



## SUPPORT RESORT FAX ORDER FORM

Thank you for your interest in placing an order with Support Resort. This form enables you to sign up by fax. If you would prefer to pay via PayPal then please sign up online via our website at <http://www.supportresort.com>.

To place your order please:

- Complete the details on pages 1-3;
- Initial each page in the place indicated;
- Please enter your business name (if you are a business) or your own name (if you are not a business) in the space indicated at the top of page 4 (where it says: "insert entity name");
- Sign the Acceptance of Terms and Conditions section on the last page;
- Take a photocopy of the front and back of the credit card you are using to make the payment, along with a photocopy of a valid Government photo identification card which includes your name, photo and current address;
- Fax all pages through to: +1-702-553-2704

If you have any questions please do not hesitate to contact us at [sales@supportresort.com](mailto:sales@supportresort.com).

### YOUR DETAILS

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**Title:** Mr / Ms / Miss / Mrs / Dr / Other

**Name:** \_\_\_\_\_

**Company:** \_\_\_\_\_

**Address:** \_\_\_\_\_

\_\_\_\_\_

**City:** \_\_\_\_\_ **State:** \_\_\_\_\_ **Postal Code:** \_\_\_\_\_ **Country:** \_\_\_\_\_

**Email:** \_\_\_\_\_

**Alternative Email:** \_\_\_\_\_

#### IMPORTANT NOTE:

Please be sure to write your email address(es) clearly so that we can contact you. If you do not hear from us within 48 hours then it is likely that we have not been able to interpret your email address above, so please email us at [sales@supportresort.com](mailto:sales@supportresort.com) quoting two email addresses so that we can contact you.



## PURCHASE DETAILS

For each type of staff member you want to hire, please enter the quantity of staff you would like to hire (in the *Qty* field) and the *Total Initial Payment* (the quantity of each staff type multiplied by the sum of the associated setup price and monthly price).

### Regular Plans

Service Plan	Period	Setup	Monthly	Qty	Monthly	Qty	Monthly	Qty	Monthly	Qty	Total Initial Payment (USD)
			Standard		Premium		Gold		Certified		
Web Design	Part-time	\$129	\$399		\$499		\$649		-		
	Full-time	\$199	\$699		\$899		\$1199		-		
PHP Programmers	Part-time	\$129	\$399		\$499		-		-		
	Full-time	\$199	\$699		\$899		\$1199		\$1499		
.NET Programmers	Part-time	\$129	\$399		\$499		-		-		
	Full-time	\$199	\$699		\$899		\$1199		\$1499		
Java Programmers	Part-time	\$129	\$399		\$499		-		-		
	Full-time	\$199	\$699		\$899		\$1199		-		
Virtual Assistants	Normal Hours	-	\$699		\$899		\$1299		-		
	Out of Hours	-	\$799		\$999		\$1399		-		
Outsourced Support	24/7	\$199	\$1999		\$2899		-		-		
Linux System Administrator	Part-time	\$129	\$399		\$499		\$649		-		
	Full-time	\$199	\$699		\$899		\$1199		-		
Windows System Administrator	Part-time	\$129	\$399		\$499		\$649		-		
	Full-time	\$199	\$699		\$899		\$1199		-		
Social Media Managers	Part-time	-	-		-		-		-		
	Full-time	-	-		-		-		-		
Data Entry	Part-time	-	-		-		-		-		
	Full-time	\$199	\$699		\$899		-		-		
			Android		iOS		Android+iOS				
Mobile App Developers	Part-time	\$129	\$499		\$499		\$649				
	Full-time	\$199	\$899		\$899		\$1199				
			Level 1		Level 2						
Technical Support Engineers	Normal Hours	-	\$899		\$1299						
	Out of Hours	-	\$999		\$1399						
<b>GRAND TOTAL (Sum of all Total Initial Payments)</b>											\$

### Hire a featured staff member

Featured Staff Name and Code	Setup	Monthly	Total Initial Payment (USD)
<b>FEATURED STAFF TOTAL</b>			\$

**NOTE:** All prices quoted in US dollars. Australian customers will be charged 10% GST in addition to the above prices.





## TERMS AND CONDITIONS

This is a legal agreement between you (\_\_\_\_\_ [insert entity name]) and Vanilla Networks. This Agreement replaces any prior written or oral agreement between the parties.

By making at least one payment to Vanilla Networks for our services, you agree to the following Terms and Conditions of Service. If you do not wish to be bound by the terms and conditions of the Agreement, you MUST NOT submit an order to, agree to or allow any service to be provided by, or otherwise make any purchase from, Vanilla Networks.

### DEFINITIONS

"account" means all aspects of the Service provided to you under this Agreement.

"Agreement" means these Terms and Conditions of Service.

"Claim" means any action, claim, demand, cost, loss, damage, (whether special, indirect, consequential, general or any other damage), expense or other liability (including for death and injury, and the costs of defending or settling any Claim) whether arising in contract, negligence or any other tortious action.

"Confidential Information" means information or material:

- containing or being passwords;
- concerning either party's internal business practices and/or actual or potential customers;
- which derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; or
- identified in writing by the disclosing party as confidential.

but does not include any information or material:

- which is or subsequently becomes available to the general public other than through a breach by the receiving party;
- which is already known to the receiving party before disclosure by the disclosing party;
- which is independently developed by the receiving party without use of or reference to the Confidential Information of the other; or
- which the receiving party rightfully receives from third parties without restriction as to use or disclosure.

"days" means calendar days unless explicitly stated otherwise.

"Direct Customer" means any person who pays you directly for your service (the service we are providing support for). Direct Customers include your resellers, but not the clients of your resellers.

"Fixed-Price Project" means a Service Plan with a defined scope and an agreed total price.

