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# *DOC00022 - SBWP Term and Conditions*

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## 2 Website Content

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### 2.1 Fees

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All prices are in Australian Dollars

#### 2.1.1 Registration/Renewal Fee

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Two years of Site Hosting and Domain Name Registration costs \$250.

The Contract Starts the day the domain name is Registered/Renewed with the domain registration organisation for the country the domain name is registered for.

#### 2.1.2 Set Up Fee

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The Set Up Fee is \$325.

The Set up fee is to be paid after within 30 days of the final Web Page Approval or within 90 days of the Domain Name being Registered/Renewed, whichever comes first.

#### 2.1.3 Alteration/Graphic Design Fee

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Additional Alterations and Graphic Design work will be charge at a rate of \$55/hr.

### 2.2 Website Alterations

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#### 2.2.1 Alterations Requests

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After the initial Website is up and running Small Business Web Pages can update and alter information on your site at any time. A Fee will be payable for this service (see Fees).

#### 2.2.2 Customer Alterations

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A customer can choose to update and maintain their own website. Upon request from the customer they will be provided with a username, password and instructions to access and alter the files on the Web Server.

Small Business Web Pages will not be responsible for alterations made by customers.

Small Business Web Pages will only give instructions to access and alter the files on the Web Server. The customer is expected to know how to use an FTP connection to change the files on the server. The customer is also responsible for any programs or software that may be required to do this.

### 2.3 Cancellation/Termination of Contract

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A customer can choose to terminate their contract at anytime. There will be no extra fees charged for termination. However, no refunds will be given for Registration Fees already paid

## 3 Privacy

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### 3.1 Privacy policy

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Below is our privacy policy. This policy governs the use and disclosure by us of personal information of our users and outlines how users can access that information. It is only applicable on the assumption that:

- You provide us with all information marked as compulsory on the relevant application forms

- You warrant that all information provided to us is complete, accurate and up to date at all times

### 3.1.1 Information that is collected

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We collect or maintain the following personal information about our users:

- Name
- Address
- Telephone Number
- Email Address
- Username & Password

This information will be collected with your knowledge and participation. If you choose not to provide this information we may decline to accept your registration. It will not be possible for you to deal with us anonymously.

### 3.1.2 Cookies

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Our website may track user access sessions using cookies, without your specific knowledge or participation, by automated means in the course of your use of our network. Cookies are a Web browser technology that is used to improve your experience of using our website, but are not used to record any personal information. You may disable cookies in your Web browser at the cost of some possible loss of functionality in your use of our website.

### 3.1.3 Sensitive information

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The personal information we collect may be used for the following purposes:

- To administer our network;
- For billing purposes;
- For any other purpose for which you would reasonably expect your personal information to be used;
- For any other purpose authorised by the National Privacy Principles set out in the Privacy Act of 1988.

### 3.1.4 Disclosure of your personal information

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Your personal information may be disclosed in the following circumstances:

- To authorised officers of Small Business Web Pages and our agents for the purpose of administering our network or for billing or credit collection purposes
- Under compulsion of law, for example if a warrant or court order is received
- To lessen or prevent a serious and imminent threat to an individual's life or health
- To you or with your consent;
- For any other purpose authorised by the National Privacy Principles set out in the Privacy Act of 1988

Otherwise we will use reasonable endeavours to avoid the disclosure of your personal information, save that aggregated demographic information may be disclosed so long as the information is unable to identify you or any other individual.

### 3.1.5 Accessing your personal information

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You can contact us to request a copy of your personal information by emailing our Privacy Officer at enquiries@sbwp.com.au The Privacy Officer shall attend to your request on a confidential basis within 14 days of the request being received.

### 3.1.6 Refusal of access

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Access of your personal information may be refused if:

- Providing access would pose a serious and imminent threat to life or health of a person
- Providing access would create an unreasonable impact on the privacy of others
- The request is frivolous and vexatious
- Denial of access is authorised or required by law
- For any other reason authorised by the National Privacy Principles set out in the Privacy Act of 1988

### 3.1.7 Data quality

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We will use all reasonable endeavours to ensure the accuracy and quality of the information collected about you. Should personal information that you know has been collected about you change, it is your responsibility to bring the changes to our attention which you may do by email to the Privacy Officer at enquiries@sbwp.com.au.

