Agreement Details means the matters set out in items 1-15 at the front of this Agreement.

Application means any application or software used by you or on your behalf including the System Software.

Application Security Measures means measures taken or to be taken throughout an Application's life cycle to prevent exceptions in the security policy of an Application or the underlying vulnerabilities through flaws in the design, development, deployment, upgrades or maintenance of the Application.

Bandwidth means the Internet connectivity services of the data/bandwidth specified in the Service Specification.

Cabinet Hardware means the network from outside the Dedicated Server to outside your cabinet switch.

Confidential Information means the confidential information of a party which relates to the subject matter of this Agreement and includes but is not limited to information relating to its business plans, customers, customer information, technology, products and its proprietary software, other than information which:

- (a) is known to the receiving party prior to receipt from the disclosing party directly or indirectly from a source other than one having an obligation of confidentiality to the disclosing party;
- (b) becomes known (independently of disclosure by the disclosing party) to the receiving party directly or indirectly from a source other than one having an obligation of confidentiality to the disclosing party;
- (c) becomes publicly known or otherwise ceases to be secret or confidential, except through a breach of this Agreement by the receiving party; or
- (d) is independently developed by the receiving party.

Data Centre means the business premises provided by or for EZHost to store and operate the Hardware.

Downtime means collectively Hardware Downtime; and Service Downtime as defined in the Service Level Agreement provided at Schedule 2.

Dedicated Server means the server operated on the Hardware using the System Software and the Bandwidth.

Dedicated Server Package means:

- a) the Setup Services;
- b) the Bandwidth;
- c) the EZHost Network;
- d) the Hardware;
- e) the System Software;
- f) the Firewall; and
- g) the Data Centre.

EZHost Carriers mean the third-party providers of the carrier services of the Bandwidth.

EZHost Network means the network from outside your cabinet switch to the border of the facilities of the EZHost Carriers (that border being where EZHost transmits your content to the relevant EZHost Carriers at the EZHost border router port(s)) but excluding any network arising from the circuit or link between the EZHost IP Network Infrastructure and the relevant EZHost Carriers.

EZHost IP Network Infrastructure means the technical infrastructure that hosts and connects Users of the Dedicated Server to the Internet.

Firewall means the Packet Filtering Technology specified in the Service Specification.

Firewall Management means configuring a Firewall to your specification.

GST has the same meaning as in the A New Tax System (Goods & Services Tax) Act 1999 (Cth).

Hardware means the server equipment on which the Dedicated Server is running including the cabling from the Dedicated Server to the outbound port of your cabinet switch.

Hardware Maintenance and Support means maintenance of the Hardware, Firewall and Cabinet Hardware, so as to enable provision of the Services including any maintenance, servicing and repairing of identified errors or malfunctions of the Hardware, Firewall or the Cabinet Hardware or the EZHost Network.

IP Addresses means an internet protocol (IP) address being a numerical identification and logical address that is assigned to devices participating in a computer.

Managed Backup means an online service provided to you for the creation of a backup copy of digital files stored on the Hardware of the file types, image snapshots and the backup frequency or scheduled to times requested by you, or described in the Service Specification, or provided for free and bundled with a Service described in the Service Specification.

Managed Services means collectively:

- (a) Managed Security Updates;
- (b) Outsourced Website Monitoring;
- (c) Outsourced Backup Services;
- (d) Systems Administration Services.

Managed Security Updates means the server management service supplied by EZHost to you in order to perform security patching and monitoring of your websites loaded onto the Dedicated Server.

Network Security Measures means security measures to prevent exceptions in the security for the network used by the User for purposes including receipt of the Services.

Outsourced Backup Services means the provision of assistance by EZHost or its authorised representative in providing a Managed Backup service.

Outsourced Website Monitoring means the monitoring of your website and Applications as installed on the Dedicated Server for possible outages or a deterioration in performance, by EZHost or its authorised representative.

Packet Filtering Technologies means a technique for implementing security firewalls specifically by controlling access to a network by analysing the incoming and outgoing packets and letting them pass or halting them based on the IP Addresses of the source and destination.

