



## **Terms of Service v 2.0**

**DreamIT Solutions Pty. Ltd. ACN 615 368 440**

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## 1. Agreement

Thanks for visiting our Terms of Service (**Agreement**), we are DreamIT Solutions Pty. Ltd. ACN 615 368 440 of 19/2 Garden Boulevard, Dingley Village, VIC 3172 (**DreamIT Solutions, DreamIT Host, we, our, us and other similar terms**). We are committed to providing quality services and this Agreement outlines the terms and conditions related to the services we provide to you.

By subscribing to our Services or activating your account with us, you agree to the terms of this Agreement, and the other policies set out on our website which relate to the services you obtain, including but not limited to the ICANN and .auDA domain name policies.

If you are agreeing to these terms on behalf of an organisation, you represent and warrant you have the power and authority to enter into and bind such organisation.

Throughout the Agreement we use some capitalised words and phrases, like the word Agreement. These capitalised words and phrases are defined in clause 16. They aid to clarify the terms and conditions. Please feel free to email us at [hello@dreamithost.com.au](mailto:hello@dreamithost.com.au), or raise a support ticket via [dreamithost.com.au](https://dreamithost.com.au), if you have any questions.

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## 2. Term

This Agreement will commence when you create an account for a Hosting Plan and will continue for the Subscription Period. On expiry of each Subscription Period, this Agreement will automatically renew for a period equal to the Subscription Period until the date of termination in accordance with clause 13.

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## 3. Services

We will use reasonable endeavours to supply the Services pursuant to the terms of this Agreement until termination in accordance with clause 13.

All Hosting Plans have allocated bandwidth, storage, technology resources and other facilities which vary depending on the plan you have selected. If you exceed your plan limits, you may purchase additional bandwidth and/or storage, by upgrading your plan.

You acknowledge and agree we may use third party suppliers or sub-contractors to provide any part of the Services to you. We may change these suppliers at any time in our sole and absolute discretion. Should a change in provider occur, you acknowledge and agree we are fully authorised to move, alter or delete your data as reasonably necessary.

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## 4. Payment

### 4.1. Service Fees

You are liable for payment of the Fees set out on the Hosting Plan or any other service selected by you. Certain Services may carry a setup Fee which must be paid by you in order to obtain access to the Services.

We may amend the Fees for our Services by giving the you at least 14 days notice prior to the end of the then current Subscription Period. The new Fees will come in effect from the end of the current Subscription Period.

### 4.2. Invoicing and payment

We will provide you with a monthly tax invoice for the Fees. The Fees will be automatically deducted from your account each month via the payment method you selected when you created the Account. Where no means for automatic deduction of the Fees are provided you must pay the invoice within 14 days of the date of the invoice.

Unless expressed otherwise, all Fees are quoted in Australian Dollars and are exclusive of GST, withholding taxes, duties and charges, imposed or levied, in Australia or overseas.

You are responsible for paying all government charges or duties of any kind incurred as a result of this Agreement. Such charges include without limitation all stamp duties, goods and services taxes, value added taxes, export duties, withholding tax, financial institution duties, and any other charges or duties of a like kind.

If any Fees remain unpaid more than 7 days past their due date, we may, without limiting our other rights and remedies, suspend your Service until such amounts are paid in full. We will provide notice that Fees are overdue before any such suspension.

Without prejudice to our other rights and remedies under this Agreement, if any Services Fees are not paid on or before their due date, we reserve the right, immediately and at our sole discretion, to suspend the provision of Services to you until such payment is made (including any interest which we charge on overdue amounts, calculated at the daily rate of 12% per annum).

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## **5. Your use of the Services**

### **5.1. Account**

You acknowledge and agree in order to use the Services and sign up to a Hosting Plan, you are required to provide us with personal information and create an account with us (**Account**). You warrant all information supplied on registration of your Account is true and accurate and will be kept up to date at all times.

### **5.2. Security**

You acknowledge and agree to use reasonable endeavours to keep all Account details strictly confidential including those credentials used to access the Services. You are responsible for all Account activities which occur via the Services, whether those activities are authorised or not, unless they arise from a technical issue within our system.

