

# OUR CUSTOMER TERMS

## CLOUD SERVICES – LEGACY DOMAINS AND HOSTING SERVICES



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Certain words are used with the specific meanings set out below or in [the General Terms section of Our Customer Terms](#).

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### 1 About the Legacy Domains and Hosting Services section

- 1.1 This is the Legacy Domains and Hosting Services section of Our Customer Terms.
- 1.2 Provisions in other parts of the Cloud Services section also apply. See section one of the General Terms of the Cloud Services section at <https://www.telstra.com.au/customer-terms/business-government/cloud-services> for more detail on how the various parts of the Cloud Services section are to be read together.
- 1.3 Unless you have entered into a separate agreement with us which excludes them, the General Terms section of Our Customer Terms also applies. See section one of the General Terms of Our Customer Terms at <http://www.telstra.com.au/customer-terms/business-government/index.htm> for more detail on how the various sections of Our Customer Terms are to be read together.
- 1.4 All products and services listed below are subject to Telstra's Acceptable Use Policy at: <https://www.telstra.com.au/customer-terms/business-government#policy>
- 1.5 Services covered in these Our Customer Terms are not available to wholesale customers.

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### 2 WebHosting

#### What is WebHosting?

- 2.1 WebHosting is a service that provides website hosting and domain name registration.

	Bronze	Silver	Gold
Minimum term	12 months	12 months	12 months
Domain Names Registered (1 domain name is included)	.com, .net and .info (extra administration fee for .com and .net)	.com, .net and .info	.com, .net and .info
Website Builder Easy	Included, limited templates, page limit of 7	Included, limited templates, no page limits	Included, all templates, no page limits

- 2.2 We have withdrawn this service from sale to new customers. Existing customers will not be able to make changes to their existing pricing plan.

#### Availability

- 2.3 If you are an existing Premium Hosting customer, selecting the option to use your existing domain name with your WebHosting service will not

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cancel your existing Premium Hosting service. You must arrange for this separately.

### Minimum Term and auto-renewal

- 2.4 You must acquire the WebHosting service for a minimum term of 12 months.
- 2.5 Except for domain name registration renewals which are separately dealt with below, your WebHosting service will automatically renew for a further 12 month term upon expiry of the minimum term, or the then current renewal term, unless you notify us that your service is not to be renewed prior to expiry of the minimum term or the then current renewal term for your service.
- 2.6 If you notify us that you do not wish to renew your WebHosting service after expiry of the minimum term, or the then current renewal term (as applicable), but before 30 days after such expiry, your WebHosting service will be cancelled effective from the original expiry date and you will not be required to pay us the early termination charge set out below.

### Domain Name Registration

- 2.7 Each WebHosting plan includes the registration or transfer of a .com, .net or .info domain name in your name.
- 2.8 If you request registration of a new domain name for your WebHosting service, we will procure registration of that domain name with our nominated registrar for the WebHosting service.
- 2.9 If you request us to do so we will transfer the registration of your existing domain name which you use or propose to use with your WebHosting service, to our nominated registrar or reseller for the WebHosting service. You must provide us with all the information we require to transfer the registration of your domain name.
- 2.10 We do not guarantee that you will be successful in your application to register or transfer your domain name.
- 2.11 If the application for your new domain name or transfer of the registration of your existing domain name to our nominated registrar or reseller for the WebHosting service is successful:
  - (a) we will become the delegated domain administrator for your domain name;
  - (b) We will not be required to provide you with the registry key or password to your domain name, except in accordance with these terms; and
  - (c) Your transferred domain name will have an additional one year term added to the balance of the registration term remaining as at the date of transfer.

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- 2.12 Each new domain name registered or transferred under these terms will automatically renew 25 days prior to the relevant domain name expiry for a further 12 months unless:
- (a) prior notice is received from you that your domain name should not be renewed;
  - (b) you cease to be the registered owner of that domain name; or
  - (c) we cease to be the delegated domain administrator of your domain name.
- 2.13 If there is a dispute regarding your domain name registration or in respect of your domain name after registration, you agree that your domain name will be subject to arbitration, suspension or cancellation in accordance with ICANN procedure, or by any registry administrator procedure approved by an ICANN policy, relating to:
- (a) the correction of mistakes by us or the registry administrator in registering the domain name; or
  - (b) the resolution of disputes concerning the domain name.
- 2.14 You agree that if changes or modifications are made to the ICANN procedures or registry administrator procedure and you continue to maintain registration of your domain name after those changes or modifications become effective, you confirm your acceptance of those changes and modifications.
- 2.15 If there is a dispute regarding your domain name, you agree to submit to the jurisdiction of the courts as provided in the applicable procedures.

### Website Builder Easy Software

- 2.16 The Website Builder Easy software allows you to create, edit and manage your own website. Each WebHosting plan comes with a set number of templates from which you can build your website.
- 2.17 We grant you a non-exclusive, non-transferable licence to use the Website Builder Easy software solely in connection with your WebHosting service.
- 2.18 You must not:
- (a) use, or permit any person to use, the Website Builder Easy software in any way that is not permitted by these terms;
  - (b) use the software on behalf of, or for the benefit of, any other person; or
  - (c) disassemble, reverse engineer or create more than one copy of the software (unless you have a statutory right to disassemble, reverse engineer or create more than one copy of the software, in which case you must only do so to the extent permitted by your statutory right).

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- 2.19 To the extent permitted by applicable law, we do not make any representations or express warranties with respect to Website Builder Easy. Our liability to you is set out in the liability section of these terms. However, notwithstanding anything in these terms, consumers may have the benefit of certain rights or remedies pursuant to Competition & Consumer Act 2010 and similar state and territory laws in Australia in respect of which liability may not be excluded. If so, then to the maximum extent permitted by law, such liability is limited if lawful to do so, at our option to either (i) resupply of Website Builder Easy or (ii) the cost of the resupply of Website Builder Easy provided it is fair or reasonable to do so. We resupply Website Builder Easy to you from our third party supplier. As a result we supply Website Builder Easy to you "as is". It is very important that you make your own investigations as to the suitability of Website Builder Easy for your purpose.
- 2.20 We reserve the right to upgrade or replace Website Builder Easy upon at least 30 days' notice in Mission Control and via email. If we upgrade or replace Website Builder Easy we may, by giving you at least 30 days' notice in Mission Control or via email:
- (a) cease to continue to supply and/or support Website Builder Easy or the prior version of Website Builder Easy (as applicable); and
  - (b) use reasonable endeavours to migrate your published website content to the upgraded Website Builder Easy or the alternate website building software (as applicable) except as otherwise set out below.
- 2.21 We will not be required to migrate your published website content to the upgraded Website Builder Easy or the alternate website building software (as applicable) if:
- (a) the upgraded Website Builder Easy or the alternate website building software (as applicable) does not have the capability to allow for such migration; or
  - (b) you fail to take all reasonable steps that we require in connection with the migration.
- 2.22 If we cease to continue to supply and/or support Website Builder Easy or the prior version of Website Builder Easy (as applicable) and you can demonstrate to our reasonable satisfaction that you will suffer more than a minor detrimental impact as a result of such cessation, you can terminate your WebHosting service with us within 60 days of the notice without payment of early termination charges or registry key charges and we will refund to you any unused portion of your monthly or yearly charges (as applicable).
- 2.23 If you do not tell us that you wish to terminate your WebHosting service within the 60 days above, and you continue using your service from the date on which we ceased to supply and/or support Website Builder Easy or the prior version of Website Builder Easy (as applicable), you will be deemed to have accepted this change to your service.

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- 2.24 If your WebHosting service is terminated, all your website content will be permanently erased.
- 2.25 If you wish to deactivate Website Builder Easy only, all your then current unpublished content which you have entered into the Website Builder Easy interface will be permanently erased.
- 2.26 If you publish content using Website Builder Easy, all other content in your WebHosting account will be deleted.