"Force Majeure" means circumstances beyond the control of a party which includes (but is not limited to) acts of God, perils of the sea or air, fire, flood, drought, explosion, sabotage, accident, embargo, riot, civil commotion or civil authority, including acts of local government and parliamentary authority, materials, breakdown of equipment and labour disputes of whatever nature and for whatever cause arising including (but without prejudice to the generality of the foregoing) work to rule, overtime bars, strikes and lockouts and whether between either of the parties hereto and any or all of its employees and/or any other employer and any or all of its employees and/or between any two or more groups of employees (and whether of either of the parties hereto or any other employer), acts of war (declared or undeclared) or terrorism.

"person" includes an individual, a body corporate, office, commission, authority, committee, tribunal, board, institute, organization or other body however described.

"Phone Provider" means a third-party entity which provides phone services, phone hardware, phone numbers, telecommunications services, point-to-point protocol services, voice over IP (VOIP) services or other voice-related communications services of any kind.



"Phone Support" means our team answering your customers' questions on your behalf via inbound phone calls from your customers.

"project milestone" means a recognisable or agreed point of progress in the course of completing a Fixed-Price Project.

"Quote Reference Number" means the code we have provided to you to uniquely identify your specific Fixed-Price Project and the quote related to it;

"section" means a sequential collection of sub-sections within this Agreement. Each section commences with a bold upper case heading.

"Service" means the provision to you, by us, of labour-based and IT-enabled services, and all associated systems and software.

"Service Plan" means the service plan or package you have purchased from us, as advertised on our website.

"sub-section" means a collection of statements (clauses) within this Agreement which are grouped under a single heading marked in bold with leading capital letters;

"Vanilla Networks", "we", "our" and "us" means Vanilla Networks Pty Ltd trading as Support Resort (ABN 94 098 484 934), a company incorporated under the Corporations Act 2001.

"website" means any pages, material, content, software or systems made available through the supportresort.com domain name, including all subdomains (such as "www.supportresort.com" and "hub.supportresort.com").

"you" and "your" means the entity that agrees with Vanilla Networks to use the Service. If you provide a business name on the order form, then that business is the entity which agrees with Vanilla Networks to use the service and the person(s) who complete the order form on behalf of that entity warrant(s) that he/she/they are duly authorised by the entity to enter into this legally binding agreement on behalf of the entity. If a business name was not provided on the order form, then the individual person(s) named on the order form is/are bound by this agreement and the order form must only be submitted by the named person(s).

## **GENERAL**

This section applies to all Service Plans.

### **Order Details and Processing**

You confirm that the details you have provided to us when placing your order(s) with us are true, complete and correct.

We reserve the right to decline your order at any time and for any reason. If your order is declined then we will refund any unused portion of any payment you have made to us for the declined order within seven days of declining the order.

### **Plan Definitions**

You acknowledge that certain limits to the scope of our service apply to all our Service Plans and you agree that we shall not under any circumstances be obliged to carry out work of any type that is not explicitly included in your Service Plan as advertised on our website.

### **Confidential Information**

Each party will maintain all Confidential Information of the other party in strict confidence and will not at any time or for any reason disclose any Confidential Information of the other to any third party without the disclosing party's prior written consent.

Neither party will use any Confidential Information of the other for any purpose whatsoever except in performing its duties and exercising its rights under this Agreement.



Neither party will disclose any Confidential Information of the other to any of its agents or employees who do not participate directly in the performance of its duties or exercise of its rights under this Agreement, and each party will advise its employees who are permitted access to any Confidential Information of the other party, of the restrictions on disclosure and use set forth in this Agreement.

Notwithstanding the foregoing, either party may disclose the Confidential Information of the other if it believes in good faith that any applicable law, rule, or regulation requires the disclosure, provided that it makes a reasonable effort to give the disclosing party as much advanced notice as may be practicable.

On termination or expiration of this Agreement, each party will return or destroy all Confidential Information obtained from the other party and copies thereof.

Either party may use for any purpose without obligation to the other party, information (other than Confidential Information) in non-tangible form, which may be recalled by persons who have had access to the Confidential Information, and which results from work with the Confidential Information.

You agree that, if you dispute any payment(s) made to us, then we will have the right to disclose any information we see fit to any financial service provider(s) involved in processing each disputed transaction, and that the Confidential Information provisions in this Agreement do not apply to our communications with those entities.

Nothing in this Clause will prohibit or restrict our right to provide the same or similar products or services furnished hereunder to other parties. You acknowledge and agree that the restrictions on Confidential Information contained in this Agreement shall not apply to the general knowledge, skills and experience gained by us or our employees while engaged by you.

## **Ownership of Work Produced**

This sub-section applies to any computer program(s), computer code, website design(s) or graphic design(s) we produce for you in relation to your Service Plan if and only if the Service has been paid for in full. Such works are your property subject to the following restriction:

- Some common, generic computer program functions and subprocedures may be re-used in projects that we undertake for other clients. Examples of generic functions include functions written to trim whitespace from a text string or to validate an email address. You agree that we have the right to re-use generic code in this way, free of cost.

## **Intellectual Property**

You agree to indemnify us, hold us harmless and defend us at your own expense from and against any and all Claims for infringement of copyright, patents, trade marks, industrial designs or other intellectual property rights issued under the laws of any country where:

- the copyright, patents, trade marks, industrial designs or other intellectual property were provided by you; or
- you represented, expressly or impliedly, that the copyright, patents, trade marks, industrial designs or other intellectual property were your intellectual property; or
- you had asked us to download or otherwise copy or access or use the copyright, patents, trade marks, industrial designs or other intellectual property.

You further agree not to provide us with any item nor ask us to download/access/copy/use any item, including but not limited to images, software, computer code and written material, unless you have the legal right to use those items for the purpose our work relates to.