### 3.1.8 Who is

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When a domain name license is registered, certain information is collected for use on the WHOIS service. The WHOIS service allows internet users to query a domain name to find out the identity and contact details of the registrant. The public WHOIS service is a standard feature of domain name systems around the world and is subject to the relevant registry operator's policies and requirements.

### 3.1.9 Amendments to privacy policy

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We may amend the terms applying to the use of your personal information at any time, subject to informing you of the amendments by publishing the revised policy on our website.

## 4 Copyright and Trademarks

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It is up to you as the customer to ensure that material on your website does not breach any copyright or Trademark laws in Australia or any other country.

Small Business Web Pages have the right to reject any material you wish to put on your site if we believe it may breach the copyright or trademark laws in Australia or any other country.

## 5 Domain Registration

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### 5.1 .au Specific terms

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The following clause (5) applies specifically to .au domain names.

#### 5.1.1 .au Domain name license registration

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Your application for a Domain Name must be in the form prescribed under the Published Policies. The Domain Name must comply with the Published Policies.

You accept that even if we have accepted and approved your Domain Name application, the application may still be rejected by the Registry Operator in performing its final integrity checks.

You accept that neither you, nor we, have any proprietary right arising from the registered Domain Name, or the entry of a Domain Name in the domain names registry.

All personal information pertaining to you are held by auDA for the benefit of the Australian public.

#### 5.1.2 .au Domain name license

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Your Domain Name license will be effective for a two year period, once:

- Your application is accepted and approved by us and by the Registry Operator
- You have paid the applicable fees
- Unless it is cancelled earlier under the terms of this document or under any Published Policies
- Your Domain Name license may be renewed every two years, as long as you:
- Pay the applicable renewal fees
- Continue to meet the eligibility criteria prescribed in the Published Policies

You accept that it is your responsibility to ensure that your Domain Name license is renewed.

You may cancel your Domain Name license at any time by notifying us in writing.

We may cancel your Domain Name license if you breach any provision of this document. We reserve the right to hold payment and deny refund.

#### 5.1.3 Your statement to us and auDA

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You confirm and state to us and to auDA separately that:

- All the information set out in your Domain Name application, and all information you give us, are true, complete and correct, and are not misleading or deceptive, and your application is made in good faith
- You meet, and continue to meet, for the duration of the Domain Name license, the eligibility criteria prescribed in the Published Policies for registering the Domain Name
- You have not previously submitted an application for registration with another registrar, a domain name which is the same as the Domain Name, in circumstances where:

- You are relying upon the same eligibility criteria for both domain names
- The Domain Name has previously been rejected by the other registrar
- Your registration or use of the Domain Name does not infringe any person's legal rights
- You are aware that even if the Domain Name is accepted for registration, your entitlement to register the Domain Name may still be challenged by others who claim to have an entitlement to the Domain Name

You accept that if any of the above statements is found to be untrue, incomplete, incorrect or misleading, then either we or auDA may cancel your Domain Name license.

You agree to indemnify us and auDA separately for any loss or damage suffered by us or auDA as a result of any of us relying upon your above statements.

#### 5.1.4 Your obligations to us

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You must comply with the Published Policies, as if they were incorporated into, and form part of, this document. In the event of any inconsistency between any Published Policy and this document, then the Published Policy will prevail to the extent of any such inconsistencies between this Agreement and the Published Policy.

You acknowledge that under the Published Policy:

- There are mandatory terms and conditions that apply to all domain names licenses, and such terms and conditions are incorporated into, and form part of, this document
- You are bound by, and must submit to, the .au Dispute Resolution Policy (auDRP)
- auDA may delete or cancel the registration of a .au domain name

Throughout the period of your Domain Name license, you must give notice to the Registry Operator (through us) of any change to any information which you have given us.