### Charges

- 2.27 We will charge you the fees and charges set out in the Telstra Apps Marketplace.
- 2.28 Other charges for your WebHosting service are:

Other Charges	Bronze	Silver	Gold
Extra administration fee for .com and .net	\$2 per month or \$24 per year (as applicable)	Not applicable	Not applicable
Site Move Fee (if applicable)	\$135	\$135	\$135
Registry Key Charge (if applicable)	\$25	\$25	\$25

- 2.29 Once-off set up charges are payable in advance. Hosting charges must be paid monthly or yearly in advance. Other charges are payable in arrears.
- 2.30 If you pay your hosting charges yearly in advance and you cancel your service prior to expiry of the minimum term or the current renewal term, we will not refund any amount of the charges paid in advance.
- 2.31 Without limiting our rights under the aforementioned, if you do not pay your invoice amount when it is due, we may do any or all of the following:
  - (a) if the amount remains outstanding for 30 days after the due date, terminate your service; and
  - (b) if the amount remains outstanding for 60 days and there are reasonable grounds for believing you represent a credit risk, terminate any other service that we provide to you.

### Early Termination charges

- 2.32 Except for our material breach of these terms or as otherwise set out in these terms, if your WebHosting service is terminated prior to expiry of the minimum term, or the then current renewal term (as applicable), you must pay us an early termination charge equivalent to the balance of the charges payable for the remainder of the minimum term or the then current renewal term (as applicable) for your WebHosting service.

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### Taxes

- 2.33 The charges in the charges section for the WebHosting services may not include all taxes. You must pay us any applicable taxes that we include as part of your invoice for the service. Applicable taxes may include any stamp and other duties, fees, taxes (including GST) and charges relating to your WebHosting service.
- 2.34 If GST is imposed on any supply we make to you under Our Customer Terms and the consideration payable for the supply under any other clause of Our Customer Terms is not expressed to be inclusive of GST, you must pay us on demand an additional amount calculated by multiplying the value of that GST-exclusive consideration (without deduction or set-off) by the prevailing GST rate. We will issue a tax invoice to you for any supply on which GST is imposed.
- 2.35 Unless otherwise stated, all pricing, fees and charges stated in these terms for WebHosting are GST inclusive.

### Service and Maintenance

- 2.36 We may perform scheduled maintenance to the systems that we use to provide the service. We will attempt to perform all scheduled maintenance at times which will affect the fewest customers. If we expect scheduled maintenance will require the service to be unavailable for a continuous period of greater than 30 minutes, we will post details of the times during which the scheduled maintenance is due to occur on the Web Host System News at least 48 hours prior to the maintenance. It is very important that you check the Web Host System News regularly.
- 2.37 We may perform unscheduled maintenance to the systems that we use to provide the service. If the unscheduled maintenance requires the service to be unavailable for a continuous period of greater than 30 minutes, we will try to post details of the unscheduled maintenance on the Web Host System News beforehand (otherwise we will post the details after the maintenance has been completed).
- 2.38 We may migrate your website to a new operating system platform if any of our suppliers cease to provide support for the legacy operating system, if the server used to provide the service fails, or if we determine that the server has (or may) become unreliable. We will tell you beforehand if we intend to migrate your website to a new operating system platform.

### Warranties

- 2.39 While we use due care and skill in providing the service to you, there may also be other non-excludable statutory guarantees, implied conditions or warranties under consumer protection laws (such as the Competition & Consumer Act 2010 and State and Territory Fair Trading Acts) that cannot be excluded which may apply to goods or services we supply to consumers, including that services be fit for their purpose. However, due to the nature of the service, we do not promise that:

- (a) the service will be uninterrupted or error free;



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- (b) the service will meet your requirements; or
- (c) the service will be free from external intruders (hackers), virus or worm attack, denial of service attack, or other persons having unauthorised access to the services or our systems.

2.40 You warrant that:

- (a) you have the power to enter into and observe your obligations under these terms;
- (b) you will conduct such tests and computer virus scanning as may be necessary to ensure that data uploaded by you onto, or downloaded by you from, our systems does not contain any computer virus and will not in any way, corrupt the data or systems of any person;
- (c) you will keep secure any passwords used with the service; and
- (d) you have, and will maintain, the necessary authority to grant the rights, consents, permissions and licences under these terms.

### Liability

2.41 Your service is supplied on the terms expressly set out and subject to non-excludable rights under consumer protection laws. No other terms or rights apply. Other representations or statements we make to you, whether in person, over the phone or in advertising or other materials you received, are not part of these terms. However, you may have other legal rights in relation to those representations.

2.42 We limit our liability to you where lawful to do so, for any losses caused by any interruption or delay to your service to an amount equal to the service charges billed to you for the affected service for the period of the interruption or delay;

2.43 Liability:

- (a) We accept our liability to you for breach of contract or negligence or breach of any non-excludable right under consumer protection law under the principles applied by the courts:
  - (i) for any personal injury or death to you, your employees, agents and contractors in relation to the supply of the service;
  - (ii) for any damage to your property (real or tangible) resulting from the supply of the service, but we limit our liability to our choice of repairing or replacing the property or paying the cost of repairing or replacing it; and
  - (iii) unless paragraph (i) above applies, for any other cost or expense reasonably incurred as a direct result of our breach or negligence (but excludes loss of profits, likely savings

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and data), but we limit our liability, provided it is lawful to do so, for all such claims in aggregate to the total amount payable to us by you for the first year of your service;

- (b) other than to the extent we have accepted liability under the clauses above, and for liability that cannot be lawfully excluded or limited under consumer protection laws, we exclude all other liability to you or a third party for breach of contract, negligence or any other cause of action. If we cannot lawfully exclude liability, but liability can be lawfully limited, our liability is limited to resupplying or paying the cost of resupplying services and repairing, replacing or paying the cost of repairing or replacing goods;
- (c) we are not liable for any loss to the extent that it is caused by you, your employees, agents or contractors; and
- (d) notwithstanding any other term, we are not liable for any loss caused by us failing to comply with our obligations in relation to your service where that is caused by events outside our reasonable control (such as a failure in equipment that is not owned or operated by us, an industrial strike or an act of God).

2.44 You are liable to us if you breach these terms or act negligently under the principles applied by the courts. However, you are not liable for any loss we suffer to the extent that it is caused by us, for example, through our negligence or breach of these terms.

2.45 These provisions relating to liability will continue unaffected by cancellation or suspension of your service.

### Term, Suspension and Termination

2.46 If your Hosting service is terminated for any reason:

- (a) you must immediately pay all charges owing up to the date of termination; and
- (b) we may delete all of your data from our systems.

2.47 We may from time to time without notice suspend or disconnect your service or deny access to your service if:

- (a) we reasonably consider that you have failed to comply with any provision of these terms (including failure to pay fees or charges due) and you do not remedy your non-compliance 14 days after we tell you to do so (if the non-compliance is of a kind that can be remedied) or immediately (if the non-compliance is of a kind that cannot be remedied);
- (b) you breach our [acceptable use policy](#); or
- (c) you do, or allow to be done, anything which in our reasonable opinion have the effect of jeopardising the operation of the service.

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2.48 You remain liable to pay all fees and charges set out in these terms during any period of suspension.

2.49 We may remove, amend or alter any data:

- (a) upon being made aware of any claim or allegation, or 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 (including intellectual property rights and moral rights); or
- (b) if we reasonably consider that you have failed to comply with any provision of these terms.

We may not be able to tell you of this beforehand, but will give you notice within 14 days after we have removed, amended or altered the data.

2.50 We are not required to provide you with a copy of your data if:

- (a) we suspend or disconnect your service or deny access to the service;
- (b) you remove, amend or alter your data; or
- (c) these terms are terminated (for any reason).

2.51 If we provide you with a copy of your data, then we are entitled to charge you an additional \$135 fee to cover the cost of us recovering, and providing you with, that data.

### **Domain name and termination**

2.52 If during the term of your WebHosting service your domain name registration is not renewed and your domain name registration period expires before the expiry of your minimum term or the then current renewal term (as applicable):

- (a) we will cease to be the delegated domain administrator for your domain name on and from the expiry date of your domain name registration period;
- (b) we will cease to have any ongoing responsibility to you in respect of your domain name on and from the expiry date of your domain name registration period;
- (c) if you request we will provide you with your domain name registration key and password at no additional charge; and
- (d) we will give you an opportunity to transfer your domain name to one of our other domain name services in which case the charges for that service will apply.

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- 2.53 If you cancel or elect not to renew your WebHosting service and at the time of cancellation or expiry the registration period for your domain name has not yet expired:
- (a) we will cease to be the delegated domain administrator for your domain name on and from the expiry date of your domain name registration period;
  - (b) we will not be required to renew, send you reminder notices about your domain name expiry or have any other ongoing responsibility to you in respect of your domain name;
  - (c) if you request we will provide you with your domain name registration key and password, provided that you have paid us any early termination charges and any other fees due to us under these terms including the registry key charge if applicable as set out below;
  - (d) we will give you an opportunity to transfer your domain name to one of our other domain name services in which case the charges for that service will apply; and
  - (e) we may repoint your domain name to a domain name page selected by us until your domain name registration period expires, you have transferred your domain name to a different domain name registrar or reseller or you have redelegated your domain name.

