



## **Introduction**

1.1 In this document 'we' and 'our' means Sticky and 'you' and 'your' mean the customer.

1.2 This agreement outlines the terms and conditions that apply to any service you have signed up for with us ('the Services').

1.3 The Services you purchased are identified in the 'sign up' and the 'welcome' emails we sent you after we accepted your request for service. The specifics of the Services are detailed on our website.

1.4 In addition to these terms and conditions you must also comply with our Privacy Policy and our Acceptable Use Policy.

1.5 If you have registered one or more .AU domain names, you must also accept our Registrant Agreement.

## **2. Acceptance of these terms and conditions**

2.1 You signified acceptance of these terms and conditions and our Privacy Policy and Acceptable Use Policy when we accepted your order for Services.

## **3. Commencement of the Agreement**

3.1 This agreement commenced on the date we accepted your order for Services.

## **4. Service availability**

4.1 In these terms and conditions 'Service' primarily refers to our provision of space on one of our Servers, domain name registration services, and a connection to and from the Internet for web and email services to the level specified in the package you selected.

4.2 We will use our best endeavours to provide continuing availability of the server fleet and the service but we cannot be liable for service interruptions or down time of the service.

4.3 We will attempt to perform all scheduled maintenance at times which will affect the fewest customers. If scheduled maintenance requires the Service to be offline for more than 30 minutes we will post details of the scheduled maintenance at least 48 hours in advance of the maintenance. If we need to perform unscheduled maintenance that requires the Service to be offline for more than 30 minutes, we will post details of the event after the maintenance has been completed.

## **5. Registering a domain name**

5.1 In respect of domain names, we advise you that we are an auDA accredited registrar and a reseller for the registrar Enom Inc.

5.2 We do not warrant or guarantee that the domain name applied for will be registered in your name or is capable of being registered by you. Accordingly, you should take no action in respect of your requested domain name(s) until you have been notified that your requested domain name has been registered.

5.3 Both the registration of the domain name and its ongoing use are subject to the relevant naming authority's terms and conditions of use and you are responsible for ensuring that you are aware of those terms and conditions and that you comply with them. You irrevocably waive any claims you may have against us in respect of the decision of a naming authority to refuse to register a domain name and, without limitation, agree that the administration charge paid by you to us shall be non-refundable in any event.

5.4 We accept no responsibility in respect of the use of a domain name by you. Any dispute between you and any other individual or organization regarding a domain name must be resolved between the parties concerned and we will take no part in any such dispute. We reserve the right, on our becoming aware of such a dispute, at our sole discretion and without giving any reason, to either suspend or cancel the domain name, and/or to make appropriate representations to the relevant naming authority.

## **6. Renewal of domain name registration**

6.1 You acknowledge that we are not obliged to renew your domain name if you do not confirm to us that the domain name should be renewed. In such circumstances we are not liable for any loss or damage resulting from non-renewal of your domain name. We may not renew your domain name where you have unpaid invoices or if you are in breach of any terms of your use of our services.

6.2 You acknowledge that our primary method of communication for domain renewal purposes is via email. We will not be held responsible for the non-renewal of your domain name if your email contact details are not kept up to date.

6.3 If you close your account with us but do not transfer your domain name to another registrar, you agree that we may contact you after account closure to remind you of domain name renewals.

## **7. Customers warranties, liabilities and undertakings**

7.1 You agree to indemnify and keep indemnified and hold us harmless from and against any claim brought against us by a third party resulting from the provision of Services by us to you and your use of the Server, and in respect of all losses, costs, actions, proceedings, claims, damages, expenses (including reasonable legal costs and expenses), or liabilities, whatsoever suffered and howsoever incurred by us in consequence of your breach or non-observance of these terms.

7.2 You warrant that you will keep secure any passwords used with the Service and that you hold and will continue to hold the copyright in your data or that you are licensed and will continue to be licensed to use that data.

7.3 You further warrant that at the time of entering into this agreement you are not relying on any representation made by us which has not been stated expressly in this agreement, or on any descriptions or specifications contained in any other document, including any catalogues or publicity material which we have produced.

