



Hosting Terms and Conditions

1. Definitions

- 1.1. "Agreement" means these terms and conditions upon which the Services are provided by the Provider to the User;
- 1.2. "Claim" means every type of claim, action, proceeding or demand for any kind of legal or equitable relief, and including costs, claims for negligence, and claims for contribution or indemnity between a party and a third party;
- 1.3. "Intellectual Property" includes all copyright, registered and unregistered trademarks (including service marks), registered and unregistered designs, and all other rights resulting from intellectual activity in the design, literary or artistic fields;
- 1.4. "Provider" means Mitchell Creative Pty Ltd ACN 152 314 586
- 1.5. "Service/s" means the provision services related to hosting a website on the servers provided by the Provider;
- 1.6. "Server Provider" means Micron 21 ABN 48 147 890 677
- 1.7. "User" a party who receives and uses the Services provided by the Provider.

2. Agreement

- 2.1. These terms and conditions are the terms upon which the Provider supplies its Services to the User and upon which the User uses the Services.
- 2.2. The use of the Services by the User constitutes acceptance of this Agreement.

3. Maintenance and Limitation of Service

- 3.1. The User acknowledges that the Provider must carry out a scheduled maintenance from time to time in order to Provide the Services. The Provider reserves the right to suspend access to the Services during any schedule maintenance.
- 3.2. The User acknowledges that the Services provided will not always be uninterrupted, continuous and fault free.
- 3.3. The User acknowledges that the Provider may have to carry out unscheduled maintenance during work hours where it is not possible to do otherwise.

4. User Data

- 4.1. The User acknowledges that the Provider is not responsible or liable in any manner whatsoever to the User for loss of the User's data, files, content, website, or anything hosted or stored by the Provider and that the User must undertake measures to:
- 4.1.1. prevent any loss or damage to the User's data, website and/or server content;

4.1.2. maintain independent archival and backup copies of the User's website or server content;

4.1.3. and ensure the security, confidentiality and integrity of all the User's website or server content transmitted through or stored on the Provider's servers.

5. Suspension or termination of account

5.1. The Provider may decide to suspend or terminate the provision of the Services to the User in the following circumstances:

5.1.1. there is a reasonable belief that the User's use of the Service may be in breach of any law;

5.1.2. the User has breached this Agreement;

5.1.3. the User's use of the Service may compromise or have an adverse effect on our systems or networks, or the Provider's systems or networks;

5.1.4. the Provider receives a take down or similar notices from a court or other authority in relation to the User's use of the Service;

5.1.5. the User fails to pay any invoice that is issued and overdue.

5.2. If there is reasonable belief that the User's use of the Service may be in breach of any law, then the Provider may notify the relevant authorities, and provide them with relevant information as appears appropriate in the circumstances.

5.3. If the Provider's agreement with its Server Provider comes to an end for any reason, then the Provider may decide to terminate this Agreement. If the Provider terminates this Agreement in accordance with this clause, the User acknowledges and agrees that:

5.3.1. all data stored with the Provider will be deleted or destroyed within 48 hours of termination; and

5.3.2. the Provider cannot recover deleted or destroyed data;

5.3.3. the Provider is not liable for any loss or damage caused by the deletion or destruction of data.

6. Limitation of Liability

6.1. To the extent lawfully possible, the Provider is not liable to the User, whether in contract, tort, equity, by operation of statute or otherwise in respect of any:

6.1.1. indirect or consequential loss or damage; loss of opportunity; loss of revenue; loss of profit or anticipated profit; loss of contracts; loss of goodwill; loss arising from business interruption; or loss arising from any claim against the User;

6.1.2. arising from, or in connection with, this Agreement incurred or suffered by the User or any person claiming through, under, or in connection with the User.

6.2. The liability of the Provider arising out of or in connection with this Agreement, the Services, whether arising in contract, tort, equity by operation of statute or otherwise, is limited to:

6.2.1. the supplying of the relevant Services again, or

6.2.2. the payment of the cost of having the relevant Services supplied again.

7. Indemnity

7.1. The User indemnifies the Provider against all claims action, losses, and expenses of any nature which the Provider may suffer, incur, become liable, or otherwise be required to respond to or defend, in respect of or arising out of any negligent or careless use or misuse by the User, or any persons under the User's control or authority, of any of the Services provided by the Provider.

8. Inconsistency with Law

8.1. If there is any inconsistency between the provisions of this Agreement and any State or Commonwealth legislation or regulation, then this Agreement prevails to the extent permitted by Law.

9. Severance

9.1. If any term or part of a term of this Agreement is or becomes legally ineffective, invalid or unenforceable in any jurisdiction it will be severed and the effectiveness, validity or enforceability of the remainder will not be affected.

10. Proper Law

10.1. This Agreement must be construed in accordance with and governed by the Laws of Queensland

11. Payment for Services

11.1. The payment for the provision of the Services is governed by a separate agreement between the Provider and the User. This Agreement is subject to and conditional upon the payment for the Services to the Provider by the User in accordance with the abovementioned agreement.

12. Changes to Agreement

12.1. The Provider must provide notice to the User of any changes to the Agreement.

12.2. The User has fourteen (14) days from the date of notice to object to any changes of the Agreement.

12.3. In relation to any objection to changes by the User within fourteen (14) days of notice, the Provider will decide in its sole discretion whether:

12.3.1. The User is permitted to terminate this Agreement with the Provider; or

12.3.2. The changes do not apply to the User's use of the Services.

13. Intellectual Property

13.1. The User agrees not to use any Intellectual Property owned by a third party in its use of the Services.

13.2. The User indemnifies the Provider against and agrees to pay the Provider on demand for the amount of any loss or claim arising out of the User's use of Intellectual Property owned by a third party.