Prescribed Terms means terms, conditions and warranties impliedly or expressly included by law into some contracts for the supply of goods or services and which the law expressly provides may not be excluded, restricted or modified or may be excluded, restricted or modified only to a limited extent.

Professional Service means an optional service which is provided at your request and charged to you at EZHost's Hourly Rates, including disaster recovery measures and technical support services.

RAID means a Redundant Array of Independent Disks being a system of multiple hard drives for sharing or replicating digital data.

Service Specification means the entirety of the equipment, software, services and pricing set out in the Agreement Details.

Services means any service, software or equipment supplied to you under this Agreement, including:

- a) the Dedicated Server Package; and
- b) any Additional Services specified in the Agreement Details or later requested by you such as:
 - (i) the Hardware Maintenance and Support;
 - (ii) IP Addresses;
 - (iii) Website Monitoring;
 - (iv) Systems Administration Services;
 - (v) Managed Services;
 - (vi) Managed Backup;

- (vii) Firewall Management; and
- (viii) any Professional Services supplied at your request.

Setup Services means initialisation tasks and the commencement of supply of the Services by EZHost, including the installation of the System Software onto the Dedicated Server and the configuration of System Software to receive the Bandwidth.

SMS Monitoring means the applications so named accessible via EZHost's online administration panel which can be used to enable SMS alerts in the event of Downtime such as to render out of action the your websites or applications which are loaded onto the Dedicated Server and described in the Service Specification.

System Software means the operating system and web server software associated with providing the Bandwidth and/or operating the Hardware, as described in the Service Specification.

Systems Administration Services means EZHost undertaking a role of assisting the Systems Administrator with basic tasks.

Systems Administrator means the collection of tasks related to maintaining and utilising System Software including maintaining Users, maintaining websites, maintaining email setting, configuration of databases, uploading content and associated programming.

Terms and Conditions means these terms and conditions.

User or Users means you or any other person or entity that you permit or allow to access the Services.

Website Monitoring means the applications so named accessible via EZHost's online administration panel which can be used to enable e-mail alerts, or as an optional extra SMS Monitoring, in the event of Downtime so as to render out of action your websites or applications which are loaded on the Dedicated Server.

11.2 Interpretation

- (a) References to:

- (i) the singular includes the plural and the plural includes the singular;
- (ii) a person includes a body corporate;
- (iii) a party includes the party's executors, administrators, successors and permitted assigns;
- (iv) a clause is a reference to a clause or subclause of this Agreement;
- (v) \$ or dollars are references to Australian dollars; and
- (vi) a subclause is a reference to a subclause of the clause in which that reference is made.

(b) Where examples of a thing or set of things are given by reference to the word "including", the meaning of references to the thing or set of things is not to be limited by reference to the examples.

(c) If a party consists of more than one person, this Agreement binds them jointly and each of them severally.

(d) Headings (including explanations below the headings) are for convenience only and do not affect the interpretation of this Agreement.

Schedule 1 – Microsoft End User Licence Agreement

MICROSOFT VOLUME LICENSING END USER LICENCE TERMS TERMS AND CONDITIONS REGARDING USE OF MICROSOFT SOFTWARE

This document governs the use of Microsoft software, which may include associated media, printed materials, and "online" or electronic documentation (individually and collectively, "Licensed Products") provided by (hereinafter referred to as "Customer"). Customer does not own the Licensed Products and the use thereof is subject to certain rights and limitations of which Customer must inform you. Your right to use the Licensed Products is subject to the terms of your agreement with Customer, and to your understanding of, compliance with, and consent to the following terms and conditions, which Customer does not have authority to vary, alter, or amend.

1. DEFINITIONS. "Client Software" means software that allows a Device to access or utilize the services or functionality provided by the Server Software. "Device" means each of a computer, workstation, terminal,

handheld PC, pager, telephone, personal digital assistant, “smart phone,” server or other electronic device.

“Server Software” means software that provides services or functionality on a computer acting as a server.

“Software Documentation” means any end user document included with server software.

“Redistribution Software” means the software described in Paragraph 4 (“Use of Redistribution Software”) below.