### Registry key charge

- 2.54 If at the time that your WebHosting service is cancelled or expires your domain name has already been renewed effective from or after the relevant cancellation or expiry date, you must pay us the registry key charge before we will provide you with your domain name registration key and password.
- 2.55 If at the time that your WebHosting service is cancelled or expires your domain name has already been renewed but is effective before the relevant cancellation or expiry date, you will not be required to pay the registry key charge before we provide you with your domain name registration key and password.

### Additional terms

- 2.56 In addition to the Acceptable Use Policy in clause 1.4 above, you must comply with our operational procedures for the service which are set out in the Mission Control User Guide at <https://mc-au.server-secure.com>.

### Miscellaneous

- 2.57 We will archive your hosted content onto backup mechanisms on a regular basis for the purposes of disaster recovery. In the event of equipment failure or data corruption, we will use reasonable endeavours to restore your hosted content from the last known good archive. Notwithstanding

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our backup regimes, you must maintain a recent copy of your hosted content at your premises at all times. You will ensure that all of your hosted content is accessible by us at the time that a backup is to be carried out (including ensuring that files are not locked or in use during this time). Any of your hosted content that is not accessible by us at the time that a backup is carried out will not be backed up. Due to technological limitations, we cannot promise that, and despite our reasonable care, backups will: (a) occur on every scheduled occasion, (b) be complete; or (c) be uncorrupted. We will not be liable for incomplete, out-of-date, corrupt or otherwise deficient data recovered from our backups where we have acted with reasonable care.

- 2.58 You are responsible for developing, installing and maintaining your hosted content. You must have appropriate and compatible equipment, software and Internet access to upload your hosted content to our systems.
- 2.59 You are solely responsible for dealing with persons who access your hosted content, and must not refer complaints or inquiries in relation to your hosted content to us.
- 2.60 You must pay all telecommunications costs and charges arising from or in connection with your WebHosting service.
- 2.61 You must adopt appropriate measures to ensure the security of your logon name, password and your hosted content. You are responsible for all use of your service (including payment of applicable charges) through the use of your logon name and password (whether or not that use was authorised by you).
- 2.62 You must advise us in a timely manner if you have reason to suspect that your WebHosting service is being used contrary to these terms.
- 2.63 We encourage you to use appropriate warnings and labelling systems for any of your hosted content that is likely to be considered unsuitable for children under Australian law and associated classification guidelines such as those that may be published from time to time by the Internet Industry Association or the Australian Communications and Media Authority.
- 2.64 The service is provided from data centres using shared infrastructure. We will determine, in our absolute discretion, the location from which your service is provided from time to time.
- 2.65 You grant to us all rights, consents, permissions and licences necessary to enable us and our subcontractors and suppliers to legally view, copy and store your hosted content for the sole purpose of performing our obligations under these terms.
- 2.66 No title in the software, hardware, infrastructure or facilities used by us to deliver the WebHosting service passes to you at any time.
- 2.67 If you provide us with your credit card details, you authorise us to charge all fees and charges to your credit card, and to disclose your credit card details to, and obtain information from, any financial institution or credit card issuer to verify the credit card details that you provide to us. You also

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authorise us to take steps to verify that there is sufficient credit on your credit card account to meet likely fees.

- 2.68 You consent to us obtaining a credit reporting agency report containing personal information about you (as well as information concerning commercial creditworthiness and activities) for the purpose of assessment by us of an application for credit (whether commercial or personal) or for the purpose of the collection of payments which are overdue.

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### 3 Family Website hosting and Business Hosting 20 Plan

- 3.1 This section of the OCT applies only to Family Website Hosting and Business Hosting 20 plans, which we have withdrawn from sale to new customers while existing customers will not be able to make changes to their existing pricing .

#### General

- 3.2 We will provide you with the service using shared infrastructure. The features of your service, and the levels of storage space and traffic that are permitted, depend upon your selected plan and are specified in the charges section below.
- 3.3 We will provide you with at least one logon name and password ("VS" number) to allow you to access the Mission Control panel (which may be used by you to configure various features of your service).
- 3.4 We will archive your data onto backup mechanisms on a regular basis for the purposes of disaster recovery. In the event of equipment failure or data corruption, we will use reasonable endeavours to restore your data from the last known good archive. Notwithstanding our backup regimes, you must maintain a recent copy of your data at your premises at all times. You will ensure that all of your data is accessible by us at the time that a backup is to be carried out (including ensuring that files are not locked or in use during this time). Any of your data that is not accessible by us at the time that a backup is carried out will not be backed up. Due to technological limitations, we cannot promise that, and despite our reasonable care, backups will: (a) occur on every scheduled occasion, (b) be complete; or (c) be uncorrupted. We will not be liable for incomplete, out-of-date, corrupt or otherwise deficient data recovered from our backups where we have acted with reasonable care.
- 3.5 You are responsible for developing, installing and maintaining your data. You must have appropriate and compatible equipment, software and Internet access to upload your data to our systems.
- 3.6 You are solely responsible for dealing with persons who access your data, and must not refer complaints or inquiries in relation to your data to us.
- 3.7 You must adopt appropriate measures to ensure the security of your logon name, password and data.
- 3.8 You must advise us in a timely manner if you have reason to suspect that the service is being used contrary to these terms.
- 3.9 We encourage you to use appropriate warnings and labelling systems for any of your data that is likely to be considered unsuitable for children under Australian

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law and associated classification guidelines such as those that may be published from time to time by the Internet Industry Association or the Australian Communications and Media Authority.

- 3.10 The service is provided from data centres in Australia. We will determine, in our absolute discretion, the location from which your service is provided from time to time.
- 3.11 You grant to us all rights, consents, permissions and licences necessary to enable us and our subcontractors and suppliers to legally view, copy and store your data for the sole purpose of performing our obligations under these terms.
- 3.12 No title in the hardware, infrastructure or facilities used by us to deliver the service passes to you at any time.
- 3.13 If we provide you with software and terms accompany it, then we provide that software to you on these terms.
- 3.14 If we provide you with software and no terms accompany it, then:
- (a) we grant you a non-exclusive, non-transferable licence to use the software for the sole purpose of using the service on these terms;
  - (b) you must not use, or permit any person to use, the software in any way that is not permitted by these terms; and
  - (c) without limiting clause 3.14(b), you must not:
    - i. use the software on behalf of, or for the benefit of, any other person; or
    - ii. disassemble, reverse engineer or create more than one copy of the software (unless you have a statutory right to disassemble, reverse engineer or create more than one copy of the software, in which case you must only do so to the extent permitted by your statutory right).

**Business hosting 20 plan** The Business hosting 20 plan includes the following features:

- (b) 20MB of disk space;
- (c) pre-written Common Gateway Interface (CGI) scripts;
- (d) allowance for customers to download up to 300MB from your website each month; and
- (e) our complimentary Do It Yourself Business WebSite Builder, to help you create a professional-looking site.

### Service and Maintenance

- 3.16 We may perform scheduled maintenance to the systems that we use to provide the service. We will attempt to perform all scheduled maintenance at times which will affect the fewest customers. If the scheduled maintenance requires the service to be unavailable for a continuous period of greater than 30 minutes, we



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will post details of the times during which the scheduled maintenance is due to occur on the Web Host System News at least 48 hours prior to the maintenance. It is very important that you check the Web Host System News regularly.

- 3.17 We may perform unscheduled maintenance to the systems that we use to provide the service. If the unscheduled maintenance requires the service to be unavailable for a continuous period of greater than 30 minutes, we will try to post details of the unscheduled maintenance on the Web Host System News beforehand (otherwise we post the details after the maintenance has been completed).
- 3.18 We may migrate your web site to a new operating system platform if any of our suppliers cease to provide support for the legacy operating system, if the server used to provide the service fails, or if we determine that the server has (or may) become unreliable. We will tell you beforehand if we intend to migrate your web site to a new operating system platform.

