

Mitchell Creative Pty Ltd Terms and Conditions for Hosting and Data Management

1 January 2021

These Terms and Conditions are applicable to all data hosting by Mitchell Creative Pty Ltd and any third party supplier to Mitchell Creative Pty Ltd.

In addition to these Terms & Conditions you may also be required to comply with any Terms & Conditions of a Third-Party provider with any Hardware, Software or Services.

1. YOUR OBLIGATIONS

- 1.1. You warrant and agree that you will not use, or attempt to use, our Services:
 - 1.1.1. To commit an offence, or to do anything that is contrary to law;
 - 1.1.2. In any way which damages or interferes with (or threatens to damage or interfere with) the operation of any of our Services or the operation of any of the services provided to us by a Supplier;
 - 1.1.3. In any way that may cause loss or damage to another person or entity;
 - 1.1.4. To transmit, publish or communicate any material which is defamatory, offensive, indecent, abusive, menacing, threatening or unsolicited
 - 1.1.5. To infringe upon another person's right;
 - 1.1.6. In any way that would constitute misuse;
 - 1.1.7. In any way that is contrary to our Terms and Conditions or any other document that forms part of our customer relationship.

2. QUALITY AND MAINTENANCE

- 2.1. We aim to provide, but do not guarantee, continuous and fault-free services.
- 2.2. You acknowledge and agree that:
 - a. We must carry out regular maintenance on our Network in order to continue to provide the Services;
 - b. We will try to carry out maintenance outside of normal business hours, but there may be circumstances where this isn't reasonably possible;
- 2.3. You acknowledge and agree that we may relocate between data centres from time to time, and at our sole discretion. You agree that:
 - a. You will comply with our reasonable directions, and do all things reasonably necessary, to assist with the relocation and to minimise disruption to your Services;
- 2.4. If you experience a fault in your Service, you may report it to us by phone, email or through any other means made available by us from time to time.

2.5. You acknowledge and agree that:

- a. Before reporting a fault to us, you must take all reasonable steps to ensure that the fault is not in, or caused by, any of your equipment;
- b. Any costs that we incur due to your incorrect reporting of faults may be charged to you;
- c. We are not responsible for rectifying any fault in the Service where that fault arising in, or is caused by, your equipment or any third-party provider engaged directly by you;
- d. We are not responsible for any support that is outside of the scope of a written agreement with you;
- e. We are not responsible for the maintenance, repair or proper functioning of your equipment; and
- f. Unless specifically agreed in writing, we are not responsible for the security of your equipment and data.

3. SECURITY

- 3.1. You acknowledge and agree that Mitchell Creative Pty Ltd does not warrant that the Services meet your technical requirements, and that you are required to rely on your own knowledge and expertise when ordering and using Services.
- 3.2. If you request that Mitchell Creative provide technical advice at any time, you agree that:
 - a. Additional charges may apply, which will be disclosed to you before the technical advice is provided;
 - b. You may be required to enter into a Service Schedule as a condition of the technical advice being provided;
 - c. You must supply all relevant information regarding your technical requirements in a timely manner to enable us to provide accurate technical advice. If you do not supply all of the relevant information, and if our technical advice would have been different if all of the relevant information had been provided, you agree that we are not liable for any loss or damage that may result.
- 3.3. You acknowledge and agree that we do not provide you with any security for your Services.
- 3.4. You warrant and agree that you are responsible for managing the security for your Services, unless otherwise agreed in writing.
- 3.5. Whilst we take every care to reduce the risk of data loss or corruption, we are not liable for your data in the event of loss or corruption however so caused.
- 3.6. If you wish to obtain a complete back of your data for local storage, please request this and it will be provided to you. A back up will be provided free of charge, further backups can be obtained by yourself and we can provide a login for you to extract your own backup.

4. AUSTRALIAN CONSUMER LAW

4.1. If you are an individual or a small business, as defined in the Australian Consumer Law, you have certain rights in relation to agreements.

5. EQUIPMENT

5.1. In order to provide you with the Services, we may use Products that we own or lease.

5.2. Where we use our Products in connection with providing you with the Service:

- a. Title in the Products is not transferred to you;
- b. You must comply with our reasonable directions in relation to the use of the Products;
- c. You must only use the Products in accordance with the manufacturer's specifications, the terms of any warranty and the terms of any lease or similar arrangement that we are subject to;
- d. You must not part with possession of the Products, except to us or in accordance with our written directions;
- e. You must not create any encumbrances over our Products;
- f. You must allow us to inspect, test, service, modify, repair, remove or replace our Products when reasonably necessary;
- g. You must do all things necessary to allow us to recover our Products after your Service is cancelled;
- h. You must ensure that the Products will not be altered, repaired, serviced, moved or disconnected except by personnel approved by us in writing; and
- i. You must ensure that you have all consents and approvals necessary for the installation and use of the Products in connection with the Services.

6. THIRD PARTY SUPPLIERS

6.1. We obtain Third Party Products and Services that we use, and permit you to use, as part of our Services. This includes, but is not limited to, software licences.

6.2. We confirm that your agreement is with Mitchell Creative Pty Ltd, and not with any Suppliers (unless you enter into separate agreements with them). We are responsible for providing technical support for the supplied Third-Party Products and Services, unless other arrangements have been agreed to.

7. SUSPENSION OF SERVICES

7.1. We may immediately suspend your Services in the following circumstances:

- a. If you attack, or attempt to attack, other servers within the Mitchell Creative Pty Ltd Network or any of our third party providers.
- b. If you engage in, or attempt to engage in, port-scanning, hacking, snooping, or any attempts to gain access to our systems;
- c. If we reasonably suspect that you have engaged, or intend to engage in, illegal activity;
- d. If we receive any take down or similar notices from a court or other authority;
- e. If we are required to by law; or
- f. If any invoice that we have issued to you is overdue.

8. **FORCE MAJEURE**

- 8.1. A Party is not liable for failure to perform its obligations under this Agreement if such failure is solely the result of the occurrence of an event of Force Majeure.
- 8.2. If a Party asserts that an event of Force Majeure caused a failure to perform its obligations under this Agreement, that Party must prove that:
 - a. It took all reasonable steps to minimise delay or damages caused by foreseeable events;
 - b. It substantially fulfilled all non-excused obligations; and
 - c. It notified the other Party of the likelihood or actual occurrence of the Force Majeure event in a timely manner.