

Domain Hosting Terms and Conditions

Dated: 01 November 2010

These are the terms and conditions for the supply of domain hosting services by M2 Digital. These terms and conditions supersede any previous terms and conditions.

M2 Digital is a division of M2 Technology Pty Ltd (ABN: 24 061 357 373).

Please read the following terms and conditions carefully. By signing the order form for M2 Digital's web hosting services, you confirm that you have read, understood, accept and will comply with the terms and conditions below. Please be aware these terms and conditions may be subject to change from time to time.

1.0 Definitions

"Client" or "You" means the Client.

"Client data" means all information, data, text, logos, images, audio, movie clips and/or content in any form that forms part of the client's websites or emails.

"Service" or "Services" means the web hosting service provided by M2 Digital.

"Service Provider" means M2 Digital or its third party service provider.

2.0 General terms and conditions

- 2.1 The Service Provider will supply the Service to you on the terms and conditions set out below.
- 2.2 Each of the terms and conditions below shall be deemed to be separate and severable from the other of them and if any or more of them are determined to be invalid or unenforceable by any Court of competent jurisdiction, such determination and the consequential severance (if any) shall not invalidate the rest of the terms and conditions which shall remain in full force and effect as if such terms and conditions had not been made a part thereof.
- 2.3 M2 Digital will supply Services based on the plan selected by you and will include the allowances specified.
- 2.4 The Service will commence from the nominated date.
- 2.5 The initial term for all Service is 12 months from the commencement date per Clause 2.4.
- 2.6 M2 Digital may vary these terms and conditions, including pricing from time to time. You will be advised by either direct contact via email or general notice on our website (www.m2digital.com.au). Use of the Service by you after publication of announced changes means that you accept the amended terms and conditions.
- 2.7 Any changes in pricing will be effective from your next billing cycle, 30 days after the announced change.
- 2.8 You acknowledge that by subscribing to the Services offered that they do not obtain any rights to the hardware, facilities or infrastructure used by the Service Provider.
- 2.9 You must comply with all laws and regulations applicable to your use of the Service. If you are made aware of any breaches, M2 Digital must be notified immediately in writing.
- 2.10 You agree to grant non-exclusive royalty free license to the Service Provider to use, transmit, display, adapt and reproduce your data to fulfill the Service Provider's obligation to provide the Service.
- 2.11 A provision of, or a right created under this agreement, may not be waived except in writing signed by the party granting the waiver, or varied except in writing signed by the parties.
- 2.12 The law in force in Western Australia governs these terms and conditions and the transactions contemplated by the same.

3.0 Services

- 3.1 You must complete the prescribed service order form indicating the desired plan and submit the signed document to M2 Digital. Incomplete forms will be returned to you and will not be accepted.
- 3.2 You will be supplied domain hosting services as per the prescribed service level chosen up to and including the allowances specified.
- 3.3 Usage in excess of the specified allowance may result in suspension of service until the next billing cycle. You may pay additional fees to increase the allowance.
- 3.4 You will be supplied with a login name and password if applicable to your selected plan.
- 3.5 The Service Provider will be required to perform maintenance to the servers from time to time to ensure that functionality of the servers is maintained. We will endeavour to keep these times to a minimum. However there may be circumstances where the required maintenance is beyond our control. We will advise you by way of announcement on our website of all maintenance causing the Service to be offline.
- 3.6 As part of our service, M2 Digital performs backup of your data on a regular basis for the sole purpose of disaster recovery. However, it is the responsibility of the Client to ensure that they perform their own regular backups. The Service Provider will not be liable for any incomplete, out-of-date, corrupt or otherwise deficient data however caused.
- 3.7 You may cancel or change the ordered Services at any time. However, the change will only be effective from the next billing cycle.
- 3.8 You may not resell Services or assign your rights and obligations under this agreement without the prior written consent of M2 Digital.

4.0 Payment

- 4.1 M2 Digital will invoice you for the Services selected.
- 4.2 Bronze and Silver plans including any additional services selected are invoiced annually in advance. Gold and Platinum plans including any additional services selected are invoiced quarterly in advance.
- 4.3 The fee payable is as per the published fees as amended from time to time per Clauses 2.5 & 2.6.
- 4.4 You must pay the invoice within 14 days of the invoice issue date. Failure to pay the invoice within these terms may result in suspension of service. Fees may be payable for resumption of suspended service.
- 4.5 Service resumption fees will not be payable if the suspension is as a result of Clause 3.3.
- 4.6 Payments can be made by EFT, cheque, VISA or Mastercard.
- 4.7 You may opt to have their VISA or Mastercard direct debited for the fees payable by selecting the option on the order form. You may also opt for this service at a later date by completing the direct debit form.
- 4.8 By selecting the direct debit option, you authorise M2 Digital to debit the selected credit card for the amount outstanding at the date of the invoice. A tax invoice will be supplied to you.
- 4.9 Should you make any changes to the Services provided per Clause 3.7, the new charges will only be effective from the next billing cycle.