We undertake to give you prompt notice of any Claim described above that is made against us or any of our subsidiaries, dealers or customers and you will forthwith defend any such Claims and make settlements thereof at your own expense.

You acknowledge that any and all of the copyright, patents, trade marks, industrial designs or other intellectual property rights used or subsisting in or in connection with our business, marketing and/or support material relating to our business and all documentation and manuals relating thereto are and will remain our property and you will not, during or at any time after the



expiry or termination of this Agreement, in any way question or dispute the ownership by us thereof.

You will not, during or after the expiry or termination of this Agreement, without the prior written consent of us, use or adopt any name, trade name, trading style or commercial designation that includes or is similar to or may be mistaken for the whole or any part of any trade mark, trade name, trading style or commercial designation used by us.

## **Use of Stock Photography**

When carrying out design work, unless otherwise instructed by you, our designers will incorporate licensed images from third party image vendors into their designs at no extra charge. However, the following limits apply to the number of stock photographs (or other third-party images) which we will download for use in your project(s):

- Full-time web designer plan (month-to-month): Maximum of 50 third-party licensed images per month;
- Part-time web designer plan (month-to-month): Maximum of 25 third-party licensed images per month;
- Full-time web designer plan (week-to-week): Maximum of 12 third-party licensed images per week;
- Fixed-price project involving design work: A limited number of third-party licensed images will be provided as explicitly agreed with you in writing or, in the absence of such an agreement, at our discretion.

Daily limits may also apply at our discretion.

Licensing restrictions apply to most images used in website and graphic design work. You must not re-use the images for any other purpose and must not redistribute the images in any way, shape, or form, nor use the images in website templates or any other product or service for multiple re-sale, unless you have our express written permission to do so. Such permission can only be obtained by contacting us through our contact form in the Hub (<https://hub.supportresort.com>) and cannot be given by your assigned staff.

## **Sufficient Information**

Where relevant, you agree to provide us with sufficient detail about, and access to, your services, policies and systems to enable us to provide the Service to you and, if applicable, your customers.

## **Non Solicitation of Employees or Contractors**

Except for the Service itself, You will not directly or indirectly, during this Agreement and for a period of two years after its expiry or termination solicit, engage, employ, contract or otherwise work in any manner with any person who is or was employed or engaged by us (including our subsidiaries). This obligation applies not only to you but also to each of your Directors and principals (where existent). In the event that You or one or more of Your Directors or principals breaches this sub-section, then You agree to pay us a fee of US\$25,000 for each breach (that is, once for each employee) plus any legal costs incurred by us in recovering such fees from you.

You acknowledge that the two-year period mentioned above is no greater than is reasonably required to protect the goodwill in the business.

## **Password Security**

You must keep confidential, all passwords created or used in relation to the Service.

You must not:

- make any password created or used in connection with the Service, available to the public or to any other third person;
- allow the public or any other third person to access your account, other than as agreed by us.

All passwords provided by you to us are kept confidential. Passwords are only provided to our employees on a need-to-know basis.



## **Staff Scheduling and Rotation**

We reserve the right to assign staff to shift times as we see fit.

You acknowledge that, unless otherwise specified in your Service Plan's details on our website, it is our company policy for all staff to rotate shifts once per month and that therefore the daily work period of each individual staff member will vary from month to month. Shift rotations occur around the same date of each month so the first shift rotation may occur at any time during your first month of service and then will generally occur at approximate one-month intervals after that.

We endeavour to provide stable staffing but, unless you have purchased a Service Plan which explicitly provides the services of a specific staff member:

- We reserve the right to assign and re-assign staff as we see fit; and
- Changes of staff may occur with or without notice and you agree that we do not need to provide any compensation, refund or reimbursement of any kind if such staff changes adversely affect you.

## **Allocation of Payments**

For each payment you make, we have the sole right to decide which due amount(s) to apply the payment to.

## **Goods and Services Tax (GST)**

This sub-section only applies to Australian customers.

Words or expressions used in this clause which are defined in the A New Tax System (Goods and Services Tax) Act 1999 (Cth) have the same meaning in this clause.

The following items do not include goods and services tax (GST):

- the fees payable by you for the Service; or
- any other Taxable Supply made or provided by us to you, whether or not in accordance with this Agreement.

If applicable, in addition to the amounts payable in respect of any one or more of the amounts above, you must pay, to us, GST on those amounts, as indicated in a Tax Invoice.

We will provide a Tax Invoice for each payment for you to view and print via our customer centre at <https://hub.supportresort.com>.

GST is payable to us by you at the same time as you pay the amounts referred to above to us.

If you fail to remit GST to us as otherwise required by this Agreement, you will indemnify us for any Claim in relation to the GST that you failed to remit.

## **Hardware and Software**

You are responsible for all costs associated with the hardware and software you use to provide your products and services, including but not limited to your: server hardware and software; website; ticket system/software; network; billing software; email services; and backup systems.

We will not authorize any charges by third parties on your behalf for hardware and/or software purchases, or related products and/or services.

## **Acceptable Content**

We will not perform any task that will or is likely to require any employee(s) of ours to view or work with content which is





sexually explicit, hateful, obscene, offensive, illegal, threatening, racist or contains depictions of nudity.

## **Notice**

You agree to correspond with us via "The Hub" (<https://hub.supportresort.com>) or by sending email messages to any email address we specify for that purpose. If we need to contact you for any reason we will do so via email, instant messenger or SMS only. You acknowledge that due to the unreliable nature of the SMS protocol any messages we send to you via SMS will not necessarily reach you.

You agree to notify us promptly of any changes to your email address or other contact details.