2. OWNERSHIP OF LICENSED PRODUCTS. The licensed products are licensed to customer from an affiliate of the Microsoft Corporation (collectively “Microsoft”). All title and intellectual property rights in and to the licensed products (and the constituent elements thereof, including but not limited to any images, photographs, animations, video, audio, music, text and “applets” incorporated into the licensed products) are owned by Microsoft or its suppliers. The licensed products are protected by copyright laws and international copyright treaties, as well as other intellectual property laws and treaties. Your possession, access, or use of the licensed products does not transfer any ownership of the licensed products or any intellectual property rights to you.

3. USE OF CLIENT SOFTWARE. You may use the client software installed on your devices by customer only in accordance with the instructions, and only in connection with the services, provided to you by customer. The terms of this document permanently and irrevocably supersede the terms of any Microsoft end user license agreement that may be presented in electronic form during your use of the client software.

4. USE OF REDISTRIBUTION SOFTWARE. In connection with the services provided to you by customer, you may have access to certain “sample,” “redistributable” and/or software development (“SDK”) software code and tools (individually and collectively “redistribution software”).

YOU MAY NOT USE, MODIFY, COPY, AND/OR DISTRIBUTE ANY REDISTRIBUTION SOFTWARE UNLESS YOU EXPRESSLY AGREE TO AND COMPLY WITH CERTAIN ADDITIONAL TERMS CONTAINED IN THE SERVICES PROVIDER USE RIGHTS (“SPUR”) APPLICABLE TO CUSTOMER, WHICH TERMS MUST BE PROVIDED TO YOU BY CUSTOMER. Microsoft does not permit you to use any redistribution

software unless you expressly agree to and comply with such additional terms, as provided to you by customer.

5. COPIES. You may not make any copies of the licensed products; provided, however, that you may (a) make one copy of client software on your device as expressly authorized by customer; and (b) you may make copies of certain redistribution software in accordance with paragraph 4 (use of redistribution software). You must erase or destroy all such client software and/or redistribution software upon termination or cancellation of your agreement with customer, upon notice from customer or upon transfer of your device to another person or entity, whichever occurs first. You may not copy any printed materials accompanying the licensed products.

6. LIMITATIONS ON REVERSE ENGINEERING, DECOMPILATION AND DISASSEMBLY. You may not reverse engineer, decompile, or disassemble the licensed products, except and only to the extent that applicable law, notwithstanding this limitation, expressly permits such activity.

7. NO RENTAL. You may not rent, lease, lend, pledge, or directly or indirectly transfer or distribute the licensed products to any third party, and may not permit any third party to have access to and/or use the functionality of the licensed products except for the sole purpose of accessing the functionality of the licensed products in the form of software services in accordance with the terms of this agreement and any agreement between you and customer.

8. TERMINATION. Without prejudice to any other rights, customer may terminate your rights to use the licensed products if you fail to comply with these terms and conditions. In the event of termination or cancellation of your agreement with customer or customer's agreement with Microsoft under which the licensed products are licensed, you must stop using and/or accessing the licensed products, and destroy all copies of the licensed products and all of its component parts.

9. NO WARRANTIES, LIABILITIES OR REMEDIES BY MICROSOFT. Any warranties, liability for damages and remedies, if any, are provided solely by customer and not by Microsoft, its affiliates or subsidiaries.

10. PRODUCT SUPPORT. Any support for the licensed products is provided to you by customer and is not provided by Microsoft, its affiliates or subsidiaries.

11. NOT FAULT TOLERANT. THE LICENSED PRODUCTS MAY CONTAIN TECHNOLOGY THAT IS NOT FAULT TOLERANT AND ARE NOT DESIGNED, MANUFACTURED, OR INTENDED FOR USE IN ENVIRONMENTS OR APPLICATIONS IN WHICH THE FAILURE OF THE LICENSED PRODUCTS COULD LEAD TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL, PROPERTY OR ENVIRONMENTAL DAMAGE.