5.0 Warranties and Liabilities

- 5.1 The Service Provider does not warrant that the Services provided will be uninterrupted or error free.
- 5.2 The Services provided is as prescribed on our website and we do not warrant that it will meet your specific requirements.
- 5.3 The Service Provider does not warrant that the Services will be free of external intruders, hacking, virus attacks, worm attacks, denial of service attacks or other malicious and unauthorised access to the systems of the Service Provider, however the Service Provider will endeavour to use best effort to avoid such acts.
- 5.4 M2 Digital, its subsidiaries, officers, directors, employees, partners or suppliers will not be liable to you or any third party for:-
 - a) any special, punitive, incidental, indirect or consequential damages of any kind;
 - b) any damages whatsoever, including, without limitation, those resulting from:
 - i. loss of use, data or profits, on any theory of liability, arising out of or in connection with the use of or the inability to use the Services;
 - ii. the statements or actions of any employee or agent of the Service Provider;
 - iii. any unauthorised access to or alteration of your website, transmissions or data;
 - iv. any information that is sent or received or not sent or received;
 - v. any failure to store or loss of data, files or other content;
 - vi. your fraudulent, negligent or otherwise unlawful behaviour;
 - vii. information, data or other material provided to M2 Digital by you or on your behalf, or the use of such information, data or other material by the Service Provider;
 - viii. cost, loss or liability (including loss of profit or other consequential damage) arising from the supply or failure the Services;
 - ix. the content, context or confidentiality of any communications made using the Services;
 - x. loss or damage caused by third party software applications forming part of the Services;
 - xi. any loss or damage arising out of an unauthorised attack on or other breach of security of the Services or client data; or
 - xii. any Services that are delayed or interrupted.
- 5.5 The Client warrants that:-
 - a) they will take necessary steps to ensure that data uploaded onto or downloaded from the Server does not contain any computer viruses and will not in any way, corrupt the data of the system of any person;
 - b) you will keep secure any login names and passwords provided by M2 Digital for uploading data to the Server or other uses in association with the provision of services;
 - c) you hold and will continue to hold the copyright in the client data or that you are licensed and will continue to be licensed to use the client data and you are permitted to sub-license such data to the Service Provider.
- 5.6 You accept responsibility for all information and material issued over any Service, and indemnify the Service Provider, and hold the Service Provider harmless against any liability in relation to such information and material. In particular you undertake that you shall not publish or issue any information which is illegal or defamatory. You also acknowledge that neither the Service Provider vet or approve any information or material available through the Service. The Service Provider does not accept any liability for any loss, claim or damages arising from or relating to information and material made available by you through the Services, to the full extent permitted by law. You acknowledge that you make available, access and use such information and material at your own risk.

6.0 Suspension and Termination of Services

- 6.1 The Service Provider may from time to time without notice to you suspend the Service or disconnect or deny your access to the Service:-
 - a) during any technical failure, modification or maintenance involved in the Service provided that we will use reasonable endeavours to procure the resumption of the Services as soon as reasonably practicable; or
 - b) if you fail to comply with any provision in this terms and conditions (including failure to pay charges due), or do, or allow to be done, anything which in our opinion may have the effect of jeopardising the operation of the Service, until the breach (if capable of remedy) is remedied.

- c) notwithstanding any suspension of any Service under this clause you shall remain liable for all charges due at the commencement of the suspension period throughout the period of suspension.
- 6.2 M2 Digital may without notice to you remove, amend or alter your data upon being 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 Broadcasting Authority under a "take down notice", in accordance with the Broadcasting Services Amendment (Online Services) Act 1999, or
 - c) an outside party or outside device disrupts or attempts to disrupt the Services.
- 6.3 M2 Digital may end the provision of Service at any time with 30 days written notice to you. You may cease any Service with M2 Digital with 30 days written notice to M2 Digital after the initial term. You are liable to pay M2 Digital for such Service up to and including the termination date for such Service.
- 6.4 Where M2 Digital supplies a Service to you through a supplier, we may terminate and replace such supplier at any time without notice to you.
- 6.5 Upon termination of your account:-
- a) You must pay all outstanding charges owing to M2 Digital;
 - b) Any license issued to or by you in relation to the Services will cease from the date of termination; and
 - c) M2 Digital may delete all client data from any storage media including backups from the date of termination.

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