## **Virus Scanning**

We scan incoming and outgoing messages for viruses. However we do not guarantee that every message will be scanned, or that every virus will be detected and removed. Additionally, we reserve the right to remove attachments from incoming and outgoing email messages. Messages we answer on your behalf through your ticket system are not scanned for viruses unless your ticket system includes virus scanning facilities.

Our virus scanning facilities provide a high level of protection against viruses but you acknowledge and agree that you are solely responsible for protecting your and your customers' property and email accounts from virus threats.

## **Backups**

You are responsible for backing up your servers and data.

You are responsible for backing up and storing any works we undertake for you, including but not limited to website designs and computer programs. You acknowledge that we do not have any obligation to keep a copy of work we undertake for you.

## **Server Outages**

You agree and acknowledge that, if any server which we are providing support for experiences an outage, responsibility for minimizing the length of the outage rests with you, whether or not you are aware of the outage. Our staff may assist in that process (if such assistance is within the scope of the service we are providing to you) but you agree that we will not be liable for any outage period in whole or in part.

## **Support From Us Directly To You**

If you require support directly from us, and if such support is covered by the Service Plan you have purchased from us, then your request(s) for support must be lodged via the method prescribed in the "Notice" sub-section of this Agreement.

We will provide support to you as required, within reason, and at our discretion, subject to the limitations applying to your Service Plan as advertised on our site.

We will not provide you with training unless we explicitly agree to the contrary.

## **Right to Outsource**

At our sole discretion, we may outsource the Service or the performance of any work, or part thereof, relating to the Services to any of our affiliates or subsidiaries.

If we outsource any part of the Services or the performance of any part of the work comprising the Services, the terms and conditions of this Agreement will apply mutatis mutandis to the subsidiary company to whom the work or Services have been outsourced. For clarity, this Agreement between you and us will continue on foot and we will hold the rights and obligations of this Agreement on trust for our subsidiaries and affiliates.



## Right to Cancel Service

We reserve the right to refuse or cancel the Service for any reason, and at our sole discretion.

## FIXED-PRICE PROJECTS

This section applies if you are placing an order for a Fixed-Price Project.

### Fixed-Price and Scope of Work

Before you place your order for a Fixed-Price Project, you must first request a quote from us.

We will provide a quote to complete your project for a fixed price. Each quote will be identified by a unique Quote Reference Number. This Quote Reference Number needs to be entered when placing your order for a Fixed-Price Project to define both the scope and price of work associated with your order. It is your responsibility to ensure that you have entered the correct Quote Reference Number on this order form. The quoted price will only cover the work that we have explicitly agreed to complete for the quoted price.

Additional charges may apply if:

- You request any alteration(s) to the project scope or specifications on which our quote was based;
- Work needs to be repeated or additional work undertaken due to your project specifications being unclear or incomplete.

In such cases, we will neither commence nor continue the additional work unless and until you have agreed to the alteration in price.

## Billing and Payments

Fees must be paid in US dollars via PayPal (<http://www.paypal.com>). Your first payment must be made at the time you place your order.

When we provide a quote for your Fixed-Price Project, we will include a list of project milestones and the amount payable upon completion of each project milestone.

Each project milestone will be deemed to be *submitted for approval* once we have notified you that the associated output is ready for your review.

Once a project milestone has been *submitted for approval*, you must pay the amount due for that project milestone within seven (7) days unless you *decline to approve the project milestone*. To *decline to approve the project milestone*, you must:

- Within seven (7) days of the project milestone being *submitted for approval*, explicitly notify us that you do not agree that the project milestone has been completed; and
- Within the same seven-day period, provide us with specific details of the changes/fixes you feel are required to complete the project milestone. You agree that you will not request or expect changes beyond what is required for the work output to meet a reasonable professional standard.

If you *decline to approve the project milestone* then we will make the corrections you have outlined at the time you declined to approve the project milestone except for *ineligible changes* - that is, changes which we determine at our sole discretion but within reason:

- Are outside the scope of our quote for the work; or
- Exceed what is required to meet a reasonable professional standard.

You agree that such *ineligible changes* will alter neither the amount due nor the due date of any payment(s).



Once all your requested changes (except for *ineligible changes*) have been completed then we will again submit the work for your approval and the above procedure will then apply with one exception: You agree that you will not raise any new concerns at this time and instead will merely verify the satisfactory completion of the changes you requested when you last *declined to approve the project milestone*.

You have no ownership of nor right to use the work completed for each project milestone until you have paid the full amount due for that milestone.

We reserve the right to suspend and/or withhold work on incomplete project milestones until payment has been received for all completed milestones.

## **Commencement of Work**

Unless otherwise agreed with you, we will endeavour to commence work within two working days of receiving your order and initial payment.

## **Project Deadlines**

If our quote for your Fixed-Price Project specifies any deadline(s) associated with particular project milestones then we will use the best of our endeavours to meet those deadlines, but no compensation, discounts or refunds will be payable in the event that any deadline is not met.

Deadlines will be extended if there are any delays at your end which prevent us from continuing work at full pace, including but not limited to payment delays and delays in receiving feedback and/or instructions from you.

You acknowledge that project delays may occur due to hard-to-control circumstances such as illness of critical staff or unforeseen technical complexities.

Unless we explicitly agree otherwise, staff will not work overtime to complete work on your project.

## **Limited Testing**

We will undertake basic testing of the work we produce for you but ultimate responsibility for product testing rests with you. We recommend that you undertake comprehensive testing on the different technology platforms and devices of relevance to you.

## **Product Maintenance**

Except at our sole discretion, no free service will be provided in association with a particular milestone after you have acknowledged completion of that project milestone or paid for the project milestone, including but not limited to bug fixes, website maintenance and data/file retrieval.