12. EXPORT RESTRICTIONS. The Licensed Products are of U.S. origin for purposes of U.S. export control laws. You agree to comply with all applicable international and U.S. laws that apply to the Licensed Products, including the U.S. Export Administration Regulations, as well as end-user, end-use and destination restrictions issued by the U.S. and other governments. For additional information, see <http://www.microsoft.com/exporting/>

13. LIABILITY FOR BREACH. In addition to any liability you may have to customer, you agree that you will also be legally responsible directly to Microsoft for any breach of these terms and conditions.

Schedule 2

SERVICE LEVEL AGREEMENT – EZHOST

THE SERVICE LEVEL AGREEMENT IS EZHOST'S GUARANTEE TO YOU IN RELATION TO POTENTIAL FAULTS, INTERRUPTIONS OR DOWNTIME OF ANY HARDWARE OR FIREWALLS, OR THE PROVISION OF SERVICES TO YOU. IT SETS OUT IN WHAT CIRCUMSTANCES FAULTS, INTERRUPTIONS OR DOWNTIME WILL LEAD TO A REFUND OF A PROPORTION OF YOUR MONTHLY FEE. YOU HAVE CERTAIN RESPONSIBILITIES UNDER THE SERVICE LEVEL AGREEMENT, INCLUDING REPORTING TO EZHOST WHEN SUCH FAULTS, INTERRUPTIONS AND DOWNTIME OCCUR.

1. DEFINITIONS

In this Service Level Agreement, capitalised terms have the following meaning:

Agreement means an agreement for dedicated hosting services entered into between EZHost and the Customer.

Application means any application or software used by or on behalf of the Customer including the System Software.

Application Fault means any Services fault, interruption or downtime arising at least in part from an Application.

Bandwidth means Internet connectivity services of the data/bandwidth.

Cabinet Hardware means the network from outside the Dedicated Server to outside your cabinet switch.

Customer means the person who has entered into an Agreement with EZHost for the provision of the Services.

Dedicated Server means the server operated on the Hardware using the System Software and the Bandwidth.

Downtime means Hardware Downtime and Service Downtime.

EZHost means EZHost (ABN 16 667 211 968).

EZHost IP Network Infrastructure means the technical infrastructure that hosts and connects Users of the Dedicated Server to the Internet.

Firewall Downtime means any downtime of the Firewall installed by EZHost on your Dedicated Server.

Hardware means the server equipment on which the Dedicated Server is running including the cabling from the Dedicated Server to the outbound port of the Customer's cabinet switch.

Hardware Downtime means when the Dedicated Server is not online due to a Hardware Fault or Firewall Downtime and when it fails to come online after a reboot within 15 minutes of one of EZHost's call centre support operators lodging an emergency ticket.

Hardware Fault means a Hardware fault arising solely or primarily from the failure of a physical component of the Hardware but excluding any arising from any Application Fault or any Firewall Downtime.

Monthly Fee means the fee payable on a monthly basis by the Customer to EZHost for the provision of Services, as specified in the Agreement.

Packet Loss means when one or more packets of data traveling across a computer network fail to reach their destination as a result of Hardware failure or Cabinet Hardware failure and excludes loss as a result of DOS attacks, hacking attacks, or any issue not related to Hardware.

Service Downtime means:

a) any interruption of 90 seconds or more in the availability to Users of any Application, directly or indirectly made available through the Services, only if such interruption is due to either:

- i. a failure by EZHost to use reasonable endeavours to manage a situation so as to cause interruption in network availability, or
- ii. a disruption in the EZHost Network; or

b) if Packet Loss is in excess of 20% and is sustained for five minutes or more; or

c) if 100% Packet Loss is identified and continues for one minute or more; or

d) if the latency across the EZHost IP Network Infrastructure exceeds 120 milliseconds; but excluding any Service Downtime itemised in subparagraphs (a) to (d) above arising from:

- i. Hardware Fault; or
- ii. Application Fault; or
- iii. Firewall Downtime.

Services mean any service, software or equipment supplied to the Customer under an Agreement, as specified in the Agreement.

System Software means the operating system and web server software associated with providing the Bandwidth and/or operating the Hardware.