You must notify us immediately of any breach of security or unauthorised use of your Account. We are not liable for any loss you incur due to any unauthorised use of your Account.

You consent to our use of your login details in provisioning the Services, including in respect of any migration or transition of your account, content or data (to or from any providers we use) as reasonably necessary for the continued provision of the Services.

### **5.3. Your obligations**

You must provide us with such co-operation and support as we may reasonably request to perform the Services, including by assisting with our investigations into any alleged breaches of this Agreement and providing accurate prompt responses to our requests for any information or documentation.

You must conduct such tests and computer virus scanning as may be necessary to ensure that any data uploaded or downloaded by you or your users does not contain any computer virus and will not in any way, corrupt the data or systems of any person (including, without limitation, us or our suppliers).

You are solely responsible for maintaining backup copies of your server content and information. Our servers are not an archive and we have no liability to you or any other person for loss, damage or destruction of any of your content. Should you require backup services we provide access to the Acronis Cloud which you can subscribe to via the MyDreamIT Portal.

Where you operate unmanaged servers via our Service you are solely responsible for the security, maintenance, backups and any other administrative operations you deem necessary to undertake. Notwithstanding that you operate and are responsible for server maintenance, the obligations imposed on you by this Agreement including your compliance with the Prohibited Conduct and Prohibited Content provisions still apply.

#### 5.4. Resource use

All Hosting Plans are subject to general resource and usage monitoring. Any action or process that unreasonably consumes resources degrading the shared environment for other users is subject to review. This includes but is not limited to execution of scripts (PHP, ASP.NET, CGI/PERL, FTP, HTTP, database connections and the like).

Where a Hosting Plan has data transfer and/or disk space usage limits, and you exceed the allocated limits, you will be charged excess data and/or storage Fees at the rate of \$1 per gigabyte (or part thereof) each month.

#### 5.5. Prohibited Conduct

We prohibit the use of our service for illegal activities and you agree we may disclose any and all of your information, including assigned IP numbers, account history, account use, etc. to any law enforcement or government agency who makes a written request without further consent or notification to you. We reserve the right to immediately terminate the Service provided to you if you are found to be hosting content or performing activities of an illegal nature or if you:

- (a) attempt to gain unauthorised access to or impair any aspect of our Service;
- (b) execute scripts or database queries which exceed 180 seconds to complete;
- (c) use the Service for online storage, data backups or archives, other than in association with our Acronis Hosted Backup service;
- (d) execute any program which results in the rapid creation of large volumes of files;
- (e) run standalone, automated server-side processes including, but not limited to any daemon or crypto mining application;
- (f) make available or otherwise operate Tor Exit Nodes;
- (g) operate any form of mass email service, without our written consent;
- (h) host streaming services;
- (i) engage in peer to peer file sharing or run bit torrent applications;
- (j) breach any provision of the *Spam Act 2003* (Cth), the *Privacy Act 1988* (Cth) or similar laws in other jurisdictions;
- (k) use Internet Relay Chat (**IRC**) or IRC bots via the Services we provide;
- (l) provide false or misleading information;
- (m) knowingly transmit any viruses or other disabling features to or via the Service;
- (n) intentionally disable or circumvent any protection or disabling mechanism related to the Service;
- (o) use the Service in any way which could be reasonably expected to interfere with or damage our systems or another user's use of the services we provide;
- (p) host Prohibited Content; or
- (q) attempt any of the above acts or facilitate or assist another person to do any of the above acts.

#### 5.6. Prohibited Content

In respect of any content you warrant you will not submit, host or store on the Service, anything:

- (a) which is false, misleading or otherwise deceptive in any way;
- (b) which promotes unlicensed or illegal financial products;
- (c) which is improper, harmful, threatening, defamatory, abusive, inflammatory, harassing, vulgar, obscene, fraudulent, hateful, or otherwise objectionable;
- (d) used for or in connection with cybercrimes;
- (e) which includes nudity, sex, pornography or adult-oriented content;
- (f) containing any computer virus or malicious code;
- (g) which infringes any third party Intellectual Property rights;
- (h) that is likely to offend, insult or humiliate based on race, religion, ethnicity, gender, age or sexual orientation;
- (i) in breach of any law in Australia or the jurisdiction in which you operate; or
- (j) any other content deemed inappropriate in our sole discretion.

