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- (d) your breach of any laws, including the *Spam Act 2003* (Cth), the *Privacy Act 1988* (Cth) and similar laws in other jurisdictions.

If we take action to recover overdue amounts from you, any reasonable costs incurred by us in recovering the debt, including but not limited to any legal expenses and collection agency charges, will be recoverable from you.

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### 13. Termination

Either party may terminate this Agreement by providing the other with notice in writing at least 7 days prior to the end of any Subscription Period, and upon doing so this Agreement will terminate at the end of the Subscription Period.

You may provide notice of termination in accordance with the notice provisions set out in this clause 13 or by using the cancellation facility contained in your account.

Either party may terminate this Agreement if the other party commits a material breach of this Agreement and the breach is incapable of being remedied or if the breach is capable of being remedied, the party in breach has failed to remedy the breach within 14 days after the receipt of notice to remedy. If we terminate a service for a breach, we may immediately cease any of our other services which we provide to you.

Upon termination:

- (a) your account will remain active for 48 hours during which you may transfer your data off our platform;
- (b) we reserve the right to permanently erase any data associated with your account 48 hours after termination; and
- (c) you must immediately pay any outstanding Fees owed to us (your obligation to pay outstanding Fees survives termination).

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### Dispute Resolution

A party claiming a dispute has arisen under this Agreement (**Dispute**) must give written notice to the other party specifying the nature of the Dispute. The parties must submit themselves to the dispute resolution procedure set out in this clause 14 before commencing any legal proceedings.

If the parties cannot resolve the Dispute between themselves within 30 days then either party may require the Dispute to be referred for mediation. The mediation must be undertaken in accordance with the Resolution Institute Mediation Rules, in accordance with the Resolution Institute Mediation Rules, in accordance with the Resolution Institute Mediation Rules, in accordance with the Resolution Institute Mediation Rules and unless otherwise agreed between the parties using a mediator nominated by the Resolution Institute. If the Dispute is not resolved within 30 days of the mediation commencing either party may commence proceedings in respect of the Dispute.

Each party must pay its own internal and legal costs in relation to complying with this clause 14. The mediator's costs are to be shared equally.

The parties acknowledge and agree this clause 14 does not apply to the recovery of any debt or prevent a party from instituting proceedings for the purposes of seeking urgent injunctive or similar interim relief from a court.

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### General provisions

**Assignment** - We may assign, encumber, declare a trust over or otherwise create an interest in our rights in this Agreement without your consent. You must not assign, encumber, declare a trust over or otherwise create an interest in your rights in this Agreement without our consent, which must not be unreasonably withheld.



**Entire Agreement** - This document and the policies incorporated by reference contains the entire agreement between the parties about its subject matter. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this document and has no further effect.

**Force Majeure** - If a party is affected by a Force Majeure Event, they must immediately notify the other party of the circumstances. The parties' obligations under this Agreement, other than an obligation to pay the Fees, are suspended for the duration of and to the extent that they are affected by the Force Majeure. However, either party may end this Agreement if the Force Majeure continues to affect the rights and obligations of the parties, under this Agreement, for more than 60 days.

**Governing law** - The laws of Victoria, Australia govern this Agreement. The parties submit to the non-exclusive jurisdiction of courts exercising jurisdiction there.

**Notices** - The parties agree all notices, disclosures and other communications that are provided in accordance with this clause, satisfy any legal requirement that such communications be in writing. Any communication under or in connection with this Agreement:

- (a) which we send to you, must be sent to the email address in your account; or
- (b) which you send to us, must be either delivered to the postal or email address set out in clause 1 of this Agreement.

**Severability** - Any provision of this document which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this document enforceable, unless this would materially change its intended effect.

**Sub-contracting** - We may sub-contract any of our obligations under this Agreement, but such sub-contracting will not release us from our liabilities.

**Variations to this Agreement** - We may vary this Agreement, including by making changes to our Fees, by giving notice to you at least 30 days prior to the end of the Subscription Period. If you do not accept the terms of the variation you may terminate your subscription in accordance with clause 13. By continuing to access or use the services after any variations to this Agreement, you agree to be bound by the amended Agreement.

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## 16. Definitions

**Account** takes its meaning from clause 5.1.

**Agreement** means these Terms of Service.

**Event of Force Majeure** means an act of war (whether declared or not) or terrorism, the mobilisation of armed forces, civil commotion or riot, natural disaster, industrial action or labour disturbance, currency restriction, embargo, action or inaction by a government, a failure of a supplier, public utility or common carrier or computer disruption due to the effects of a computer virus, trojan, malware, a ransomware attack or other malicious code.

**Fees** mean all subscription fees associated with Hosting Plans, Usage Charges, setup costs and any other fees associated with the Services you procure from us.

**Hosting Plans** means the hosting package you selected when entering into this Agreement with us.

**Intellectual Property** means all present and future rights conferred by statute, common law or equity (and all moral rights) in or in relation to business names, domain names, circuit layouts, computer code, confidential information, copyright, designs, formulas, inventions, knowhow, patents, plant varieties, recipes, trade marks, and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic field, the benefit of any application to register such a right and the benefit of any renewal or extension of such a right.

**Non-excludable Condition** means any guarantee, condition or warranty (such as the consumer guarantees implied by the *Competition and Consumer Act 2010* (Cth)), which cannot by law be excluded.

**Prohibited Conduct** takes its meaning from clause 5.5.

**Prohibited Content** takes its meaning from clause 5.6.

**Services** means the Hosting Plans and related services which you subscribe to or otherwise obtain from us.

**Subscription Period** means the duration you signed up for when requesting a Hosting Plan.

**Usage Charges** means any fees chargeable for usage of resources beyond those allocated on your Hosting Plan.