7.4 You undertake that 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 the server does not contain any computer virus and will not in any way, corrupt the data or systems of any person.

7.5 You also agree that you are solely responsible for dealing with persons who access your data and that you will not refer complaints or inquiries in relation to such access to us.

7.6 You indemnify us against all claims arising out of your registration and use and renewal of registration of your chosen domain name, unless and to the extent that the claim arises out of our breach of this agreement, or our negligent act or omission

## **8. Sticky's Warranties and Liabilities**

8.1 We accept liability for the supply of the Services to the extent provided in this agreement.

### **We do not warrant that:**

- \* the Services provided under this agreement will be uninterrupted or error free;
- \* the Services will meet your requirements, other than as expressly set out in this agreement; or
- \* the Services 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 systems of Sticky.

8.3 Except as expressly provided to the contrary in this agreement, 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 this agreement and/or its subject matter.

8.4 We make or give no express or implied warranties including, without limitation, the warranties of merchantability or fitness for a particular purpose, or arising from a course of dealing, usage or trade practice, with respect to any goods or services provided under or incidental to this agreement. No oral or written information or advice given by us, our resellers, agents, representatives or employees shall create a warranty or in any way increase the scope of the express warranties hereby given, and you may not rely on any such information or advice.

8.5 Our total aggregate liability to you for any claim in contract, tort, negligence or otherwise arising out of or in connection with the provision of the services will be limited to the charges paid by you in respect of the services which are the subject of any such claim and provided that you notify us of any such claim within one year of it arising.

8.6 In no event will we be liable to you for any loss of business, contracts, profits or anticipated savings or for any other indirect or consequential or economic loss whatsoever.

8.7 In the event that this agreement constitutes a supply of goods or services to a consumer as defined in the Trade Practices Act 1974 (Cth) nothing contained in this agreement excludes, restricts or modifies any condition, warranty or other obligation in relation to this agreement, where to do so is unlawful. To the full extent permitted by law, where the benefit of any such condition, warranty or other obligation is conferred upon you pursuant to the Act, our sole liability for breach of any such condition, warranty or other obligation, including any consequential loss which you may sustain or incur, shall be limited (except as otherwise specified in this agreement) to:

- \* the replacement of the goods or the supply of equivalent goods or payment of the cost of replacing the goods or acquiring equivalent goods; or
- \* the repair of the goods or payment of the cost of having the goods repaired;
- \* the supplying of the Services again; or
- \* the payment of the cost of having the Services supplied again.

8.8 We specifically exclude any warranty as to the accuracy or quality of information received by any person via your server and in no event will we be liable for any loss or damage to any data stored on the Server. You are responsible for maintaining insurance cover in respect of any loss or damage to your data stored on the Server.

## **9. Suspension and Termination of the Service**

9.1 We may suspend or terminate your account if you breach any of these terms and conditions, or if you become insolvent or you are declared bankrupt.

9.2 From time to time we may have to suspend or disconnect the service without notice or deny your access to the Service during any technical failure, modification or maintenance involved in the Service. We will use reasonable endeavours to procure the resumption of the services as soon as reasonably practicable. In these circumstances you will remain liable for all charges due throughout the period of suspension.

9.3 If your account has been suspended or terminated due to your breach, reactivation of your account will be completely at our discretion. If we agree to reactivate your account, we will require payment in full of all outstanding amounts and payment of a reactivation fee.

9.4 If you wish to terminate your account with us for any reason you may do so by giving us 30 days notice in writing. No refunds are available for monies paid in advance.

9.5 If we wish to terminate your Service for reasons other than a breach of these conditions, we can do so by giving you 30 days written notice. In this circumstance, we will refund any remaining unused credit on your account.

9.6 If your account is closed for whatever reason you must pay all outstanding charges immediately.

9.7 We are under no obligation to provide you with a copy of your data if we have suspended or terminated your access to the service for your breach. If we provide you with a copy of your data in such circumstances, we are entitled to charge a fee for service.

## **10. Fees, charges and payments**

10.1 All charges payable by you to us for the Services will be in accordance with the relevant scale of charges and rates published from time to time by us on our website and will be due and payable within fourteen days of receipt of our invoice. The price of the Services we provide you will remain fixed for the period covered by the payment; that is, monthly, quarterly or annual. After that time you will be billed at the rates current on our website at the time the Service is renewed.