We reserve the right to take down and destroy any content which you submit without notice. It is entirely your responsibility to keep copies of any content uploaded to the service and you must not rely on us storing copies for you.

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## **6. Suspension**

### **6.1. Account suspension and takedown**

We reserve the right to suspend your use of the Service at any time if you consume excessive resources, engage in Prohibited Conduct or you submit, host or store Prohibited Content.

If any Fees remain unpaid more than 14 days past their due date, we may, without limiting our other rights and remedies, suspend your access to the Services until such amounts are paid in full. We will provide you with at least 7 days prior notice that Fees are overdue before any such suspension.

In addition to any other rights under this Agreement, you agree we may, without notice to you, suspend your account and remove, amend or alter your data, if we are made aware of:

- (a) any court order, judgment, determination or other finding of a court or other competent body, that the data is illegal, defamatory, offensive or in breach of a third party's rights;
- (b) if directed to do so by the Australian Communications and Media Authority, or other authority, under a "take down notice"; or
- (c) an outside party or outside device disrupting or attempting to disrupt the Service associated with your account.

### **6.2. Reactivation**

Suspending your access will not constitute a breach of this Agreement by us, nor will it alter your obligation to pay the Fees. Any account deactivated due to non-payment will require a reactivation Fee of \$20.00 prior to reactivation.

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## **7. Warranties**

We warrant that for the Subscription Period our Service will perform substantially in compliance with any documentation provided by us, including the material and description of the Service contained on our website.

While we aim to provide the best possible user experience, subject to the Non-excludable Conditions, we make no warranties or guarantees:

- (a) the Services are fault free;
- (b) regarding our Service's fitness for any particular purpose which we have not expressed; or
- (c) regarding your access to, or the results of your access to, the Services.

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## 8. Service levels and support

We will provide support in respect of our Services via the MyDreamIT web portal.

We guarantee a 99.95% HTTP, FTP, POP, IMAP, SMTP service uptime on all Hosting Plans (**SLAs**). Where we fail to satisfy the SLAs in any calendar month you are entitled to a credit calculated by pro-rating the Fees for that month (**Service Level Credits**). In order to receive Service Level Credits, you must apply by written notice to our support team. Upon receipt of a written notice from you seeking a Service Level Credit our service team may either undertake investigation into your eligibility or provide a refund on a purely commercial basis. Any Service Level Credit payable will be applied to your invoice following our investigations.

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## 9. Privacy and confidentiality

You agree and consent to us handling your personal information in accordance with our privacy policy. We may amend our privacy policy in our sole discretion. If we amend our privacy policy, we will post the new version to <https://dreamithost.com.au/terms-policies/>.

We may disclose information, including, but not limited to, your personal information, a transmission made using our network, or a website, in order to comply with a court order, subpoena, summons, discovery order, warrant, statute, regulation, governmental request to protect our legal rights, prevent harm to persons or where such disclosure is necessary to the proper operation of our Services (**Permitted Disclosures**).

You acknowledge and agree, we have no obligation to inform you if Permitted Disclosures are made.

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## 10. Intellectual property

We warrant we own or have a licence to use the Intellectual Property in the Services we provide.

You are solely responsible for obtaining any and all necessary Intellectual Property rights, clearances, consents and authorisations (**Authorities**), including but not limited to, Authorities to use any materials you give to us and any content that you upload to the Service. You warrant you will obtain all necessary Authorities before you use any third party Intellectual Property in connection with the Services.

You grant to us (and our suppliers) a licence to host and cache the entirety of your website, including data and content supplied by you and/or third parties. You warrant that you hold any agreements or consents required of any third party in connection with the grant of this licence.

Unless otherwise expressed we (or our suppliers) maintain and control ownership of all IP addresses that may be assigned to you and may change or remove any and all such IP addresses.