#### 5.1.5 Use of your information

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You give to:

- auDA, the right to publicly disclose to third parties, all information relation to the registered Domain Name in accordance with the Published Policies
- us, the right to disclose to the Registry Operator, all information which are reasonably required by the Registry Operator in order to register the Domain Name in the domain names registry
- the Registry Operator, the right to publicly disclose to third parties, all information relation to the registered Domain Name to enable the Registry Operator to maintain a public WHOIS service, provided that such disclosure is consistent with the National Privacy Principles, and the Published Policies.

#### 5.1.6 Dispute resolution

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auDA has in place a dispute resolution called the auDRP (which stands for .au Dispute Resolution Policy), which applies in the event of a dispute between a registrar and a domain name license holder, or between a domain name license holder and a third party, in relation to entitlements to domain names.

The auDRP binds you and us severally as if it were incorporated in this document.

You accept that:

- auDA may develop and implement other dispute resolution policies which are accessible by you as an alternative and further to any complaints handling procedure adopted by us
- Such policies bind you and us severally as if they were incorporated in this document

#### 5.1.7 .au Domain name license registrar transfer

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We will ensure that you can easily transfer your Domain Name registration to another registrar in accordance with the Published Policies. The Published Policies will address such matters as:

- The maximum fees which we can charge you for such transfer
- When we are not allowed to charge you fees
- The conditions under which we must transfer the registered Domain Name
- The conditions under which we are entitled not to transfer the registered the Domain Name

#### 5.1.8 Limitation of liabilities

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You cannot pursue any claim against auDA or against us, and to the fullest extent permitted by law, neither auDA nor we are liable to you for any direct, indirect, special, punitive, exemplary or consequential losses or damages of any kind, including but not limited to losses or damages resulting from loss of use, lost profits, loss or corruption of data, business interruption, lost business revenue or third parties damages, arising from, as a result of, or otherwise in connection with, any act or omission whatsoever of auDA or us, or any of auDA's or our

employees, agents or contractors, including but not limited to any breach by us of our obligations under this document.

You agree to indemnify, keep indemnified and hold auDA and us, and auDA's and our employees, agents and contractors harmless from all and any claims or liabilities, arising from, as a result of, or otherwise in connection with, your registration or use of the Domain Name.

You accept and agree that neither auDA nor we are responsible for the use of any Domain Name in the domain names registry, and that auDA is not responsible for any conflict or dispute with any actual or threatened claim against a registrar or a domain name license holder, including one relating to registered or unregistered trademark, a corporate, business or other trade-name, rights relating to a name or other identifying indicium or of an individual or other intellectual property rights of a third party or relating to the defamation or unlawful discrimination with respect to any other person.

Despite any other provision of this document, and to the fullest extent permitted by law, neither auDA nor we are liable to you for consequential, indirect or special losses or damages of any kind (including without limitation, loss of profit, loss or corruption of data, business interruption or indirect loss) suffered by you as a result of any act or omission whatsoever of auDA or us, and our respective employees, agents, or sub-contractors.

Nothing in this document is to be read as excluding, restricting or modifying the operation of Trade Practices Act 1974, or the application of any legislation which by law cannot be excluded, restricted or modified.

### 5.1.9 General

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In this document:

- A reference to this or other document includes the document as varied or replaced regardless of any change in the identity of the parties
- A reference to writing includes all modes of representing or reproducing words in a legible, permanent and visible form
- Headings and sub-headings are inserted for ease of reference only and do not affect the interpretation of this document
- Where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning

All previous agreements, statements, explanations and commitments, expressed or implied, affecting the subject matter of this document are superseded by this document and have no effect.

If a provision in this document is held to be illegal, invalid, void, voidable or unenforceable, that provision must be read down to the extent necessary, or severed if necessary, to ensure that it is not illegal, invalid, void, voidable or unenforceable.

## 6 Web Site Hosting

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### 6.1 Hosting services

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The following clause (6) applies specifically to hosting services provided by us.