10.2 If you exceed our fourteen day credit terms, you will be charged an \$20.00 late payment fee.

10.3 Prices published on our web site are inclusive of any government taxes or charges unless otherwise noted.

10.4 The provision of services is contingent upon our having received payment in full from you in respect of the Services we provide. Without prejudice to our other rights and remedies under this agreement, if any sum payable is not paid on or before the due date, we reserve the right, at our discretion, to suspend the provision of Services to you.

10.5 If you fail to make payment within the terms of this agreement, you will become liable for the cost of collection. This will include interest on any overdue amount, calculated at the daily rate of 10% per annum, from the due date of the payment.

10.6 If you have chosen a yearly contract for your Service, your account will be automatically rolled over for a further yearly contract at the end of the term. You must give us notice before the end of the term if you wish to cancel or alter your Service. If you elect to pay your fees on a yearly basis, and fail to make payment within 14 days of invoice, you will not be entitled to receive the yearly fee discount.

10.7 Upon registration of a credit card account, you give us authorisation to debit your credit card for all charges. If you are bill on a monthly basis the billing cycle begins from the date you register.

10.8 You consent to us obtaining a report from a credit reporting agency on your credit worthiness if you choose to pay by credit card.

10.9 No refunds will be given for unused portions of payments in advance (including payment of yearly contracts) unless the account has been terminated due to our breach of these terms and conditions or we exercise our rights under clause 9.5.

## **11. Archiving and backup your data**

11.1 We will archive your data on a regular basis for the purposes of disaster recovery. In the event of equipment failure or data corruption, we will restore from the last known good archive. In the event of corruption of all of our archives, or in the event that an old archive is used to restore data, you should be prepared to upload your data to your web site. You must maintain a recent copy of your data at your premises at all times. We will not be liable for incomplete, out-of-date, corrupt or otherwise deficient data recovered from our backups.

## **12. The use of spam and virus filters**

12.1 You agree that we can use spam and virus filters and that this may require us to use third party equipment or services to monitor and filter email traffic between our equipment and the Internet. You agree that we will not be liable for any loss or damage resulting from the use of spam or virus filters.

## **13. The need to change to a new operating platform**

13.1 Unless otherwise agreed, the Service is provided by us from our data centre in Australia. We reserve the right to migrate your web site to a new operating system platform if our operating system supplier ceases to provide appropriate support or your particular server fails or becomes unreliable.

13.2 We will advise you of such a change but we will not take any responsibility for web site failure if you have failed to keep your contact details up-to-date or if you have not checked the operation of your web site post-migration and notified us of any required changes to the web site configuration.

## **14. Ownership of server equipment**

14.1 Unless otherwise agreed, you obtain no rights to the hardware and other infrastructure and facilities used by us to deliver the Service.

## **15. Severability**

15.1 If any clause of these terms and conditions is held to be invalid or unenforceable in whole or in part, the invalid or unenforceable wording shall be deemed to be omitted.

## **16. Assignment**

16.1 You may transfer this agreement provided that you give us notice in the form we require (setting out the details of the assignee) accompanied by payment of any transfer fee specified by us. No other method of transfer by you is permitted.

## **17. Changes to Terms**

17.1 We may change the terms and conditions of this agreement at any time. Details of our current terms will always be available on our website.

## **18. Entire Agreement**

18.1 These terms and conditions constitute the entire agreement between Sticky and you. It supersedes all prior agreements, understandings and representations whether oral or written.

## **19. Governing Law**

19.1 These terms and conditions are governed by the laws in force in Australia both parties agree to submit to the exclusive jurisdiction of the Courts of that Territory.

## **20. Notifications & Communications**

20.1 All notifications under this agreement will be by email to your nominated internet address. By entering into this agreement you agree to receive other email communications of a marketing and promotional nature unless you opt out of our mailing list. You will not be able to opt-out of critical service notifications, renewal, billing and account notifications, scheduled downtime notifications or any other communications deemed to be an essential part of our service to you.