### Charges

- 3.19 We will charge you the fees and charges set out in the Telstra Apps Marketplace.
- 3.20 You must pay all fees relating to the use of your logon name and password (whether or not that use was authorised by you).
- 3.21 You must also pay:
- (a) all telecommunications costs and charges arising from or in connection with the service; and
  - (b) all government taxes, duties and levies (if any) imposed on either you or us in respect of the service or any other service or goods supplied (excluding taxes payable on our overall income).
- 3.22 Without limiting clause 3.21(b), if GST is imposed on any supply we make to you under these terms, and the fees payable by you for the supply are not inclusive of GST, you authorise us to charge you an amount of GST in addition to the fees payable by you, calculated by multiplying those fees by the prevailing GST rate. You must pay the amount of GST at the same time and in the same manner as the fees are payable.
- 3.23 If you provide us with your credit card details, you authorise us to charge all fees and charges to your credit card, and to disclose your credit card details to, and obtain information from, any financial institution or credit card issuer to verify the credit card details that you provide to us. You also authorise us to take steps to verify that there is sufficient credit on your credit card account to meet likely fees.
- 3.24 You consent to us obtaining a credit reporting agency report containing personal information about you (as well as information concerning commercial creditworthiness and activities) for the purpose of assessment by us of an application for credit (whether commercial or personal) or for the purpose of the collection of payments which are overdue.



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- 3.25 We collect, use and disclose personal information as set out in our “Protecting Your Privacy” Statement. The current version of our Privacy Statement is available at [http://www.telstra.com.au/privacy/privacy\\_statement.html](http://www.telstra.com.au/privacy/privacy_statement.html).

### **Charges**

- 3.26 We will charge you the fees and charges set out in the Telstra Apps Marketplace.
- 3.27 Your web address can be (subject to availability):  
www.[YourDomainName].com.au OR www.[yourwebsite.hosting].com
- 3.28 Additional Domain Name charges apply as set out in the Telstra Apps Marketplace.

### **Warranties**

- 3.29 While we use due care and skill in providing the service to you, there may also be other non-excludable statutory guarantees, implied conditions or warranties under consumer protection laws (such as Competition & Consumer Act 2010 and State and Territory Fair Trading Acts) that cannot be excluded which may apply to goods or services we supply to consumers, including that services be fit for their purpose. However, due to the nature of the service, we do not promise that:
- (a) the service will be uninterrupted or error free;
  - (b) the service will meet your requirements; or
  - (c) the service will be free from external intruders (hackers), virus or worm attack, denial of service attack, or other persons having unauthorised access to the services or our systems.
- 3.30 You warrant that:
- (a) you have the power to enter into and observe your obligations under these terms;
  - (b) you will conduct such tests and computer virus scanning as may be necessary to ensure that data uploaded by you onto, or downloaded by you from, our systems does not contain any computer virus and will not in any way, corrupt the data or systems of any person;
  - (c) you will keep secure any passwords used with the service; and
  - (d) you have, and will maintain, the necessary authority to grant the rights, consents, permissions and licences in this clause.

### **Liability**

- 3.31 Your service is supplied on the terms that are expressly set out and subject to non-excludable rights under consumer protection laws. Other representations or statements we make to you, whether in person, over the phone or in advertising or other materials you received, are not part of these terms. However, you may have other legal rights in relation to those representations.

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## CLOUD SERVICES – LEGACY DOMAINS AND HOSTING SERVICES



- 3.32 We are not liable for any loss to the extent that it is caused by you, for example, through your negligence or breach of these terms.
- 3.33 Given the nature of telecommunications systems (including the service's reliance on systems not owned or controlled by us) we cannot promise that the service will be continuous or fault free. Accordingly, if it is lawful to do so under consumer protection laws, we limit our liability to you for losses resulting from any interruption or delay to your service to an amount equal to the service charges billed for the affected service for the period of the interruption or delay.
- 3.34 We accept liability arising from our breach of contract or negligence:
- (a) for any personal injury or death to you, your employees, agents and contractors in relation to the supply of the service;
  - (b) for any damage to your real or tangible property resulting from the supply of the service, but we limit our liability to our choice of repairing or replacing the property or paying the cost of repairing or replacing it; and
  - (c) for any other cost or expense you reasonably incur that is a direct result of, and flows naturally from, such breach or negligence (but excludes loss of profits, likely savings and data), but we limit our liability provided it is lawful to do so for all such claims in aggregate to the total amount payable to us under these terms in respect of the first year of these terms.
- 3.35 Other than for the liability we accept and for liability that cannot be lawfully excluded or limited under consumer protection laws we exclude all other liability whether to you or a third party for breach of contract, negligence or breach of any other law. For any liability which cannot lawfully be excluded, but can be limited, our liability is limited to resupplying or paying the cost of resupplying services and repairing, replacing or paying the cost of repairing or replacing goods.
- 3.36 Notwithstanding anything else in these terms, our liability will be reduced to the extent the loss or damage is caused by you, your employees, agents or contractors.
- 3.37 We will not be responsible for any loss or damage arising from circumstances outside our reasonable control.
- 3.38 You are liable to us if you breach these terms or act negligently under the principles applied by the courts. However, you are not liable for any loss we suffer to the extent that it is caused by us, for example, through our negligence or breach of these terms.

### **Term, Suspension and Termination**

- 3.39 Either party may terminate the service at any time by providing the other party with at least 30 days' written notice.
- 3.40 If the service is terminated for any reason.

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- (a) you must immediately pay all fees and charges owing up to the date of termination;
- (b) we may delete all of your data from our systems; and
- (c) you must immediately delete from your systems all copies of all software.

3.41 We may from time to time without notice:

- (a) suspend the service during any technical failure, modification or maintenance of the service, provided that we use reasonable endeavours to resume the service as soon as reasonably practicable. If this happens, our liability to you is set out under this clause. If we need to suspend your service under this clause, usually we will give you 24 hours' notice, unless the maintenance is urgent, in which case we will give you as much notice as we reasonably can. We will try to ensure that the limitation or suspension is at night and for as short a period as is reasonable possible; or
- (b) suspend or disconnect the service or deny access to the service if we reasonably consider that you have failed to comply with any provision of these terms (including failure to pay fees or charges due), or you do, or allow to be done, anything which in our opinion may have the effect of jeopardising the operation of the service and either:
  - a) you do not remedy your non-compliance 14 days after we tell you to do so (if the non-compliance is of a kind that can be remedied); or
  - b) immediately (if the non-compliance is of a kind that cannot be remedied),
  - c) or you do, or allow to be done, anything which in our reasonable opinion have the effect of jeopardising the operation of the service.

3.42 If your Internet service to which these services relate is suspended, disconnected or terminated, then these services may also be suspended, disconnected or terminated.

3.43 You remain liable to pay all fees and charges set out in these terms during any period of suspension.

3.44 We may remove, amend or alter any data:

- (a) upon being made aware of any claim or allegation, or 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 (including intellectual property rights and moral rights); or
- (b) if we reasonably consider that you have failed to comply with any provision of these terms.

We may not be able to tell you of this beforehand, but will give you notice within 14 days after the removed/amended or altered data.

3.45 We are not required to provide you with a copy of your data if:

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- (a) we suspend or disconnect your service or deny access to the service;
- (b) remove, amend or alter your data; or
- (c) these terms are terminated (for any reason).

3.46 If we provide you with a copy of your data, then we are entitled to charge you an additional fee calculated at the hourly rate set out in the Plan Table for the time taken for us to recover and provide you with that data.

### **Additional terms**

3.47 You must comply with:

- (a) our [acceptable use policy](#); and
- (b) our operational procedures for the service which are set out in the Mission Control User Guide at <https://mc-au.server-secure.com>

3.48 If there is any inconsistency between a provision in a document listed in this clause 8 and a provision in another document listed in this clause 8, then the provision in the document listed first below prevails:

- (a) these terms;
- (b) our [acceptable use policy](#) and
- (c) our operational procedures for the service which are set out in the Mission Control User Guide at <https://mc-au.server-secure.com>.

### **General**

3.49 Either party may exercise a right, power or remedy at its discretion and separately or concurrently with another right, power or remedy. Failure by a party to exercise, or delay in exercising, a right, power or remedy does not prevent its exercise.

3.50 A provision of, or a right created under these terms, may not be waived except in writing signed by the party granting the waiver.

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## **4 Premium Website Hosting and add ons**

### **General**

4.1 We have withdrawn this service from sale to new customers. Existing customers will not be able to make changes to their existing pricing plan.