#### 6.1.1 Services

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We may provide services directly or via a third party. Third party services may be subject to specific agreements as supplied by them. By applying or using any service offered by us you must agree to this agreement and any agreement of our third party suppliers.

#### 6.1.2 Hosting setup

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Quoted times for account activation are estimates and we do not guarantee or imply activation within the quoted time frame. We may delay or refuse activation if:

- Payment is not cleared or received in full
- We believe the order, information or payment is fraudulent
- You have any funds outstanding with relation to any other account
- The domain name quoted does not exist, is in a non-usable state (e.g pending renew) or deemed to be proposed for use that voids our Acceptable Use policy
- There is any other reason which we deem satisfactory

We may send notification of hosting activation however:

- Your contact details must be correct and up to date

- This is not final word that your hosting is fully active and ready for use, you must ensure the hosting is fully functional

You release us of any claim arising from failed hosting activation whether at fault of our system, our staff or any other factor out of our reasonable control.

### 6.1.3 Loss of service

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We will endeavour to maintain network stability and satisfactory service levels, however:

- We may from time to time perform routine maintenance, service and upgrades. We will endeavour to act on such instances at the most convenient times and provide reasonable notice by any means we deem satisfactory
- We may experience outages beyond our control caused by any of the following: force majeure (any 'act of god' including those induced by negative human activities), war, invasion, act of hostilities, civil war, rebellion, military power or confiscation, terrorist activities, nationalism, governmental/quasi-governmental sanction, restraint, embargo, prohibition or intervention, blockage, labour dispute, general strike, lockout or failure of utilities (electricity, telephone, etc), failure of hardware (our hardware as well as third party), failure of software, failed software or hardware upgrade or any other failure as caused by Small Business Web Pages, our suppliers or any third party
- We may, at our discretion provide notification of outages whether planned or unplanned
- You release us from any claim or potential claim with relation to outages and any loss of business/service suffered by you or any third party

### 6.1.4 Payment

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We are entitled to recover (on a full indemnity basis) any costs, fees and charges (including legal costs) incurred in recovering any amounts owing by you to Small Business Web Pages. Without limitation to the above, we may charge an administration fee of \$30.00 for any dishonoured cheques.

You acknowledge that should we not receive renewal payment prior to the date of expiry we reserve the right to suspend services immediately without notice. We may provide a 30 day grace period whereby we will hold your information and data on our servers. Should this period expire without payment we reserve the right to purge all data pertaining to your account with us.

### 6.1.5 Suspension and cancellation

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We reserve the right to suspend/cancel any/all service, including all domain names if:

- You have any outstanding invoice or account
- Your account is in dispute or dispute resolutions procedure, court order, judgement, findings or determination
- You fail to comply with any provision in this agreement or those referenced in this agreement
- There is evidence of fraudulent, illegal, defamatory, offensive activities, or any activity in breach of a third party's rights
- We deem your use of our services may jeopardize the operation of the service, Small Business Web Pages or our suppliers
- We deem any other reason as satisfactory to protect Small Business Web Pages, our staff and/or our suppliers

If your account is cancelled under this agreement:

- You must pay all outstanding charges to us immediately
- We may immediately delete all data held prior to cancellation
- We may perform any action without notice

### 6.1.6 Acceptable use policy

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It is your responsibility at all times to:

- Use our service and services in a manner which does not violate any applicable laws or regulations
- Respect the conventions of the newsgroups, lists and networks that you use
- Respect the legal protection afforded by copyright, trademarks, license rights and other laws to materials accessible via our service;
- Respect the privacy of others
- Use the service in a manner which does not interfere with or disrupt other network users, services or equipment; and
- Refrain from acts that waste resources or prevent other users from receiving the full benefit of our services
- Ensure your use of our services remains ethical and in accordance with accepted community standards

You must at all times comply with law. You will be in breach of this policy on violation of state, federal or international laws.