## **Cancellation of Service**

If you choose to cancel service prior to completion of your entire Fixed-Price Project then:

- You must provide us with unambiguous written notification of your cancellation;
- We will discontinue work immediately upon receipt of such notification;
- You must pay the full amount for any completed milestones within seven (7) days of cancellation;
- Within seven (7) days of notifying us of your cancellation, you must pay 50% of the quoted price (after taking into account any agreed modifications to price during the course of the project) for any incomplete project milestones for which work has already commenced;

If we choose to cancel service prior to completion of your entire project then:



- We will provide you with unambiguous written notification of our cancellation of service;
- We will discontinue work within two (2) working days (or earlier at your request); and
- You must pay the full amount for any completed milestones within 7 days.

## **Identity Verification**

You agree to provide us with a copy of your government-issued identification documents (with photo) to prove your identity if we so request. Such documents must be provided by mail or fax within two (2) days of our request. We reserve the right to suspend work and/or service pending receipt of such requested documents.

## **HIRING STAFF BY THE MONTH OR WEEK**

This section applies to Service Plans under which you hire individual staff or teams on a monthly or weekly basis, as opposed to purchasing a Fixed-Price Project.

### **Commencement of Work**

We reserve the right to decide when to start the Service, subject to the following conditions.

If you place an order to hire staff on a monthly basis, the setup fee (if any) and first month's fee will be charged at the time you place your order.

If you place an order to hire staff on a weekly basis, the setup fee (if any) and first week's fee will be charged at the time you place your order.

After your initial payment has been made, we will endeavour to commence the Service within 48 hours. Please note that the 48 hours of 'lead-time' is usually required to prepare properly for commencing the Service, and is included in the period charged for.

If we are not able to commence the Service within 48 hours of you making your first payment for the Service Plan then we will notify you of that fact before the 48 hours expires. You will then have the choice of:

1. Cancelling your order and receiving a full refund;
2. Proceeding with the order, in which case:
  - If you have purchased an ongoing month-to-month or week-to-week Service Plan we will issue a refund for all the days not worked from the day you place your order up to and including the day before work commences; or
  - If you have purchased a specific number of weeks of service then a refund will not be issued for the delayed start but all the days you have paid for will be worked.

If you choose option 2 above, then:

- You can cancel your order at any time prior to us commencing service; and
- If you are hiring staff on a month-to-month basis, the 14-day Money Back Guarantee applies to the 14-calendar-day period starting from the day your staff are assigned and on duty and ending 14 calendar days afterwards.

We can commence service in accordance with the above either with or without your explicit agreement to the start date and time.

### **Continuous Service**

From the time we commence the Service, the Service will be provided on an ongoing basis until cancelled. Specifically, we are not able to suspend the Service at your request and then re-commence the Service later.

### **Meal Breaks**



All staff are entitled to:

- An average of up to 60 minutes of meal breaks per 8-hour shift;
- An average of up to 30 minutes of meal breaks per 4-hour shift.

Time spent on meal breaks in accordance with the above entitlements forms part of your paid support period and you will not be reimbursed or refunded in any way for time spent on meal breaks as per the above entitlements.

## **Number of Working Days**

Unless you have purchased a 24/7 Service Plan, service is provided only five days per week (Monday to Friday).

## **Staff Absences**

Staff may be absent from work due to leave, sickness, public holidays and other extenuating circumstances. Staff absences will be handled as follows:

- Replacement staff will not be provided on the day of the absence. Instead, the absence will be recorded so that it can be reimbursed to you at a later time. Such reimbursed days will be referred to as "Make-up Days";
- Once you have at least three Make-up Days owing to you, you can request that we work those days. We will then assign staff to work the Make-up Days for you, starting within 14 days of your request for the Make-up Days to be worked. All Make-up Days owing will be worked on consecutive days (excluding public holidays and the regular weekly off days of the staff involved) and no Make-up Days can be saved for later;
- You must use each Make-up Day (that is, have our staff member assigned to work the Make-up Day) within 365 calendar days of the date of the staff absence for which the Make-up Day was originally allocated to you. If you do not use a Make-up Day within this 366 calendar day period, then the Make-up Day will expire and will no longer be available for your use;
- You acknowledge and agree that we have no obligation to remind you of Make-up Days that are available for your use and/or expiring soon. We will however notify you of each staff absence when it occurs and will advise you that a Make-up Day has accrued for each day of absence so that you can maintain your own records. You are also welcome to contact us to check your Make-up Day balance at any time;
- Upon service cancellation, we will work all the Make-up Days owing to you immediately following the end of your regular paid-up period. If you ask us not to provide the Make-up Days at that time, then all Make-up Days will automatically be forfeited and will no longer be owed to you;
- We reserve the right to assign Make-up Day staff of a different service level to that at which the Make-up Days accrued. In such cases the Make-up Days will be pro-rated based on prevailing prices at the time;
- No Make-up Days will be worked by Certified Programmers;
- We reserve the right to assign Make-up Day staff as we see fit;
- Unless otherwise agreed by us, the staff assigned to work the Make-up Days will be of the same type (e.g. web designer) as the staff member who was absent.

## **Supervision Level**

We provide basic supervision only, meaning that we will ensure that your assigned staff:

- Attend work punctually and stay for the required hours;
- Apply themselves effectively while at work;
- Take only the allowed duration of meal breaks;
- Comply with our administrative procedures;
- And so on.

Please note in particular that we do not provide project management services and so you will need to monitor the work undertaken by your assigned staff.

It is your responsibility to make good use of staff time by assigning sufficient, clearly-defined, appropriate work - charges still apply for time that your assigned staff are sitting idle.



## **Money back guarantee**

The 14-Day Money-Back Guarantee applies only when you hire staff on a month-to-month basis.

