

Terms of Service (TOS)

[IMPORTANT NOTICE] **All Payments To Switch Networks Are Non-Refundable**

Switch Networks, ("The Business") agrees to furnish services to the Subscriber, subject to the following [TOS] (*Terms of Service*).

Use of Switch Networks Service constitutes acceptance and agreement to Switch Networks' AUP as well as Switch Networks' TOS (*Terms of Service*). All provisions of this contract are subject to the TOS (Terms of Service) of Switch Networks, and AUP (Acceptable Use Policy). The AUP may be changed from time to time at the discretion of the Business. The Subscriber understands that changes to the AUP by the Business shall not be grounds for early contract termination or non-payment.

This Agreement shall be construed in all respects in accordance with the laws of the state of NSW, applicable to contracts enforceable in that state and all other States and Territories of Australia. Venue will be Sydney, NSW, Australia.

[Disclosure to Law Enforcement]

The AUP specifically prohibits the use of our service for illegal activities. Therefore, Subscriber agrees that the Business may disclose any and all subscriber information including account history, account use, etc. to any law enforcement agent who makes a written request without further consent or notification to the Subscriber. In addition Switch Networks shall have the right to terminate all service set forth in this Agreement.

[Service Rates]

Subscriber acknowledges that the nature of the service furnished and the initial rates and charges have been communicated to Subscriber. Subscriber is aware that the Business may prospectively change the specified rates and charges from time to time. The promotional offer is contingent upon Business achieving and maintaining its cost of service goals including but not limited to rates charged to Business by its suppliers.

[Payment]

Establishment of this service is dependent upon receipt by the Business of payment of stated charges. Subsequent payments are due on the anniversary date of the month for that month's service. All accounts and services provided by Switch Networks are subject to the current tax rate as imposed by the Australian Government which is currently 10%. 100% of the monthly service charge is subject to the 10% tax rate. 100% of the setup fee is subject to the 10% tax rate. The above applies to all accounts and services provided by Switch Networks.

[Payments and Fees]

Service will be interrupted on accounts that reach 14 days past due. Service interrupted for nonpayment is subject to a \$50 reconnect charge. Accounts not paid by due date are subject to a \$7.95 late fee. Accounts that are not collectable by Switch Networks may be turned over to an outside collection agency for collection. If your account is turned over for collection, you agree to pay the Business a "Processing and Collection" Fee of not less than \$100 nor more than \$300. If you desire to cancel your account, please follow the proper procedure to do this as outlined in this TOS. All amounts quoted are in AUD (Australian Dollars).

[Refund and Disputes]

All payments to Switch Networks, Inc. are nonrefundable. This includes the one time

setup fee and subsequent charges regardless of usage. All overcharges or billing disputes must be reported within 60 days of the time the dispute occurred. If you dispute a charge to your credit card issuer that, in Switch Networks's sole discretion is a valid charge under the provisions of the TOS and /or AUP, you agree to pay Switch Networks an "Administrative Fee" of not less than \$50 and not more than \$150.

[Failure to Pay]

The Business may temporarily deny service or terminate this Agreement upon the failure of Subscriber to pay charges when due. Such termination or denial will not relieve Subscriber of responsibility for the payment of all accrued charges, plus reasonable interest and any collection fees.

[Account Cancellation]

All requests for cancelling accounts must be made in writing with at least **30 days** notice *but not more than 60 days prior written notice* and sent via **Email** to any of the following email addresses:

support@switchnetworks.com.au
admin@switchnetworks.com.au
accounts@switchnetworks.com.au

All emails should be Subject and Attention to Cancellations and must contain the details of the account you are wishing to cancel.

Subscriber acknowledges that the service provided is of such a nature that service can be interrupted for many reasons other than the negligence of the Business and that damages resulting from any interruption of service are difficult to ascertain. Therefore, subscriber agrees that the Business shall not be liable for any damages arising from such causes beyond the direct and exclusive control of the Business. Subscriber further acknowledges that the Business's liability for its own negligence may not in any event exceed an amount equivalent to charges payable by subscriber for services during the period damages occurred. In no event shall the Business be liable for any special or consequential damages, loss or injury.

All accounts cancelled prior to the agreed *SERVICE TERM* expiry date, incur charges of no less than **75%** of the remaining *SERVICE TERM* and must be paid in full.

[New Domain Accounts]

All new webhosting accounts involving new domains will be set up and entered into our DNS servers within 3 to 5 business days. Due to unforeseen complications, however, this process may sometimes require up to 7 business days. If the new domain is registered by the account holder, there will be no handling fee. If the domain is registered by Switch Networks, Inc. on behalf of the account holder a handling fee will be incurred.