2. SERVICE LEVEL AGREEMENT

During the term of the Agreement, the Customer shall have the benefit of this Service Level Agreement for any Hardware Downtime, Service Downtime or Firewall Downtime reported to EZHost by the Customer.

3. FORCE MAJEURE EVENT

Other than as expressly provided in this Service Level Agreement, EZHost is not liable for failure or delay in performing its obligations under or pursuant to the Agreement if such failure or delay is due to:

- a) any cause beyond EZHost's reasonable control (force majeure event); and/or
- b) any reckless, malicious or negligent activity of the Customer or any third party; and/or
- c) any circumstances beyond EZHost's reasonable control, including 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 the Services.

4. 99.99% UPTIME GUARANTEE

Subject to clauses 2 and 7, in the event of Service Downtime, such that the Bandwidth connection from the Dedicated Server to the outbound port of your cabinet switch fails for more than four minutes cumulative in any one calendar month, EZHost will at the Customer's request, credit the Customer's account for the failed service with 10% of the Monthly Fee. Thereafter, EZHost will credit the Customer's account for Service Downtime according to the following schedule:

- a) if Service Downtime is greater than 4 minutes but does not exceed 7.2 hours, the Customer will be credited 10% of the Monthly Fee;
- b) if Service Downtime is greater than 7.2 hours but does not exceed 14.4 hours, the Customer will be credited 20% of the Monthly Fee;
- c) if Service Downtime is greater than 14.4 hours but not exceeding 21.6 hours, the Customer will be credited 40% of the

Monthly Fee;

d) if Service Downtime is greater than 21.6 hours but does not exceed 28.8 hours, the Customer will be credited 60% of the Monthly Fee; and

e) if Service Downtime is greater than 28.8 hours, the Customer will be credited 80% of the Monthly Fee.

5. HARDWARE DOWNTIME

If Hardware Downtime occurs then, subject to clauses 2 and 7, EZHost will at the Customer's request credit the Customer's account in respect of a calendar month 10% of your Monthly Fee for every one hour of cumulative Hardware Downtime in excess of the first hour, up to a maximum of 100% of that Monthly Fee.

6. COMMENCEMENT OF DOWNTIME

For the purposes of this Service Level Agreement, any Downtime begins at the time the Customer reports Services failure to EZHost. If the Customer does not report Services failure or Hardware Fault or Firewall Downtime before EZHost resolves the problem, then Downtime will not be accumulated.

7. TYPE OF DOWNTIME

For the purposes of this Service Level Agreement, EZHost shall in its sole discretion determine whether an incident of Hardware or Services failure reported to EZHost is to be treated as either:

- a) Service Downtime;
- b) Hardware Downtime or
- c) an incident not comprising Downtime.

8. MAINTENANCE WINDOWS

a) In order to maintain and upgrade the EZHost IP Network Infrastructure, EZHost performs scheduled maintenance on its equipment. Outages or performance degradation during scheduled maintenance windows as a result of router, switch or server maintenance, are not considered Downtime for purposes of this Service Level Agreement.

b) EZHost shall make all commercially reasonable efforts to provide the Customer with reasonable prior notification of all scheduled and emergency maintenance procedures.

9. INVESTIGATION OF SERVICE INTERRUPTIONS

At the Customer's request, EZHost will investigate any report of any Hardware or Services failure and attempt to remedy any Downtime expeditiously. If EZHost reasonably determines that all facilities, systems and equipment furnished by EZHost are functioning properly, and that the reported Hardware or Services failure arose from some other cause, EZHost can continue to investigate such downtime at your request. Further investigation of service interruptions are not included in the Services and will be charged on a time cost basis, plus any disbursements.

10. SOLE REMEDY

The terms and conditions of this Service Level Agreement shall be the Customer's sole remedy and EZHost sole obligation to the Customer in relation to any Downtime and for any other failures of Hardware or Services.