4.2 We will provide you with the service using shared infrastructure. The features of your service, and the levels of storage space and traffic that are permitted, depend upon your selected plan and what add ons you select and are specified below.

4.3 We will archive your data onto backup mechanisms on a regular basis for the purposes of disaster recovery. In the event of equipment failure or data

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corruption, we will use reasonable endeavours to restore your data from the last known good archive. Notwithstanding our backup regimes, you must maintain a recent copy of your data at your premises at all times. You will ensure that all of your data is accessible by us at the time that a backup is to be carried out (including ensuring that files are not locked or in use during this time). Any of your data that is not accessible by us at the time that a backup is carried out will not be backed up. We do not warrant that backups will:

- (a) occur on every scheduled occasion;
  - (b) be complete; or
  - (c) be uncorrupted. We will not be liable for incomplete, out-of-date, corrupt or otherwise deficient data recovered from our backups where we have acted with reasonable care.
- 4.4 You are responsible for developing, installing and maintaining your data. You must have appropriate and compatible equipment, software and Internet access to upload your data to our systems.
- 4.5 You are solely responsible for dealing with persons who access your data, and must not refer complaints or inquiries in relation to your data to us.
- 4.6 You must adopt appropriate measures to ensure the security of your logon name, password and data.
- 4.7 You must advise us in a timely manner if you have reason to suspect that the service is being used contrary to these terms.
- 4.8 We encourage you to use appropriate warnings and labelling systems for any of your data that is likely to be considered unsuitable for children under Australian law and associated classification guidelines
- 4.9 The service is provided from data centres in Australia. We will determine, in our absolute discretion, the location from which your service is provided from time to time.
- 4.10 You grant to us all rights, consents, permissions and licences necessary to enable us and our subcontractors and suppliers to legally view, copy and store your data for the sole purpose of performing our obligations under these terms or any law.
- 4.11 No title in the hardware, infrastructure or facilities used by us to deliver the service passes to you at any time.
- 4.12 We grant you a non-exclusive, non-transferable licence to use the software for the sole purpose of using the service on these terms.
- 4.13 You must not use, or permit any person to use, the software in any way that is not permitted by these terms.
- 4.14 Without limiting this clause, you must not:
- (a) use the software on behalf of, or for the benefit of, any other person; or

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- (b) disassemble, reverse engineer or create more than one copy of the software (unless you have a statutory right to disassemble, reverse engineer or create more than one copy of the software, in which case you must only do so to the extent permitted by your statutory right).

### Premium website hosting plans

4.15 The Premium Hosting plans include the following:

- (a) an allocated amount of disk space;
- (b) up to 9,999 mailboxes for your staff and incoming mail streams (enquiries, info, jobs, etc);
- (c) pre-written Common Gateway Interface (CGI) scripts;
- (d) allowance for customers and prospects to download an allocated amount of images and information each month; and
- (e) website builder.

4.16 Details of Premium Hosting Plans are set out in the charges section below.

### Charges for Premium hosting

4.17 We will charge you the fees and charges set out in the Telstra Apps Marketplace.

4.18 You must pay fees for all add ons you select in accordance with the applicable add on terms.

4.19 You must pay all fees relating to the use of your logon name and password (whether or not that use was authorised by you).

4.20 You must also pay:

- (a) all telecommunications costs and charges arising from or in connection with the service; and
- (b) all government taxes, duties and levies (if any) imposed on either you or us in respect of the service or any other service or goods supplied (excluding taxes payable on our overall income).

4.21 If GST is imposed on any supply we make to you under these terms, and the fees payable by you for the supply are not inclusive of GST, you authorise us to charge you an amount of GST in addition to the fees payable by you, calculated by multiplying those fees by the prevailing GST rate. You must pay the amount of GST at the same time and in the same manner as the fees are payable.

4.22 If you provide us with your credit card details, you authorise us to charge all fees and charges to your credit card, and to disclose your credit card details to, and obtain information from, any financial institution or credit card issuer to verify the credit card details that you provide to us. You also authorise us to take steps to verify that there is sufficient credit on your credit card account to meet likely fees.

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- 4.23 You consent to us obtaining a credit reporting agency report containing personal information about you (as well as information concerning commercial creditworthiness and activities) for the purpose of assessment by us of an application for credit (whether commercial or personal) or for the purpose of the collection of payments which are overdue.
- 4.24 Each plan includes up to 9999 mailboxes.
- 4.25 Domain name charges are payable if you request us to register a domain on your behalf.

### **Other charges**

- 4.26 The charges for Data Recovery from backup tape are \$135 per hour.
- 4.27 Standard Website Builder is included in monthly hosting fee.

### **Add ons**

- 4.28 You may apply to receive one or more add ons if you are Premium Hosting plan customer. If you change plans and are no longer eligible to receive an add on under your new plan, we may cease providing that add on to you. We will charge you the fees and charges set out in the Telstra Apps Marketplace for all add-ons.

### **Website builder add on**

- 4.29 Website builder enable you to create, edit and manage your own website.
- 4.30 If you cancel your Premium Hosting service, all content created using Website Builder will be permanently erased.
- 4.31 If you use the eShop component of Advanced Website Builder, you may need to enter into separate agreements with third party service providers (eg e-commerce payment providers). We are not responsible for the conduct of any third party provider you contract with.

### **Business Mail add-ons**

- 4.32 Business Mail add ons enable you to add mailboxes to extend your email system up to a maximum of 500 mailboxes.
- 4.33 The Business Mail add on products can only be used in conjunction with Premium Hosting services.
- 4.34 Your charges depend on whether you take up the service on a monthly or yearly basis.

### **Additional mailing lists add on**

- 4.35 Additional mailing lists allow you to email up to 10000 subscribers from a single email address.

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- 4.36 All premium hosting plan customers received one mailing list that allows you to send up to 1000 subscribers at no additional cost. You may pay extra to expand the number of subscribers up to 10000.
- 4.37 When you purchase Additional Mailing Lists or Additional Subscribers, you are not purchasing lists of names or email addresses - you are purchasing the ability to send email to all of the subscribers in your mailing list at once.
- 4.38 No email names or addresses are provided.

### **Security tokens add-on**

- 4.39 Each Premium hosting plan has an allocated number of tokens. Additional tokens may be purchased up to a maximum of 26 per plan. You must have an existing Premium Hosting product to purchase an additional security token.

### **Additional data sources add-on**

- 4.40 Data source names allow you to connect your website to a SQL Service 2000 or 2008 database.
- 4.41 The Additional data sources add on is not available for Premium hosting 100 or 2000 plan customers.
- 4.42 Data source names can be created upon request, however we strongly recommend you utilise Object Linking and Embedding Database connection methods.

### **SQL database add-on**

- 4.43 Provisioning
  - (a) This add on is only available to premium hosting 800 and 3000 customers.
  - (b) Databases will be stored on a SQL 2000 or a SQL 2008 Server.
  - (c) Premium Hosting 3000 plan customers can host on Premier SQL servers or Standard SQL servers (SQL 2000 or 2008). Premium Hosting 800 plan customers can host on Standard SQL servers (SQL 2000 or 2008). Standard 2000 or 2008 Server service customers will receive a single database up to 50MB and 35 simultaneous user connections. Premium SQL 2000 or 2008 customers will receive a single database up to 150MB and 35 simultaneous user connections.
- 4.44 Product features
  - (a) Customers whose databases exceed the number of user connections for their level will have their excess connections automatically terminated. We take no responsibility for problems caused by the termination of excessive user connections.
  - (b) SQL Replication is not supported.



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- (c) We will only supply a hosting environment, not a testing environment. Customers hosting SQL databases should run the database in a similar environment in their premises and test off line.
- (d) Full-text search support is provided for character-based data on the SQL 2000 and 2008 Servers. The Full-Text Search facilities can be used to create special indexes of all pertinent words in selected columns of selected tables. Administration of full-text indexes can be managed either through SQL Server Enterprise Manager or through a new set of stored procedures. Additional new stored procedures can be used to obtain information about full-text indexes. The space taken up by the Full-Text Search indexes is included in the space quota for your site.