[Transfer of Domains]

New webhosting accounts which involve the transfer of a domain from another provider to Switch Networks, Inc. will require a minimum of seven (7) days to be set up and entered into our DNS servers. In some cases, such transfers may take up to sixty (60) days. Due to the unpredictable nature of the transfer process, no guarantees are made regarding the amount of time a specific transfer may take. If the transfer of the domain is done by Switch Networks, on behalf of the account

holder a handling fee will be incurred. If the customer cancels service during the transfer period for any reason, all charges are considered earned.

[Support Boundaries]

Switch Networks, provides 24 x 7 technical support to our subscribers (except for holidays and short Business meetings when we close our centre.) We limit our technical support to our area of expertise. The following is our guidelines when providing support: Switch Networks provides support related to our server or virtual site physical functioning. Switch Networks does not offer tech support for application specific issues such as CGI programming, HTML, PHP, PERL, Outlook or Apple Mail Configuration or any other such issue. Switch Networks does not provide technical support for YOUR clients. If you can email, we encourage you to email support@switchnetworks.com.au for assistance. Lastly, the Help files in the program you are using may have the answer to your question so please do investigate these resources before calling tech support.

[SPAM and Unsolicited Commercial Email (UCE)]

Switch Networks takes a **zero tolerance** approach to the sending of *Unsolicited Commercial Email* (UCE) or **SPAM** over our network. Very simply this means that customers of Switch Networks may not use or permit others to use our network to transact in UCE. Customers of Switch Networks may not host, or permit hosting of, sites or information that is advertised by UCE from other networks. Violations of this policy carry severe penalties, including termination of service. Violation of Switch Networks's SPAM policy will result in severe penalties.

Upon notification of an alleged violation of our SPAM policy, Switch Networks will initiate an immediate investigation (within 48 hours of notification). During the investigation, Switch Networks may restrict customer access to the network to prevent further violations. If a customer is found to be in violation of our SPAM policy, Switch Networks may, at its sole discretion, restrict, suspend or terminate customer's account. Further, Switch Networks reserves the right to pursue civil remedies for any costs associated with the investigation of a substantiated policy violation. Switch Networks will notify law enforcement officials if the violation is believed to be a criminal offense.

First violations of this policy will result in an "Administrative Fee" of \$500 and your account will be reviewed for possible immediate termination. A second violation will result in an "Administrative Fee" of \$1000 and immediate termination of your account. Users who violate this policy agree that in addition to these Administrative" penalties, they will pay "Research Fees" not to exceed \$350 per hour that Switch Networks personnel must spend to investigate the matter. PLEASE, DO NOT SPAM from your account.

As our Customers are ultimately responsible for the actions of their clients over the Switch Networks network, it is advisable that Customers develop a similar, or stricter, policy for their clients.

[IMPORTANT NOTICE]

BEGINNING IMMEDIATELY, anyone hosting websites or services on their server that support spammers or cause any of our IP space to be listed in any of the various Spam Databases will have their server immediately removed from our network. The server will not be reconnected until such time that you agree to remove ANY and ALL traces of the offending material immediately upon reconnection and agree to allow us access to the server to confirm that all material has been COMPLETELY

removed. Severe violations may result in immediate and permanent removal of the server from our network without notice to the customer. Any server guilty of a second violation WILL be immediately and permanently removed from our network without notice.

Network

[Bandwidth and Disk Usage]

Customer agrees that bandwidth and disk usage shall not exceed the number of megabytes per month for the Services ordered by Customer as per the Service Specification (the "Data Transfer"). Switch Networks will monitor Customer's bandwidth and disk usage. Switch Networks shall have the right to take corrective action if Customer's bandwidth or disk usage exceeds the Agreed Usage. Such corrective action may include the assessment of additional charges, disconnection or discontinuance of any and all Services, or termination of this Agreement, which actions may be taken is in Switch Networks' sole and absolute discretion. If Switch Networks takes any corrective action under this section, Customer shall not be entitled to a refund of any fees paid in advance prior to such action. In the event that a customer exceeds the included allocation, Switch Networks may, at its sole discretion, collect a deposit, in an amount determined by Switch Networks, against customer's details on file with Switch Networks.

[System and Network Security]

Users are prohibited from violating or attempting to violate the security of the Switch Networks Network. Violations of system or network security may result in civil or criminal liability. Switch Networks will investigate occurrences, which may involve such violations and may involve, and cooperate with, law enforcement authorities in prosecuting Users who are involved in such violations. These violations include, without limitation:

Accessing data not intended for such User or logging into a server or account, which such User is not authorized to access.