If you cancel the Service within 14 days of the start of this Agreement, and request a refund within 7 days of cancellation, we will refund any unused portion of the payment made by you for the cancelled services within 7 days of your refund request, as long as you have not previously claimed a refund under this clause. That is, we will issue a maximum of one refund per customer.

Other than as described in the previous paragraph, all payments are non-refundable. If however we decide that exceptional circumstances apply then we will provide a refund, or partial refund, at our discretion. Refunds will not be issued for days on which staff were assigned and on duty for you.

## **Billing Cycle and Payments**

Your initial payment is due at the time you open your account.

All prices advertised on our website are in US dollars.

For month-to-month Service Plans:

- Service is provided on a calendar month basis and a payment for one month covers service provided during a period of one calendar month; and
- Our billing cycle is monthly in advance.

For week-to-week (ongoing) Service Plans:

- Our billing cycle is weekly in advance; and
- The first day of each billing cycle will be the day of the week on which you placed your order for the Service Plan.

When you hire a staff member for a specific number of weeks:

- You will need to pay for those weeks of service at the time you place your order;
- Work will be discontinued immediately upon expiration of the paid-up period; and
- You acknowledge that we are not obliged to provide you with notice of the discontinuation.

### *Payments via PayPal*

If you purchase a set number of weeks of service, fees must be paid via PayPal (<http://www.paypal.com>) in US dollars at the time you place your order.

For month-to-month and week-to-week Service Plans:

- Fees must be paid in US dollars via PayPal (<http://www.paypal.com>) using PayPal's subscription payment option. That is, you need to authorize PayPal to charge your credit card (or PayPal account) automatically on or shortly after the first day of each billing cycle;
- A US\$50 administration charge applies to each payment that is not made through your regular PayPal subscription;
- You agree to become a Verified account holder with PayPal within 30 days of the start of this Agreement, so that we can be confident of the validity of your credit card details;
- If PayPal are unable to charge you successfully in any billing cycle then they will notify you via email, at the address they have on record for you, that their attempt to charge you has failed. After a sufficient number of failed charge attempts, PayPal will automatically cancel your subscription;
- It is solely your responsibility to update the email address which PayPal have on record for you (in relation to your PayPal subscription) if required; and



- A current PayPal subscription for our Service is required and so if your PayPal subscription is cancelled at any time, we will cease to provide the Service until a new PayPal subscription is in place.

#### *Credit Card Payments Which Are Not Via PayPal*

This subsection applies if you have elected to provide us with your credit card details so that we can charge your credit card directly.

Credit card payments are available only for month-to-month Service Plans.

Prices are quoted in United States dollars but are charged in Australian dollars by converting the United States dollar amount to Australian dollars using the exchange rate quoted on <http://www.oanda.com> on the day of the charge. We will charge your credit card automatically each month on or shortly after the monthly anniversary of your joining date. If we are unable to charge you successfully in any month then we will notify you via email, at the email address we have on record for you, that our attempt to charge you has failed. After three failures we will automatically cancel the Service and, if your credit card is valid, we will continue to attempt to charge any overdue fees to your credit card until the charge is successful. You agree to update us within seven (7) days of any changes to your credit card details. An administrative fee of US\$30.00 will apply to each failed attempt to charge your credit card and will be added to the amount payable at the subsequent charge attempt. An administrative fee of US\$50 applies to each payment that is not made through the automatic recurring billing process described in this paragraph. Credit card payments are accepted at our discretion and on the condition that no more than a total of three payment failures occur in any calendar year in relation to all the Service Plans you have ordered.

#### *Overdue Payments*

Dues not settled within fourteen (14) days will attract late fees at the rate of 20% per annum, compounded daily. Late fees apply from the original due date of the payment until the date of full payment. We reserve the right to discontinue the Service until payment of all applicable fees has been made in full via one of our supported payment methods.

### **Prices**

Prices are subject to change without notice. Any change in fees will apply to your next billing cycle, but will not be payable for your current billing cycle. You will be issued with prior notice of any price changes so that you can opt to cancel service instead of paying the new prices if you wish.

### **Cancellation of Service**

You may cancel the Agreement at any time by cancelling your PayPal subscription(s) (if relevant) and providing us with written authorisation to cease the Service. You acknowledge that our regular fees will continue to apply until you explicitly and unambiguously cancel service and advise us of the date of cancellation (which must be at least one day after the day you explicitly and unambiguously cancel service).

Since all fees are payable in advance, in order to avoid charges for a subsequent billing cycle, you need to cancel the Service prior to the end of the current billing cycle. We recommend that you cancel your PayPal subscription (if relevant) prior to your next billing date, and also advise us of your intentions in writing prior to the end of your current billing cycle so that we know to cease providing the service, and then no further charges will be payable.

### **Post-Service Maintenance**

No service will be provided after your Service Plan has been cancelled, including but not limited to bug fixes, website maintenance and data/file retrieval.

### **Phone Support**

If you purchase a Service Plan from us which includes Phone Support then the following applies:



- We will only provide phone support to your customers if they call, or are forwarded to, the phone number(s) which we provide for that purpose, or if your calls are directed to us in some other manner which we deem appropriate;
- A "call" is defined as a telephone discussion (or other voice-based discussion) lasting at least 15 seconds and no more than 15 minutes. Once the 15-minute mark is exceeded, then an additional ticket will be charged for every additional 10 minutes or part thereof;
- Any telephone number(s) which we provide for your customers to contact us cannot be transferred to your direct control under any circumstances and if you cancel service then you will no longer have access to the phone number(s). However, in the event of cancellation we will also discontinue all use of the phone number(s);
- Each phone number which we provide for your customers to contact us on is subject to change from time to time. That is, we cannot guarantee that you will have ongoing use of the number and we will not be responsible for any complications or damage which arise as a result of any change(s) to the phone number(s) which we have provided to you. Of course, we will endeavor to keep such changes to a minimum;
- We will not make any outbound calls on your behalf unless otherwise agreed by us in writing;
- We reserve the right to play recorded messages as we see fit, including but not limited to periods of high call volume and on days where the Service is not provided (Sundays). Such messages will be generic and will not mention our company name;
- Phone Support is provided to your Direct Customers only, and not to any third parties;
- We reserve the right to terminate any call if we, at our sole discretion, decide that it is reasonable to do so, such as in cases where a customer is being offensive;
- You acknowledge that, due to the imperfection of phone technologies, it is possible that some calls will be interrupted or dropped, and that we are not responsible for any complications or damage which arise as a result of such interrupted and/or dropped calls;
- We reserve the right to choose whether and when to escalate customer calls to a supervisor or another staff member at our sole discretion;
- We reserve the right to decide whether or not a particular issue is covered under "Level 1 Technical Support";
- We reserve the right to log the details of calls as we see fit;
- We reserve the right to count the number and duration of calls occurring while providing the Service. You will accept our counts as final.

## **Call Volume Limits**

If you purchase a Service Plan from us which includes Phone Support, a maximum number of calls may apply each month. Where applicable, this maximum number is specified on our website for each Service Plan. The maximum number of calls is not cumulative, and all unused calls are forfeited at the end of each monthly billing cycle.

If we determine, at our sole discretion, that you have reached the monthly call limit for your Service Plan, then we will discontinue the Service until the beginning of the next billing month. In such cases:

- The Service will be deemed to have been delivered in full for the current billing month, and no refund will apply under any circumstances (even upon upgrade to a higher volume plan);
- You can arrange for support to resume prior to the next billing month by purchasing an additional/replacement Service Plan, in which case support will re-commence within 24 hours of receiving and accepting your order for the new Service Plan.

## **BYO Phone Provider**

If you choose to avail the "Bring Your Own (BYO) Phone Provider" option, then you have full responsibility for paying all bills and amounts due to that Phone Provider, and you acknowledge and agree that we will not be responsible for paying any such amounts (in whole or in part) under any circumstances.

If your BYO Phone Provider provides an option to make outbound calls then we may, at our sole discretion, use that feature to make outbound calls in relation to the service we are providing to your customers, such as making outbound calls to test that the phone line is working or to call your customers back in relation to their support issues.

We reserve the right to decline to work with any specific Phone Provider(s) as we see fit. For example, we may decline





to work with a particular provider if their service is insufficiently reliable and leads to too many dropped or lost calls. If we decline to work with the Phone Provider you have selected, then you would need to sign up with an alternative Phone Provider. Under no circumstances will we be liable for any costs or damages resulting from our declining to work with a particular provider.

### **Voice Over IP (VOIP) Technology**

You acknowledge that, due to the nature of VOIP technology, line quality cannot be guaranteed and that outages and line quality degradation may occur from time to time. You acknowledge and agree that fees will not be refunded, nor work hours repeated, due to such outages. If you choose the BYO Phone Provider option, then responsibility for the operation and quality-level of the VOIP connection rests solely with you.

### **Use of Ticket System and Live Chat Software**

If you sign up for a customer support plan (for example, the "Comprehensive 24/7 Support" plan), we will answer your customers' queries through your choice of:

- Your ticket system/software; or
- Your live chat software.

The following applies if you choose for us to answer your customers' queries through your ticket software:

- You must pay all costs associated with the purchase, upgrade and maintenance of your ticket system/software;
- All queries which you want us to answer on your behalf must be lodged in your ticket system and not through any other method;
- When a ticket is lodged in your ticket system, you need to send a notification to us via email (at an address we specify) to inform us that the ticket has been lodged. Most ticket software packages provide facilities for you to do this easily.

The following applies if you choose for us to answer your customers' queries through your live chat software:

- You must pay all costs associated with the purchase, upgrade and maintenance of your live chat software;
- You acknowledge that since our customer support technicians work from Linux desktops that they can only use live chat operator software which runs on Linux. If you have purchased the Dedicated Support option then, at your request, we may be able to arrange for your team to work on a Windows desktop but you would need to cover the cost of purchasing Windows and any other required software.

### **No Third-Party Support**

This section applies if your Service Plan requires us to provide support to your customers.

Unless we explicitly agree otherwise in writing, we will only provide support to your Direct Customers and not to customers of any other company/entity. For example, if you have multiple companies then you would need to purchase a separate Support Plan for each company.

We reserve the sole right to decide which customers are Direct Customers and which customers are not.

### **Plans With Per-Server Billing**

If you purchase a Per Server Plan from us the following applies:

- You will ensure that, at all times, the number of domains housed on your server is lower than or equal to the number of domains allowed per server under your Service Plan. If the number of domains on your server(s) exceeds the domain limit for your Service Plan, you will upgrade or cancel your Service Plan immediately and appropriately;
- At our request, you will provide us with sufficient and reasonable access to your supported servers within seven



days to enable us to accurately count the number of domains you host on each server.

## **Server Monitor**

This section applies if our Server Monitor service is included with your Service Plan.

Our Server Monitor service is provided in good faith but we do not guarantee that Server Monitor will definitely detect any specific downtime experienced by your site or server. Furthermore, if you use the SMS notification facility with Server Monitor, we cannot guarantee that any particular SMS will reach you. You acknowledge that Server Monitor may also send false positive alerts.

Even if our staff assist with configuring Server Monitor for you, you are solely responsible for ensuring that your Server Monitor checkpoint and notification settings are error-free and appropriate for your needs.