It is not acceptable to use our service(s) to:

- Violate copyright or other intellectual property rights;
- Illegally store, use or distribute software; transmit threatening, obscene or offensive materials
- Engage in electronic 'stalking' or other forms of harassment such as using abusive or aggressive language
- Misrepresent or defame others
- Commit fraud
- Gain unauthorised access to any computing, information, or communications devices or resources, including but not limited to any machines accessible via the Internet
- Damage, modify or destroy the files, data, passwords, devices or resources of Small Business Web Pages, other users or third parties
- Engage in misleading or deceptive on-line marketing practices;
- Conduct any business or activity or solicit the performance of any activity that is prohibited by law
- Make an unauthorised transmission of confidential information or material protected by trade secrets
- "Spam" or engage in "spamming" activities as defined in clause 4
- Engage obscene speech or materials, this includes, advertising, transmitting, storing, posting, displaying or otherwise making available; child pornography, offensive sexual content or materials or any other obscene speech or material
- Post or transmit defamatory, harassing, abusive or threatening language
- Create, distribute or provide information/data regarding internet viruses, worms, Trojan horses, pinging, flooding, mail-bombing or denial of service attacks;
- Facilitating a violation of this Acceptable Use Policy
- Perform any other action through utilization of any service which we deem unsatisfactory
- Attempt to do any of the above

You also agree not to attempt any of the following:

- Use 25% or more of system resources for longer than 90 seconds. There are numerous activities that could cause such problems; these include: CGI scripts, scripts, FTP, PHP, HTTP, Mail, etc
- Run any type of interactive real-time chat applications that require server resources. Remotely-hosted services are fully allowed
- Run stand-alone, unattended server-side processes at any point in time on the server. This includes any and all daemons, such as IRCD
- Run any software that interfaces with an IRC (Internet Relay Chat) network.
- Run any gaming servers/services
- Any activity which causes the server to crash / restart
- Check their email more than every 3 minutes

You agree that we may at our discretion and by order of any law enforcement agency disclose information relating to your account and use of services. We may also report any action we find in breach of this agreement, local, state, federal or international laws and cannot be held liable for any outcome resulting in our actions.

Any breach of our AUP can result in immediate termination of services and loss of all data held on provided services. You release us, our staff and our suppliers of any liability resulting in such instances.

### 6.1.7 Liability and indemnity

You agree that we shall have no liability to you or any other person with respect to any loss of service, data, business, indirect, incidental, consequential, special, exemplary or punitive damages, including loss of profit/goodwill for any matter whether such liability is asserted on the basis of contract, tort, breach of warranties either expressed or implied.

You agree to defend, indemnify, save and hold us, our staff and suppliers from any and all demands, liabilities, losses, costs and claims, including reasonable legal fee's asserted against us, our agents, our clients, our offices and employees, that may arise or result from any service provided, performed or agreed to be performed or any product sold by a customer, their agents and employees.

You agree to defend, indemnify, and hold us harmless against liabilities arising out of:

- Any injury to person or property caused by any products sold or otherwise distributed in connection with Small Business Web Pages
- Any material supplied by the customer infringing or allegedly infringing on the proprietary rights, legal and/or civil rights of a third party
- Any breach of any representation or warranty provided herein
- Any negligence or wilful misconduct by you
- Any allegation that your account infringes a third person's copyright, trademark, or intellectual property right, or misappropriates a third person's trade secrets

- Any defective products sold to customers from our server

By accessing any service hosted on our network you understand, agree and are bound to this indemnification and any other indemnification mentioned in our service agreement and agreements referenced to therein.

Should we be notified of pending legal action or intention to seek legal advice, we may seek written confirmation from you concerning your obligation to indemnify Small Business Web Pages. Failure to provide such confirmation may be considered a breach of this agreement.

We cannot be held responsible for any damages your business/operation may suffer. We provide no warranties, expressed or implied, for service we provide. Nor do we guarantee your web site or applications will be error free on our servers. We are not responsible for loss of data resulting from delays, software incompatibility, hardware or software issues, outages, failed deliveries and any service interruption caused by Small Business Web Pages, our employees or our suppliers.

Should any part of this policy be made invalid by relevant legislation, the remainder of the policy shall remain in force.