Schedule 3

ACCEPTABLE USE POLICY – EZHOST

THE ACCEPTABLE USE POLICY FORMS PART OF THE AGREEMENT AND SETS OUT DISRUPTIVE AND ILLEGAL ACTIVITIES WHICH YOU (OR ANY USERS) ARE PROHIBITED FROM USING THE SERVICES TO ENGAGE IN. IF YOU OR ANY USERS DO NOT COMPLY WITH THE POLICY THEN EZHOST IS ABLE TO SUSPEND OR TERMINATE THE PROVISION OF SERVICES TO YOU.

1. DEFINITIONS

In this Acceptable Use Policy (Policy), capitalised words have the following meaning:

Agreement means an agreement for dedicated hosting services entered into between EZHost and the Customer.

Customer means the person who has entered into an Agreement with EZHost for the provision of the Services.

EZHost means EZHost (ABN 16 667 211 968)

Services means the dedicated hosting services, and any other additional services, provided by EZHost to the Customer pursuant to an Agreement.

User or Users means the Customer or any other person or entity that the Customer permits or allows to access the Services.

2. INTRODUCTION

This Policy governs the use of the Services by the Customer. This Policy is incorporated by reference into each agreement EZHost enters into with a Customer for the use of such Services. EZHost may modify this Policy at any time without notice by posting it on EZHost's website (ezhost.net.au).

3. WARRANTY

The Customer is solely responsible for the content of any postings, data or transmissions using the Services, or any other use of the Services by a User.

The Customer represents and warrants that Users will not use the Services for any activity which is prohibited by EZHost under this Policy.

4. PROHIBITED ACTIVITY

4.1 Disruptive Activity

The Customer must not, and will ensure that Users will not, use the Services for any disruptive activity, being any activity which interferes with, or causes or contributes to disruption(s) of other network users, network services or network equipment. Disruptive activity includes but is not limited to using the Services:

- a) to impair the operation of EZHost or its facilities or the facilities of other network hosts or Internet users;
- b) to subvert, or assist others in subverting, the security or integrity of EZHost's systems, facilities or equipment;
- c) to gain unauthorised access to the computer networks of EZHost or any other person;
- d) to forge the signature or other identifying mark or code of any other person, impersonate or assume the identity of any other person or engage in any other activity to attempt to deceive or mislead other persons regarding the true identity of the User;
- e) to distribute or post any virus, worm, Trojan horse, or computer code intended to disrupt services, destroy data, destroy or damage equipment;

- f) to conduct port scans or other invasive procedures against any server (except a server for which the User is an authorised System Administrator);
- g) to distribute, advertise or promote software or services which have the primary purpose of encouraging or facilitating unsolicited commercial email or spam; or
- h) in any other manner, whether intentionally or inadvertently, which interrupts or interferes with the Internet usage of other persons.

4.2 Unlawful Activity

The Customer must not, and will ensure that Users do not, use the Services for any unlawful, tortious or actionable activity, which includes but is not limited to using the Services to:

- a) publish or disseminate defamatory material, personal information or likeness of a person without that person's consent; or material which otherwise violates the privacy of any person;
- b) threaten harm to any person, or harass or abuse any person; or
- c) solicit acts or services that are unlawful.

4.3 Illegal Activity

The Customer must not, and will ensure that Users do not, use the Services for any illegal activity, which includes but is not limited to using the services to:

- a) copy material from third parties (including text, graphics, music, videos or other material the subject of copyright protection) without proper authorisation;
- b) misappropriate or infringe the intellectual property rights of any third party, including patents, copyright, trademarks and other rights;
- c) traffic in illegal drugs, illegal gambling, obscene materials or any other products or services that are prohibited under law;
- d) export or import software, technical information, encryption software or technology in violation of regional export control laws; and
- e) solicit acts or services that are illegal.

5. SUSPENSION AND TERMINATION OF SERVICES

EZHost may suspend or terminate the Services immediately, without giving the Customer prior notice, if EZHost reasonably believes in good faith that the Customer or any other User is using the Services for any activity which is prohibited under this Policy.

6. INDEMNITY

The Customer indemnifies and holds harmless EZHost from and against all liabilities, judgements, claims, damages, settlements, expenses and costs (including legal fees and litigation expenses) arising out of or relating to any and all claims by any person relating to use of the Services, including, but not limited to, use of the Services without the consent of the Customer.