Nothing in this Agreement transfers to you any rights to the hardware, software or other infrastructure and facilities used by us or our suppliers to deliver the Services. All Intellectual Property in any materials provided by us in connection with the Services (including websites, designs, information, reports and data) other than your pre-existing Intellectual Property, remains ours. We grant you a perpetual, irrevocable, non-exclusive, royalty-free licence to use those materials for the purpose of using our Services.

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## 11. Limitation of Liability

You acknowledge and agree you are entering into and acquiring services under this Agreement for commercial purposes and not for domestic, personal or household use.

We expressly exclude all conditions, warranties and other terms which might otherwise be implied by any law, regulation, statute, common law or law of equity except any Non-excludable Condition.

Subject to the Non-excludable Conditions, we exclude all other liability for any costs, including consequential losses, suffered or incurred directly or indirectly by you in connection with this Agreement, including:

- (a) the Services being inaccessible for any reason;
- (b) for any delay or failure to perform our obligations under this Agreement if such delay or failure is due to termination of access to the Service by the supplier of the Service or as a result of a change to the conditions of supply by that supplier;
- (c) incorrect or corrupt data, lost data, or any inputs or outputs associated with the Services;
- (d) computer virus, trojan and other malware in connection with the Services;
- (e) security vulnerabilities in the Services or any breach of security that results in unauthorised access to, or corruption of data;
- (f) negligence arising from our activities or that of our suppliers;
- (g) any unauthorised activity in relation to your Account or the Services;
- (h) the occurrence of an Event of Force Majeure;
- (i) your breach of this Agreement; or
- (j) any act or omission by you, your personnel, your associates or any related body corporate of yours.

Where a Non-excludable Condition is deemed to apply, to the fullest extent possible under the law, we limit our liability for any breach to:

- (a) in the case of goods: the re-supply of the goods or payment of the cost of the re-supply of the goods; or the replacement or repair of the goods or payment of the cost of replacement or repair of the goods; and
- (b) in the case of services: the resupply of the services; or the payment of the cost of having the services resupplied.

To the maximum extent permitted by law, our aggregate liability for any loss or damage in connection with the provision of the Service, which is not excluded or limited under this clause 11, is limited to the total of the Fees paid by you for the Services over the preceding 6 months.

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## 12. Indemnity

You indemnify us against all costs suffered or incurred by us, however caused, arising wholly or partially, directly or indirectly, in connection with this Agreement or your use of the Services including any costs arising from:

- (a) your breach of any term of this Agreement;
- (b) a dispute between you and a customer or user of your website arising from your use of the Services;

- (c) your infringement of any third party Intellectual Property rights associated with this Agreement; and
- (d) your breach of any laws, including the *Spam Act 2003* (Cth), the *Privacy Act 1988* (Cth) and similar laws in other jurisdictions.

If we take action to recover overdue amounts from you, any reasonable costs incurred by us in recovering the debt, including but not limited to any legal expenses and collection agency charges, will be recoverable from you.

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### 13. Termination

Either party may terminate this Agreement by providing the other with notice in writing at least 7 days prior to the end of any Subscription Period, and upon doing so this Agreement will terminate at the end of the Subscription Period.

You may provide notice of termination in accordance with the notice provisions set out in this clause 13 or by using the cancellation facility contained in your account.

Either party may terminate this Agreement if the other party commits a material breach of this Agreement and the breach is incapable of being remedied or if the breach is capable of being remedied, the party in breach has failed to remedy the breach within 14 days after the receipt of notice to remedy. If we terminate a service for a breach, we may immediately cease any of our other services which we provide to you.

Upon termination:

- (a) your account will remain active for 48 hours during which you may transfer your data off our platform;
- (b) we reserve the right to permanently erase any data associated with your account 48 hours after termination; and
- (c) you must immediately pay any outstanding Fees owed to us (your obligation to pay outstanding Fees survives termination).

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### 14. Dispute Resolution

A party claiming a dispute has arisen under this Agreement (**Dispute**) must give written notice to the other party specifying the nature of the Dispute. The parties must submit themselves to the dispute resolution procedure set out in this clause 14 before commencing any legal proceedings.