Attempting to probe, scan or test the vulnerability of a system or network or to breach security or authentication measures without proper authorization.

Attempting to interfere with the service to any user, host or network, including, without limitation, via means of overloading, "flooding", "mail bombing" or "crashing".

Forging any part of the TCP/IP header information in any e-mail or newsgroup posting.

Taking any action in order to obtain services to which such User is not entitled.

[Notification of Violation]

Switch Networks is under no duty to look at each customer's or user's activities to determine if a violation of the AUP has occurred, nor do we assume any responsibility through our AUP to monitor or police Internet-related activities. Users will be notified via Email, SMS or Phone call. Users are to ensure that all contact details held by Switch Networks are up to date at all times and any changes must be made either by using the Online Billing and Account systems or by contacting Switch Networks by Email.

[First violation]

Any User, which Switch Networks determines to have violated any element of this Acceptable Use Policy, shall receive an email, warning them of the violation. The service may be subject at Switch Networks's discretion to a temporary suspension pending a User's agreement in writing, to refrain from any further violations.

[Second Violation]

Users that Switch Networks determine to have committed a second violation of any element of this Acceptable Use Policy shall be subject to immediate suspension or termination of service without further notice. We reserve the right, to drop the section of IP space involved in Spam or Denial-of-Service complaints if it is clear that the offending activity is causing great harm to parties on the Internet. In particular, if open relays are on your network or a customer's network, or if denial of service attacks are originating from your network. In certain rare cases, we may have to do this before attempting to contact you. If we do this, we will contact you as soon as is feasible.

[Suspension of Service or Cancellation]

Switch Networks reserves the right to suspend network access to any customer if in the judgment of the Switch Networks network administrators the customer's server is the source or target of the violation of any of the other terms of the AUP or for any other reason which Switch Networks chooses. If inappropriate activity is detected, all accounts of the Customer in question will be deactivated until an investigation is complete. Prior notification to the Customer is not assured.

In extreme cases, law enforcement will be contacted regarding the activity. The customer will not be credited for the time the customer's machines were suspended. Switch Networks reserves the right to amend its policies at any time. All Sub-Networks, resellers and managed servers of Switch Networks must adhere to the above policies. Failure to follow any term or condition will be grounds for immediate Cancellation. You will be held responsible for the actions of your clients in the matter described on these Terms and conditions. Therefore, it is in your best interest to implement a similar or stricter Terms and conditions or otherwise called Acceptable Terms of use policy.

[Indemnification]

Switch Networks wishes to emphasize that in agreeing to the Switch Networks Acceptable Use Policy (AUP) and Terms of Service (ToS), customer indemnifies Switch Networks for any violation of the Acceptable Use Policy (AUP) and Terms of Service (ToS) that results in loss to Switch Networks or the bringing of any claim against Switch Networks by any third-party. This means that if Switch Networks is sued because of a customer's or a customer of a customer's activity, the customer will pay any damages awarded against Switch Networks, plus all costs and attorney's fees.

[Miscellaneous Provisions]

You must provide us with, and keep current, good contact information for you. E-mail, fax, and telephone contacts are used, in that order of preference. A waiver by the Business of any breach of any provision of this Agreement by Subscriber shall not operate as or be construed as a continuing or subsequent waiver thereof or as a waiver of any breach of any other provision thereof. Subscribers shall not transfer or assign this Agreement without the prior written consent of the Business. Business may assign Agreement at anytime without consent from or notice to Subscriber.

Business reserves right to cancel customers rights under this contract at anytime without further obligation.

Switch Networks takes no responsibility for any material input by others and not posted to the Switch Networks Network by Switch Networks. Switch Networks is not responsible for the content of any other websites linked to the Switch Networks Network; links are provided as Internet navigation tools only. Switch Networks disclaims any responsibility for any such inappropriate use and any liability to any person or party for any other person or party's violation of this policy. Switch Networks is not responsible for any damages your business may suffer. Switch Networks does not make implied or written warranties for any of our services. Switch Networks denies any warranty or merchantability for a specific purpose. This includes loss of data resulting from delays, non-deliveries, wrong delivery, and any and all service interruptions caused by Switch Networks. It is absolutely forbidden to host pornographic content or IRC servers on Virtual Server Accounts. Virtual Server Accounts found hosting this material will be subject to immediate cancellation without refund.

[Responsibility for Content]

You, as Switch Networks's customer, are solely responsible for the content stored on and served by your Switch Networks server or Webspaces/Website/ftp space.

[Signatures]

Department Head or Business Manager

Switch Networks Representative

Department or Business Name

Print Name

Date / /

Date / /

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