### 4.45 Pre-requisites for Premier SQL Hosting

Premium Hosting 1000 customers wishing to host their database on a SQL 2000 or 2008 server are required to meet the Pre Requisites for Premier SQL Hosting as outlined below:

- (a) Customers will design their Web-SQL applications to use the SAME user connection. Opening individual user session connections to the database is undesirable and not recommended.
- (b) At least one member of the development team responsible for development of the SQL database possesses at least two years experience in SQL Server development and/or has a Microsoft certification (MCSD or MCDBA).
- (c) Customer's SQL Server development team follows a formal testing process that tests all application components prior to deploying to the SQL Premier Site server.
- (d) The SQL Server development team will apply the following SQL Server development best practices guidelines which may be viewed at <http://admin-au.server-secure.com/bestpractices/sql/>:
  - i. Normalise the database design to 3rd Normal Form and use controlled redundancy as a last resort;
  - ii. Do not use or design an application that allows users to fill in edit boxes that generate a long-running query. For example, do not use or design an application that prompts the user for inputs but rather allows certain fields to be left blank or a wildcard to be entered. This may cause the application to sub a query with an excessive running time, thereby causing a blocking problem;
  - iii. Do not use or design an application that allows user input within a transaction;
  - iv. Allow for query cancellation;
  - v. Use a query or lock time out to prevent a runaway query and avoid distributed deadlocks;

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- vi. Immediately fetch all result rows to completion;
- vii. Keep transactions as short as possible and avoid nesting transactions;
- viii. Explicitly control connection management;
- ix. Use Stored procedures where possible. When calling a stored procedure avoid returning single row result sets, instead use stored procedure output parameters. Insert error handling after each insert, delete and update SQL statement to ensure stored procedure robustness;
- x. If returning large result sets to the client, develop a method of returning only the number of rows that can fit in the screen at the one time. See article on "Just-In-Time Record Set Creation";
- xi. When returning result sets, ensure the SQL statement is as selective as possible to minimise the number of rows retrieved, retrieve only the columns required and minimise network round trips;
- xii. Construct SQL Query statements using efficient techniques; and
- xiii. Use selective WHERE clause with a supporting index, avoid negative equality clauses and minimise OR logic, use IF EXISTS instead of Select Count(\*), use EXISTS instead of IN, avoid large sorts by minimising use of DISTINCT, ORDER BY, GROUP BY and by matching search arguments and ORDER BY clause with a supporting index, minimise the number tables in a join (rule of thumb is  $\leq 4$  tables).
- xiv. Test SQL statements prior to implementation. Check for an efficient execution plan, resource usage (CPU, IO, Memory, Worktable space).
- xv. Avoid using large Server Side cursors

### SQL Lite add-on

- 4.46 The SQL Lite Add-On is only for use with the Premium 500 product. Premium 500 customers can only have their database hosted on the SQL Lite Add-On server.
- 4.47 If database and transaction log storage greater than 25MB is required, you will need to upgrade your Premium Hosting plan to Premium 800 with a Standard SQL Add-On or Premium 3000 with a Standard/Premier SQL Add-On.
- 4.48 Additional SQL disk space is not available with this product. If a larger database is required, you will need to upgrade your Premium Hosting plan and SQL Add-On product.
- 4.49 Customers whose databases exceed the number of user connections permitted for their plan will find that their excess connections will be automatically terminated. We take no responsibility for problems caused by the termination of excessive user connections.
- 4.50 We provide a hosting environment - not a testing environment. Customers hosting SQL databases should be running the database in a similar environment in their premises and testing offline.

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4.51 We charge you for Microsoft windows streaming media add on services as per the charges and fees set out in the Telstra Apps Marketplace.

### **Geotrust QuickSSL Premium SSL key add-on**

4.52 This add on is only available for Premium 400, 800, 1500 and 3000 customers.

4.53 You will need to complete and sign the applicable application form and third party terms.

4.54 The cost for GeoTrust, which is \$280 for a 2 year period.

### **Domain Name Management service**

4.55 Domain name management services are only available to Premium Hosting plan customers.

4.56 If you request us to register a .com, .net, .org, .biz, or .info domain name ("TLDs" or "Top Level Domains") on your behalf, you must read and accept the General Registrar Policy applicable to .com, .net, .org, .biz and .info domain names issued by the registrar Melbourne IT located at <http://www.melbourneit.com.au/policies/index>, as amended from time to time.

4.57 If you request us to register a .com, .net or .org domain name on your behalf, you must comply with any Policy applicable to .com, .net and .org domain names issued by the Internet Corporation for Assigned Names and Numbers ("ICANN") from time to time.

4.58 In the event of a dispute in registering a TLD, or a dispute about a TLD after registration, you will:

- (a) submit to and be bound by Uniform Domain Name Dispute Resolution Policy located at , as amended from time to time; and
- (b) be subject to arbitration, suspension or cancellation by any ICANN procedure, or by any registry administrator procedure approved by ICANN policy, relating to:
  - i. the correction of mistakes by us or the registry administrator in registering the domain name; or
  - ii. the resolution of disputes concerning the domain name.

4.59 If you request us to register a .com.au, .id.au, .net.au or .org.au domain name (.au Domains) on your behalf, you must read and accept:

- (a) the policies applicable to terms for .au Domain Name Licences issued by the registrar Melbourne IT located at <http://www.melbourneit.com.au/policies/index>, as amended from time to time; and
- (b) the .au 2LD Domain Name Eligibility and Allocation Policy Rules issued by .au Domain Administration Limited (auDA) located at

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<http://www.auda.org.au/docs/auda-2002-07.txt>, as amended from time to time.

- 4.60 In the event of a dispute in registering a .au Domain, or a dispute about a .au Domain after registration, you will submit to and be bound by the .au Dispute Resolution Policy (auDRP) located at <http://www.auda.org.au/docs/auda-2002-22.txt>, as amended from time to time.
- 4.61 By maintaining the registration of a domain name after changes to the applicable policies become effective, you accept those changes.
- 4.62 In the event of a dispute regarding a domain name, you will submit to the jurisdiction of the courts as provided in the applicable policies.
- 4.63 You must pay any registration or delegation charges to us in advance. A domain name cannot be registered unless you pay for it in advance.
- 4.64 We make no representations and give no warranties regarding the availability of your chosen domain name.
- 4.65 You authorise and direct us to nominate Telstra Corporation Limited ABN 33 051 775 556 as the authorised billing contact for your domain name.
- 4.66 We are not liable for any loss or damage resulting from the non-renewal of your domain name if you fail to provide us with consent to renew the domain name registration or you delay in providing us with such consent. By providing us with your consent to renew the domain name registration, you warrant that you are, and will remain, eligible to register the domain name during the renewal period.
- 4.67 You indemnify us against all claims arising out of the registration, use or renewal of your domain name, unless and to the extent that the claim arises out of our breach of these terms, or our negligent act or omission.

### **Service and Maintenance**

- 4.68 If you experience a problem with any component of an add on supplied to you under a contract between you and a third party, you should contact the third party for support directly.
- 4.69 We may perform scheduled maintenance to the systems that we use to provide the service. We will attempt to perform all scheduled maintenance at times which will affect the fewest customers. If the scheduled maintenance requires the service to be unavailable a continuous period of greater than 30 minutes, we will post details of the times during which the scheduled maintenance is due to occur on the Web Host System News at least 48 hours prior to the maintenance.
- 4.70 We may perform unscheduled maintenance to the systems that we use to provide the service. If the unscheduled maintenance requires the service to be unavailable for a continuous period of greater than 30 minutes, we will post details of the unscheduled maintenance on the Web Host System News after the maintenance has been completed.
- 4.71 We may migrate your web site to a new operating system platform if any of our suppliers cease to provide support for the legacy operating system, if the server

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used to provide the service fails, or if we determine that the server has (or may) become unreliable. We will try to tell you if we intend to migrate your web site to a new operating system platform.

### Warranties and Indemnity

- 4.72 Your service is supplied on the terms that are expressly set out and subject to non-excludable rights under consumer protection laws. Other representations or statements we make to you, whether in person, over the phone or in advertising or other materials you received, are not part of these terms. However, you may have other legal rights in relation to those representations.
- 4.73 Without limiting clause 4.72 above, we do not warrant that:
- (a) the service will be uninterrupted or error free;
  - (b) the service will meet your requirements; or
  - (c) the service will be free from external intruders (hackers), virus or worm attack, denial of service attack, or other persons having unauthorised access to the services or our systems.

This clause is not intended to limit your rights under consumer protection legislation.

