

# THE CONDITIONS



# TERMS OF HOSTING

These hosting terms outline that your website is not hosted on servers run by Ethically Creative. Your hosting account has been chosen for its capability and security as well as top customer service from the Hosts themselves. All precautions will be taken to keep your site regularly backed-up, however in the event of server or e-mail down-time or website abuse this will be at fault by the server Hosts and not Ethically Creative.

## 1. DEFINITIONS

- **“Client”, “You”, “Customer”, “I”:** A business or individual engaging in website or domain hosting services resold through Ethically Creative.
- **“Host”:** The company selling server space to Ethically Creative.
- **“Ethically Creative”:** Services trading ABN 52 585 799 165.
- **“Supply”:** Information or goods given either verbally, written or digitally.
- **“Third Party”:** Any goods or services used from another individual or business.

## 2. TERMS OF SERVICE

- Website Hosting services may be used for lawful purposes only. Transmission, storage or presentation of any information, data or material in violation of any Australian federal, state or city law is prohibited. This includes, but is not limited to: defamatory material, computer viruses/Trojans/worms, copyrighted material, material judged to be threatening or obscene, or material protected by trade secret and other statute. The Client agrees to indemnify and hold harmless Ethically Creative from any claims resulting from the use of service which damages the subscriber or any other party.
- Prohibited are sites that promote any illegal activity or present content that may be damaging to the Host servers, or any other server on the Internet. Links to such materials are also prohibited.
- If your account is found to contain illegal activity, illegal mp3 files, pirated software, hacker programs, warez programs, or any other illegal files, your account will be terminated immediately, without notice. Additionally, Ethically Creative will notify the proper authorities of your actions.

## 3. SERVICE UPTIME GUARANTEE

- The Hosts guarantee 99.9% service (http, https ftp, pop, imap, smtp) uptime on all web hosting plans.

Service Availability	Time
99.9 - 100%	0 to 43.2 minutes
98 - 99.8	43.2 mins to 14 hrs 24 mins
94 - 97.9	14 hrs 24 mins to 36 hrs
90 - 94.9	36 hrs to 72 hrs
89% or below	more than 72 hrs

- Should a technical issue arise resulting in server down-time, the Client will be notified via a secondary email account which is not connected to the website. The Client will be asked to provide a secondary email account upon account setup. Failure by the Client to provide any secondary account exempts Ethically Creative from these notification terms and responsibilities.

## • Exclusions to uptime guarantee include:

- *Scheduled Maintenance*; the systems will require periodic maintenance and upgrades that may or may not result in services being unavailable for certain periods. This is part of your Host's continuing commitment to providing Clients with the highest quality services available.
- *Outages*; caused by the actions beyond Ethically Creative or your Host's control including, without limitation: acts of any governmental body, war, terrorism, or natural occurrences (e.g. fire, tornado, flood, earthquake), DOS attacks or other forms of intrusion, applications, equipment or facilities of a member or acts or omissions by a member; DNS issues not within the Company's control; and/or member acts, such as scripts or misconduct or use of the service in breach of the other terms of service.
- *Problems related to*; (i) a customer's local area network; (ii) customer-provided Internet connectivity or end-user software; or (iii) anything inside customer's internal network, including, but not limited to, firewall configuration and bandwidth to internet, local area workstations, servers, software, and configuration.

## 4. SYSTEM RESOURCE USAGE

- In order to ensure speed, reliability & server performance over any given time all hosting services are subject to certain resource limitations concerning, but not limited to, server CPU usage, memory usage, database usage, e-mail usage etc. If a hosting account exceeds the allowed amount of system resources, the account owner will be immediately notified to take actions in order to decrease the usage. If such action is not instantly taken by the owner, the account will be suspended. When an excessive CPU usage is detected the account owner may be also suggested to place an order for a CPU upgrade or a service allowing for higher resources.
- If any hosting account is found to be causing degradation of the server and/or the hosting network's performance, regardless of the reason, the account will be subject to suspension or immediate removal, depending on the situation. Your Hosts will be the sole arbiter in determining whether a given account is excessively using the server resources and/or causing server degradation.
- You may refer to the following lists below at any given time to determine if your account exceeds the resource limits allocated:

### Processor & Memory (CPU/MEMORY) Restrictions

- Memory for any given processor 512 MB.
- Excess of 15 seconds.
- Number of open files should not exceed 64.
- Number of simultaneous processes should not exceed 25.

### Database (MySQL) Restrictions

- 30 concurrent MySQL connections.
- Queries should not exceed 10,000 per hour.

### Email (POP3/IMAP/SMTP) Restrictions

- Files in excess of 15 MB should not be sent via email.
- POP3 connections are limited to 60 per hour.

- Mailing lists should be throttled to send out no more than 500 emails per 60 mins.

- If any hosting account is found to be causing degradation of the server and/or our hosting network's performance, regardless of the reason, the account will be subject to suspension or immediate removal, depending on the situation. Your Hosts (not Ethically Creative) will be the sole arbiter in determining whether a given account is excessively using the server resources and/or causing server degradation.