If the parties cannot resolve the Dispute between themselves within 30 days then either party may require the Dispute to be referred for mediation. The mediation must be undertaken in accordance with the Resolution Institute Mediation Rules, in Melbourne, Victoria, and unless otherwise agreed between the parties using a mediator nominated by the Resolution Institute. If the Dispute is not resolved within 30 days of the mediation commencing either party may commence proceedings in respect of the Dispute.

Each party must pay its own internal and legal costs in relation to complying with this clause 14. The mediator's costs are to be shared equally.

The parties acknowledge and agree this clause 14 does not apply to the recovery of any debt or prevent a party from instituting proceedings for the purposes of seeking urgent injunctive or similar interim relief from a court.

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### 15. General provisions

**Assignment** - We may assign, encumber, declare a trust over or otherwise create an interest in our rights in this Agreement without your consent. You must not assign, encumber, declare a trust over or otherwise create an interest in your rights in this Agreement without our consent, which must not be unreasonably withheld.

**Entire Agreement** - This document and the policies incorporated by reference contains the entire agreement between the parties about its subject matter. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this document and has no further effect.

**Force Majeure** - If a party is affected by a Force Majeure Event, they must immediately notify the other party of the circumstances. The parties' obligations under this Agreement, other than an obligation to pay the Fees, are suspended for the duration of and to the extent that they are affected by the Force Majeure. However, either party may end this Agreement if the Force Majeure continues to affect the rights and obligations of the parties, under this Agreement, for more than 60 days.

**Governing law** - The laws of Victoria, Australia govern this Agreement. The parties submit to the non-exclusive jurisdiction of courts exercising jurisdiction there.

**Notices** - The parties agree all notices, disclosures and other communications that are provided in accordance with this clause, satisfy any legal requirement that such communications be in writing. Any communication under or in connection with this Agreement:

- (a) which we send to you, must be sent to the email address in your account; or
- (b) which you send to us, must be either delivered to the postal or email address set out in clause 1 of this Agreement.

**Severability** - Any provision of this document which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this document enforceable, unless this would materially change its intended effect.

**Sub-contracting** - We may sub-contract any of our obligations under this Agreement, but such sub-contracting will not release us from our liabilities.

**Variations to this Agreement** - We may vary this Agreement, including by making changes to our Fees, by giving notice to you at least 30 days prior to the end of the Subscription Period. If you do not accept the terms of the variation you may terminate your subscription in accordance with clause 13. By continuing to access or use the services after any variations to this Agreement, you agree to be bound by the amended Agreement.

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## 16. Definitions

**Account** takes its meaning from clause 5.1.

**Agreement** means these Terms of Service.

**Event of Force Majeure** means an act of war (whether declared or not) or terrorism, the mobilisation of armed forces, civil commotion or riot, natural disaster, industrial action or labour disturbance, currency restriction, embargo, action or inaction by a government, a failure of a supplier, public utility or common carrier or computer disruption due to the effects of a computer virus, trojan, malware, a ransomware attack or other malicious code.

**Fees** mean all subscription fees associated with Hosting Plans, Usage Charges, setup costs and any other fees associated with the Services you procure from us.

**Hosting Plans** means the hosting package you selected when entering into this Agreement with us.

**Intellectual Property** means all present and future rights conferred by statute, common law or equity (and all moral rights) in or in relation to business names, domain names, circuit layouts, computer code, confidential information, copyright, designs, formulas, inventions, knowhow, patents, plant varieties, recipes, trade marks, and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic field, the benefit of any application to register such a right and the benefit of any renewal or extension of such a right.

**Non-excludable Condition** means any guarantee, condition or warranty (such as the consumer guarantees implied by the *Competition and Consumer Act 2010* (Cth)), which cannot by law be excluded.

**Prohibited Conduct** takes its meaning from clause 5.5.

**Prohibited Content** takes its meaning from clause 5.6.

**Services** means the Hosting Plans and related services which you subscribe to or otherwise obtain from us.

**Subscription Period** means the duration you signed up for when requesting a Hosting Plan.

**Usage Charges** means any fees chargeable for usage of resources beyond those allocated on your Hosting Plan.

## A. Document change history

Date	Description of Change	Version
6 July 2020	New Terms of Service, replacing legacy terms.	2.0
	Legacy Terms	1.0