- 4.74 You warrant that:
- (a) you have the power to enter into and observe your obligations under these terms;
  - (b) you have not relied on any representation made by us or upon any descriptions or illustrations or specifications contained in any document including any catalogues or publicity supplied by us;
  - (c) you will conduct such tests and computer virus scanning as may be necessary to ensure that data uploaded by you onto, or downloaded by you from, our systems does not contain any computer virus and will not in any way, corrupt the data or systems of any person;
  - (d) you will keep secure any passwords used with the service; and
  - (e) you have, and will maintain, the necessary authority to grant the rights, consents, permissions and licences.
- 4.75 You must indemnify us, our employees, contractors and agents against all damages, costs, charges, liabilities and expenses arising out of or in connection with:
- (a) the use or attempted use of the service by a person (including you) using your logon name and password with, or without, your authority;
  - (b) any fault in the service due to your negligence or wilful misuse, or any unauthorised use of the service; and
  - (c) your breach of these terms.

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### Liability

- 4.76 We accept liability for the supply of the service to the extent provided in this clause and in accordance with any non-excludable right under consumer protection law.
- 4.77 We accept liability where:
- (a) the service is not supplied with due care and skill;
  - (b) any material supplied in connection with the service is not fit for a particular purpose for which was made known by you to us; and
  - (c) we are otherwise required as a result of non-excludable rights under consumer protection laws.
- 4.78 To the extent (if any) that the service is not of a kind ordinarily acquired for personal, domestic or household use, our liability is limited to, at our option:
- (a) resupplying or paying for the costs of having the services resupplied, if the liability relates to services; or
  - (b) repairing the goods or refunding the purchase price of the goods, if the liability relates to goods.
- 4.79 Other than liability accepted by, we exclude all liability for indirect and consequential loss or damage of any kind, loss or corruption of data, loss of revenue, loss of profits, failure to realise expected profits or savings and any other commercial or economic loss of any kind, in contract, tort (including negligence), under any statute or otherwise arising from or relating in any way to these terms and/or its subject matter.
- 4.80 Other than liability accepted by us, our total liability for loss or damage of any kind not excluded, however caused, in contract, tort (including negligence), under any statute or otherwise arising from or relating in any way to these terms and/or its subject matter is limited in aggregate for any and all claims to \$10.

### Term, Suspension and Termination

- 4.81 Either party may terminate the service at any time by providing the other party with at least 30 days' written notice.
- 4.82 If your service is terminated for any reason:
- (a) you must immediately pay all fees and charges owing up to the date of termination (without any deduction or set-off of any kind);
  - (b) we may delete all of your data from our systems; and
  - (c) you must immediately delete from your systems all copies of all software.
- 4.83 We may from time to time without notice suspend or disconnect the service or deny access to the service:

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- (a) during any technical failure, modification or maintenance of the service, provided that we use reasonable endeavours to resume the service as soon as reasonably practicable. If we need to suspend your service under this clause, usually we will give you 24 hours' notice, unless the maintenance is urgent, in which case we will give you as much notice as we reasonably can. We will try to ensure that the limitation or suspension is at night and for as short a period as is reasonable possible; or
  - (b) we consider that you have failed to comply with any provision of these terms (including failure to pay fees or charges due), or you do, or allow to be done, anything which in our opinion may have the effect of jeopardising the operation of the service.
- 4.84 You remain liable to pay all fees and charges during any period of suspension or disconnection or denial of access.
- 4.85 We may (without notice) remove, amend or alter any data:
- (a) upon being made aware of any claim or allegation, or 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 (including intellectual property rights and moral rights); or
  - (b) if we consider that you have failed to comply with any provision of these terms.
- 4.86 We are not required to provide you with a copy of your data if:
- (a) we suspend or disconnect your service or deny access to the service;
  - (b) remove, amend or alter your data; or
  - (c) your service is terminated (for any reason).
- 4.87 If we provide you with a copy of your data, then we are entitled to charge you an additional fee calculated at the hourly rate the charges section above for the time taken for us to recover and provide you with that data.

### **Additional terms**

- 4.88 You must comply with:
- (a) the add on terms that are applicable to your selected add ons;
  - (b) our operational procedures for the service which are set out in the Mission Control User Guide at <https://mc-au.server-secure.com>

### **General**

- 4.89 Either party may exercise a right, power or remedy at its discretion and separately or concurrently with another right, power or remedy. Failure by a party to exercise, or delay in exercising, a right, power or remedy does not prevent its exercise.



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- 4.90 A provision of, or a right created under these terms, may not be waived except in writing signed by the party granting the waiver.
- 4.91 Notices can be provided under these terms by email, post or facsimile. We may tell you by email of any matters relating to these terms, including any changes to these terms. You must regularly check the email address that you provide to us. If we elect to provide notice to you by email, you will be taken to have received the email notification, in the absence of any evidence to the contrary.
- 4.92 You may not resell services or assign any of your rights or obligations under these terms without our prior written consent. We may transfer or novate any of our rights or obligations under these terms to a reputable, credit worthy third party who agrees to be bound by our obligations under these terms. If we do so, we will try to notify you beforehand (otherwise we will tell you within 30 days after the transfer).

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## 5 Business Online Hosting and add ons

### What is Business Online?

- 5.1 We have withdrawn this service from sale to new customers. Customers cannot upgrade or downgrade services
- 5.2 We will charge you the fees and charges set out in the Telstra Apps Marketplace.
- 5.3 Business Online is made up of various components that we package together for you. The components are:
- (a) website hosting;
  - (b) website builder; and
  - (c) website statistics.

The terms for each of those components are set out below.

- 5.4 We have withdrawn this service from sale to new customers. Existing customers will not be able to make changes to their existing pricing plan.

### Website hosting

- 5.5 We will provide you with a website hosting service that has certain features, storage space and permitted data allowance. The features, levels of storage space and permitted data allowance will depend on the package and features that you select in your application form.
- 5.6 Website hosting also allows you to change the server on which your website is hosted. We will charge you the Web Server Transition Fee set out in the charges section below if you change the server on which your website is hosted.
- 5.7 You need to have one of the following types of registered domain name for your website hosting service: .com, .com.au, .net, .net.au, .org, or .org.au. You can:
- (a) ask us to register a .com, .com.au, .net, .net.au, .org, or .org.au domain



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name for you; or

- (b) provide us with details of an existing domain name.

If you ask us to register a domain name for you or you re-delegate your domain name to us, the terms set out in the Domain name registration and hosting service section above apply.

- 5.8 You acknowledge that each Add On may have separate terms that apply, as set out in this section of Our Customer Terms.
- 5.9 Business Online is available with the following storage space: 200MB, 500MB, 800MB or 3000MB.
- 5.10 The amount of storage space you use is calculated by adding the monthly average of the disk space of your web site and the monthly average of the stored data in all your POP Mail mailboxes created under your Business Online service. If your storage space exceeds the amount you have selected, you agree to reduce the size of your POP Mail mailboxes if we ask you to (by either downloading or deleting emails).
- 5.11 Each storage space has a certain data download limit and comes with a standard number of security tokens as set out below. If you exceed the relevant allowed download limits, you will be charged the additional charges that are set out in the charges section. Security tokens allow you to prevent users from having access to certain parts of your website unless the user enters a username and password.

Storage space	Data download limit	Standard number of security tokens
200MB	10,000MB	5
500MB	20,000MB	10
800MB	30,000MB	15
3000MB	40,000MB	20

- 5.12 You may only use your Business Online service for commercial purposes. You must not build or maintain a website that is offensive, in breach of any laws, regulations or policies applicable to internet content or in breach of any provision of the Internet Direct and Business Broadband section of Our Customer Terms. If we believe that you are in breach of this clause, we may modify, limit or suspend your Business Online service.
- 5.13 We will use reasonable endeavours to back up your data. In the event of equipment failure or data corruption, we will use reasonable endeavours to restore your data.
- 5.14 We cannot promise that the backup of your data will be complete and error free. We backup your data on a regular basis but only when you have made your files available to us so that we are able to perform our backup procedures. We are not responsible for handling complaints about your data.

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- 5.15 You must scan your data for viruses and ensure that the data that you upload onto our systems does not contain any computer virus and will not in any way corrupt the data or systems of any person.
- 5.16 You warrant that our use of your data to provide you with your Business Online service will not infringe any other person’s rights including intellectual property rights.