## **Short Message Service (SMS) Facilities**

If you decide to use our Short Message Service (SMS) facilities in conjunction with our "Server Monitor" service then you acknowledge and agree that:

- Each SMS message sent will cost you one "SMS credit";
- SMS credits are allocated each month based on the package(s) you have purchased from us, and will expire at the end of each month of Service;
- We have the sole right to determine how many SMS credits you have consumed, and to determine how many SMS credits remain available to you;
- SMS messages will not be delivered to you if you do not have sufficient SMS credits available;
- Our systems will determine whether our over-the-air transmission of each SMS is successful. If we determine that the message was sent successfully over-the-air then an SMS credit will be deducted from your account;
- We are not responsible for any Claim which arises from any damage or inconvenience to you or any other party as a result of any SMS message failing to reach its destination (usually your phone);
- While we strive to maximize the reliability of our SMS service and provide these services in good faith, we rely on third-party providers for message delivery and therefore make no guarantee about the reliability or performance of our SMS services;
- We have a comprehensive worldwide SMS coverage area but make no guarantee that any particular network will be able to receive messages from our service.

## **INTERPRETATION AND FURTHER LIMITATIONS**

### **Severability**

If any part of this Agreement is deemed to be unenforceable or otherwise invalid then that will not affect the validity nor enforceability of any other parts of this agreement.

### **Jurisdiction**

This agreement shall be interpreted under the laws of Queensland, Australia, and both parties agree that any legal action or proceedings relating to this agreement shall be settled in the courts and/or tribunals in Queensland, Australia.

### **Force Majeure**

Neither party will be liable to the other party in respect of anything which, apart from this provision, may constitute breach of this Agreement arising by reason of Force Majeure.

### **Waiver**

Failure or neglect by us to enforce, at any time, any of the provisions of this Agreement will not be construed or deemed to be a waiver of our rights hereunder nor in any way affect the validity of the whole or any part of this



Agreement or prejudice our rights to take subsequent action.

## **Headings**

The headings of the terms and conditions contained in this Agreement are inserted for convenience of reference only and are not intended to be part of or to affect the meaning or interpretation of any of the terms and conditions of this Agreement.

## **Assignment**

You may not assign, attempt to assign nor otherwise transfer any right or obligation arising out of this Agreement without our written consent.

## **Modifications to Service**

We reserve the right to modify or discontinue the Service (or any part thereof) as we see fit, with or without notice. We will not be liable to you or any other party for such modifications to the Service.

We reserve the right to update these Terms and Conditions from time to time. Any updates to these Terms and Conditions will apply to the Service from the time that this Agreement is updated on our website and an email is sent to the email address we have on record for you to advise you that our Terms and Conditions of Service have been modified (whether or not that message is properly received and read by you).

## **Limitation of Liability**

WE WILL NOT BE LIABLE TO YOU OR ANY OTHER PERSON FOR ANY CLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY PRODUCT OR SERVICE FURNISHED OR TO BE FURNISHED UNDER THIS AGREEMENT OR THE USE THEREOF (INCLUDING BUT NOT LIMITED TO DAMAGE, LOSS OR CORRUPTION OF DATA, SERVICE INTERRUPTIONS OR ERRORS, INACCURATE ADVICE PROVIDED TO YOUR CLIENTS, OR LOSS OF PROFIT, BUSINESS, REVENUE, GOODWILL OR ANTICIPATED SAVINGS), EVEN IF YOU HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE.

THE AGGREGATE LIABILITY OF US FOR ANY CLAIMS HOWSOEVER ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY PRODUCTS OR SERVICES FURNISHED OR TO BE FURNISHED BY US UNDER THIS AGREEMENT WILL, IN ANY EVENT, BE ABSOLUTELY LIMITED TO THE AMOUNT PAID BY YOU TO US UNDER THIS AGREEMENT FOR THE APPLICABLE PRODUCTS AND/OR SERVICES.

YOU ACKNOWLEDGE THAT WE HAVE SET OUR PRICES AND ENTERED INTO THIS AGREEMENT IN RELIANCE UPON THE LIMITATION OF LIABILITY SET FORTH IN THIS AGREEMENT, AND THAT THE SAME FORMS AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN THE PARTIES. THE PARTIES AGREE THAT THE LIMITATION OF LIABILITY SPECIFIED IN THIS AGREEMENT WILL SURVIVE AND APPLY EVEN IF ANY LIMITATION OF REMEDIES IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE. NOTWITHSTANDING THE FOREGOING, NOTHING CONTAINED HEREIN WILL LIMIT YOUR LIABILITY FOR ITS OWN WILFUL OR WANTON CONDUCT.

NOTWITHSTANDING ANY OTHER PROVISIONS CONTAINED HEREIN, WHERE ANY ACT OF THE AUSTRALIAN PARLIAMENT IMPLIES ANY TERM INTO THIS AGREEMENT, AND THAT ACT AVOIDS OR PROHIBITS PROVISIONS IN A CONTRACT EXCLUDING OR MODIFYING SUCH TERM, THAT TERM WILL BE DEEMED TO BE INCLUDED IN THIS AGREEMENT, BUT OUR LIABILITY FOR BREACH OF THAT TERM WILL BE LIMITED IN ONE OR MORE OF THE WAYS (AT OUR OPTION) PERMITTED BY SECTION 68A(1) OF THE TRADE PRACTICES ACT 1974 (CTH).

## **Disclaimer**

We make no statement, warranty, representation or promise not expressly set out in the Agreement, or required by law.



We expressly disclaim all warranties, representations or promises in relation to the Service.

### Acceptance of Terms and Conditions

On behalf of \_\_\_\_\_ (insert entity name), I hereby agree to the above Terms and Conditions of Service. I am authorized to enter into this agreement on behalf of the above-named entity.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Print name: \_\_\_\_\_

**For companies, please sign above and also affix company seal in the space below and initial at the bottom of this page where indicated.**