## 5. SECURITY & SOFTWARE

- You acknowledge that the use of software such as Joomla, WordPress and other similar types of Third Party open source software can represent potential risk, and as such requires you to play a part in maintaining your chosen software. Therefore, you agree to take steps to ensure you keep you or their chosen software updated to the latest release and security patched where applicable.
- You agree to utilise and implement security measures as per advice from the developers/publishers of the Third Party software installed onto your hosting account/s on the server. You agree that under no circumstances shall Ethically Creative be liable for any damages, loss or costs arising from or associated with the result of any Third Party or otherwise software you have chosen to install into a hosting account becoming compromised (hacked) that may result in the destruction of data on the server whether this is the result of your or your chosen software becoming compromised or for any other reason whatsoever. You explicitly agree not to hold Ethically Creative responsible or liable in any manner whatsoever for any damages, loss or costs arising from or associated with any type of data becoming deleted and/or unrecoverable due to any type of compromise or hack irrespective of how the compromise or hack occurred.
- Account compromise by a Third Party or otherwise, including but not limited to: stolen passwords, phishing, redirections, meta-refresh scripts or defacement of an individual website is not the responsibility of Ethically Creative. Ethically Creative and your Hosts have the responsibility to notify the Client and suspend the account at the earliest convenience, at the sole discretion of Ethically Creative repeat offenders which have openly had an account compromised several times may be charged a service administration fee.

Terms continue over page...

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## 6. LATE PAYMENT PENALTIES

- Ethically Creative and your Hosts reserve the right to delete any account remaining unpaid to its full amount after 28 days of invoice issue. This will result in loss of all Client data. This includes all domain names, email accounts and website or other files held within the hosting account. This information will not be retrieved or restored from backup at any time.

## 7. BACKUPS & DATA LOSS

- Use of your service is at your sole risk. Ethically Creative and your server Hosts are not responsible for any and all files and data residing on your account on the servers. Ethically Creative and your Hosts cannot guarantee that the contents of a web site will never be corrupted, or that a backup of a web site will always be available. You agree to take full and sole responsibility for any and all files and data transferred to our servers and to maintain all appropriate backups of any and all files and data stored on any server to which you have an account on. In the case that an account backup is required to be restored from a server backup performed by your Hosts a \$30.00 fee will incur.

## 8. RESELLER ACCOUNTS

- The term 'Reseller' is identified as any Client of Ethically Creative who redistributes hosting account invoices under their own business identity to a customer who is not in direct contact with Ethically Creative
- The Reseller agrees that any contact details for Ethically Creative will not be given to third-party Clients and Reseller remains the sole contact for third-party Clients. In the event of website or email down-time the Reseller must answer their Client's enquiries without any referral to Ethically Creative.

## 9. TERMINATION OF DATA

- For your privacy, all data and files from terminated and cancelled accounts are immediately deleted and purged from the servers. This includes any and all back ups. Please make sure to back up all your files and data before cancelling your account.

## 10. REFUSAL OF SERVICE

- Ethically Creative reserves the right to refuse, cancel or suspend service, at its sole discretion.

## 11. LIMITATION OF LIABILITY

- Ethically Creative shall not be responsible for any claimed damages, including incidental and consequential damages, which may arise from the reseller's servers going off-line or being unavailable for any reason whatsoever. Furthermore, Ethically Creative shall not be responsible for any claimed damages, including incidental or consequential damages, resulting from the corruption or deletion of any web site from one of the reseller's servers. All damages shall be limited to the immediate termination of service.

## 12. INDEMNIFICATION

- Ethically Creative wishes to emphasise that in agreeing to these Terms and Conditions, the Client indemnifies Ethically Creative for any violation of these Terms and Conditions that results in loss to Ethically Creative or the bringing of any claim against Ethically Creative by any third-party. This means that if Ethically Creative is sued because of a Client's activity, the Client will pay any damages awarded against Ethically Creative, plus all costs and attorney's fees.

## 13. DISCLAIMER

- Ethically Creative cannot be held liable for system down time, crashes or data loss. Ethically Creative cannot be held liable for any predicated estimate of profits which a Client would have gained if their site was functioning.
- Ethically Creative shall not be responsible for the content of any material published on servers pursuant to these Terms and Conditions.

## 14. CONSEQUENCES

- Failure to comply with any terms or conditions will result in the automatic deactivation of the account in question. Ethically Creative reserves the right to remove any account, without advance notice for any reason without restitution, as seen fit. If you sign up for an account and fail to comply with these terms, no refunds will be given.

## 15. PRICING AND PACKAGES

- Storage space, all features and pricing of hosting packages may change at any time.

## 16. DOMAIN TERMS

- All domain extensions are subject to their own terms & conditions of use which you have read and agree to.

## 17. ACCEPTANCE OF AGREEMENT

- By opening a hosting account, email account or registering a domain name through Ethically Creative (ABN: 52 585 799 165), you hereby accept the above prices, specifications and conditions. Ethically Creative and its representatives are then authorised to execute the account registration as outlined in this agreement.

## 18. REVISIONS TO THIS POLICY

- These terms may be updated and amended and the Client agrees that the latest version of these Terms applies.