### Website builder

- 5.17 Website builder can help you create, modify and publish a website. The terms are set out in the table below:

<b>Website Builder Standard (included with a standard package)</b>	<b>Website Builder Advanced (included with an eCommerce package)</b>
If you have a Standard Package, you will receive Website Builder Standard which will assist you with having online presence.	If you have an eCommerce Package, you will receive Website Builder Advanced which is Website Builder Standard with extra features including an e-shop feature which provides functionality to allow you to sell your products and services from your website.
Website Builder Standard does not have eCommerce capability.	If you have a Website Builder Advanced and you use the e-shop tool, you acknowledge that the tool utilises the merchant services of a third party. You may have to agree to the terms and conditions of the third party. We will not be responsible for loss that you may suffer as a result your use of the e-shop tool.

- 5.18 The features of your website builder may change from time to time.
- 5.19 If your Hosting service is cancelled for any reason, your website builder will also be cancelled. We recommend that you keep a copy of your content because if your website builder is cancelled for any reason, we will not keep a copy of your content.
- 5.20 You acknowledge that we obtain website builder from a third party. If the third party stops providing us with website builder, we will endeavour to give you as much notice as possible but we will have to stop providing the product to you.

### Website statistics

- 5.21 Website statistics is a reporting tool that provides information on the internet traffic your website receives.
- 5.22 You should not rely on the data provided in your website statistics for calculating excess usage charges and other charges. The website statistics data should be used as a guide only.

### Add Ons

- 5.23 Add Ons are additional features that you can add to your Business Online service through mission control. The charges for Add Ons are set out in the charges section below.

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- 5.24 You acknowledge that we obtain Add Ons from a third party. If the third party stops providing us with an Add On, we will endeavour to give you as much notice as possible but we will have to stop providing it to you. You may have to agree to the terms and conditions of the third party.
- 5.25 You may need to have a certain package or download limit to receive Add Ons.
- 5.26 The Add Ons and applicable terms and limitations are set out in the table below:

Add On	Description and applicable terms
SSL Keys	SSL Keys allow you to use your own domain name with your Business Online service. You may choose either a Thawte 128 bit or auto 128 bit plan, a Verisign 40 bit or 128 bit plan or a Comodo 128 bit plan. The 128 bit plans provide more secure protection.
Additional Security Token	Security tokens allow you to prevent users from having access to certain parts of your website unless the user enters a username and password. You may apply for security tokens as an Add-On in addition to the standard number of tokens you receive with your Business Online package. You are limited to ordering 26 additional security tokens with your Business Online service.
Additional Data Sources	Additional Data Sources provides you with a System Data Source Name (DSN), which allows you to connect to your existing databases. DSNs are configured on the web server to allow the code in web pages to access the database.
Additional Mailing Lists	A Mailing List that allows you to send an email to up to 1,000 email addresses from a single email address comes standard with your Business Online. Additional Mailing Lists gives you mailing lists for up to 1,000 email addresses per list in addition to the list you receive with your Business Online.
Web Server Log	Web Server Log provides you with a report of the number of users that access your website.
SQL Database	<p>You can apply for a MySQL Database, a Standard SQL Database or a Premier SQL Database. Each type of SQL Database comes with a certain amount of storage space and number of permitted users (which are set out below).</p> <p>You may purchase additional SQL Database storage space for the additional charge set out below.</p> <p>If your database exceeds the relevant number of permitted user connections, then your excess connections will be automatically terminated. We are not responsible for any problems you experience that are caused by the termination of excess user connections.</p> <p>We are not able to provide you with a testing environment for your SQL Database. You should test your SQL Database offline.</p> <p>The Standard or Premier SQL Databases come with full-text search facilities for character-based data. The full-text search facilities can be used to create special indexes of all relevant words in selected columns of selected tables. The storage space occupied by the full-text search indexes is included in your storage space limit.</p> <p>You should apply the SQL Server development best practices guidelines, which are set out at <a href="http://admin-au.server-secure.com/bestpractices/sql/">http://admin-au.server-secure.com/bestpractices/sql/</a> when using any of the SQL Databases.</p>

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Add On	Description and applicable terms
MySQL Database	<p>There are two types of MySQL Database: MySQL Intro and MySQL Standard. The MySQL Intro Database is a single database with up to 2MB of storage space (including both data and transaction log space) and the MySQL Standard Database is a single database with up to 15MB of storage space (including both data and transaction log space).</p> <p>Both types of MySQL Database can support up to 10 simultaneous user connections, including 2 users who use the database for application and administrative purposes only.</p> <p>You may apply for both types of MySQL Database but you can only apply for one MySQL Intro Database and only at the time you apply for your first MySQL Add On.</p> <p>You cannot use:</p> <ul style="list-style-type: none"> <li>• external network connections;</li> <li>• software packages not provided by us; or</li> <li>• InnoDB or Berkeley table types,</li> </ul> <p>with your MySQL Database.</p> <p><b>Standard SQL Database</b></p> <p>The Standard SQL Database is a single database with up to 50MB of storage space (including both data and transaction log space) and can support up to 10 simultaneous user connections.</p> <p>You may apply for a Standard SQL Database if your Business Online service has a storage space of at least 500MB.</p> <p><b>Premier SQL Database</b></p> <p>The Premier SQL Database is a single database with up to 150MB of storage space (including both data and transaction log space) and can support up to 35 simultaneous user connections.</p> <p>You may apply for a Premier SQL Database if your Business Online service has a storage space of 3000MB.</p> <p>If you receive a Premier SQL Database, you must:</p> <ul style="list-style-type: none"> <li>• design your Web-SQL applications to use the same user connection and, if possible, avoid opening individual user session connections to the database;</li> <li>• ensure that at least one of your personnel responsible for development of your SQL Database has at least two years experience in SQL Server development or has Microsoft certification (MCSD or MCDBA); and</li> <li>• test all application components of your Premier SQL Database prior to deploying it to the SQL Premier site server</li> </ul>

## 6 Business Mail Extra -SMTP Mass Email

- 6.1 We will charge you the fees and charges set out in the Telstra Apps Marketplace.
- 6.2 The SMTP Mass Email service allows you to send outgoing emails to the Internet through an SMTP gateway using Simple Mail Transfer Protocol (SMTP).
- 6.3 The SMTP Mass Email service will authenticate each access request based on the IP address we have allocated to you. You may access the SMTP Mass Email service by configuring your email client to send outgoing emails to smtp-au.server-mail.com or such other host as we may tell you from time to time.

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- 6.4 You may apply for the SMTP Mass Email service:
- (a) if you have a Business Mail POP service; or
  - (b) as a Business Broadband Extra if you have a TBB service but (a) does not apply.
- 6.5 The size of each email sent through our SMTP Gateway must not exceed 20 Megabytes. We can refuse access to the SMTP Mass email service or discard or delete any email sent through the SMTP Mass email service (without telling you or the person who sent it) if your use of the SMTP Mass Email service exceeds this limitation. There is no limit to the number of emails that you can send through the SMTP Mass Email service.
- 6.6 You must use the SMTP Mass Email service in accordance with our reasonable directions. You must not use the SMTP Mass Email service, attempt to use the SMTP Mass Email service or allow the SMTP Mass Email service to be used in any way:
- (a) which causes you to breach your agreement with us, or to breach a law (including a foreign law), a code or an instrument which governs your conduct;
  - (b) which could cause us to breach, or be involved in a breach of law (including a foreign law), a code or an instrument which governs our conduct;
  - (c) which could result in us incurring a liability to any person;
  - (d) which could interfere with the SMTP Mass Email service, our networks or equipment or those of another person, or the provision by us of services to you or another person;
  - (e) to engage in conduct or activities that we consider could adversely affect or prejudice our reputation or brand; or
  - (f) which attempts to manipulate or bypass any limitations on the SMTP Mass Email service by any means.
- 6.7 We will use reasonable endeavours to ensure that the SMTP Mass Email service is available for your use. However, due to technical limitations, despite due care we can not promise that the SMTP Mass Email service will always be available or that it will deliver all emails to the intended recipients.
- 6.8 If you are in serious breach of the clauses above, then we may take remedial action. We may also take remedial action if the law or a regulator or other authority requires us to do so. The types of remedial action which we may take at our discretion include suspending, cancelling or limiting your access to the SMTP Mass Email service.
- 6.9 We will try to notify you before we terminate or suspend your access to the SMTP Mass Email Service in accordance with this clause if it is reasonably possible to do so. However, a failure to notify you will not affect any such termination or suspension.