

## Terms and Conditions

This document sets out the terms and conditions (“the Terms”) which govern the use of services and deliverables provided by ITechnique Australia Pty Ltd trading as Creative Answers (ABN: 29 138 188 342 & BN98592307) (“Creative Answers”).

Each Customer agrees to abide by the Terms.

In this document, a “Customer” is a person who has entered into a contract to use Creative Answers’ services or deliverables or who uses Creative Answers’ services or deliverables without a contract.

The Terms consist of the following:

1. Hosting Terms and Conditions (“HTC”)
  - 1.1 Web Hosting, Email Hosting & Ecommerce Customer Restrictions
  - 1.2 Dedicated Server Customer Restrictions
2. Project Services Terms and Conditions (“PSTC”)
3. General Terms and Conditions (“GTC”)
  - 3.1 Customer Terms
  - 3.2 Customer Billing Policy
4. Fee Schedule

The spirit of the HTC is to ensure Customers are using Creative Answers services with due regard to the rights of other Internet users and in conformity with the requirements of the Creative Answers’ network environment. The PSTC apply to Consulting, Web Design, Web Development and project activities. The GTC apply to all products and services.

The Terms are not exhaustive and Creative Answers reserves the right to add, delete, or modify any provision of the Terms at any time without notice, effective upon either the posting of the modified Terms to [www.creativeanswers.com.au](http://www.creativeanswers.com.au) or notification of the modified Terms to the Customer (whichever is the earlier). Any complaints about a Customer's violation of the Terms should be sent to [admin@creativeanswers.com.au](mailto:admin@creativeanswers.com.au). The Terms supersede any other agreement with Creative Answers, whether written, oral, by conduct, or otherwise.

### 1 HOSTING TERMS AND CONDITIONS (“HTC”)

#### 1.1 WEB HOSTING, EMAIL HOSTING & ECOMMERCE CUSTOMER RESTRICTIONS

The following terms and conditions apply only to Creative Answers’ Web Hosting, Email Hosting and Ecommerce Customers, and supplement the terms and conditions in Section 3 that apply to all Creative Answers’ Customers:

##### 1.1.1 SERVER RESOURCES

Any web site that uses a high amount of server resources (such as, but not limited to, CPU time, memory usage, and network resources) will be given the option to either pay additional fees as considered reasonable by Creative Answers (which will depend on the resources required), reduce the resources used to a level considered acceptable by Creative Answers, or upgrade its server to a Dedicated Server plan. All Web Hosting and Ecommerce accounts come with a limit of 5,000 files per account. Each block of 5,000 files after the initial 5,000 will incur an additional charge of AUD\$20.00 per month (inclusive of GST). Any Web Hosting and Ecommerce account deemed to be adversely affecting server performance or network integrity will be shut down without prior notice. Creative Answers will be the sole arbiter of what is considered to be a high server usage level and whether any web hosting and Ecommerce account is deemed to affect server performance or network integrity.

##### 1.1.2 SCRIPTS

Any scripts, which in Creative Answer’s opinion, pose a potential security risk or are deemed to be adversely affecting server performance or network integrity will be shut down or will be automatically removed without prior notice. Creative Answers does not permit CGI script sharing with domains not hosted by Creative Answers or any scripts that may be abused for UCE purposes.

### **1.1.3 CHAT ROOMS**

Creative Answers does not allow Web Hosting and Ecommerce Customers to install their own chat rooms. Chat rooms tend to require significant system resources and therefore cannot be permitted as an account option. However, for a small charge to be advised from time to time, Creative Answers provides Java chat rooms that meet most users' needs and run without hindering system performance.

### **1.1.4 BACKGROUND RUNNING PROGRAMS AND CRON JOBS**

Creative Answers may allow programs to run in the background. These programs will be considered on an individual basis and Web Hosting and Ecommerce Customers will incur extra charges based on system resources used and operational maintenance needed. If a Customer wishes to run background programs please contact Creative Answers at support@creativeanswers.com.au so that Creative Answers can arrange set-up and advise on extra charges if applicable.

### **1.1.5 INTERNET RELAY CHAT ("IRC")**

Creative Answers does not allow IRC or IRC bots to be operated by Web Hosting and Ecommerce Customers.

### **1.1.6 SOFTWARE DISTRIBUTION**

Creative Answers Web Hosting and Ecommerce accounts are not configured for the purposes of distributing software and/or multimedia products. If the Customer wishes to distribute software and/or multimedia files, please contact sales@creativeanswers.com.au to make special arrangements.

### **1.1.7 MULTIMEDIA FILES**

Multimedia files are defined as any graphics, audio, and video files. Creative Answers Web Hosting and Ecommerce accounts are not to be used for the purposes of distributing and storing unusual amounts of multimedia files. Any web site whose disk space usage for storing multimedia files exceeds 70% of its total usage, in terms of total size or number of files, will be considered to be using an unusual amount of multimedia files.

### **1.1.8 DATABASES**

Any database stored on Creative Answers' Web Hosting and Ecommerce servers will be limited in size to 10% of the total disk space allotted for that particular domain's plan/web hosting account.

## **1.2 DEDICATED SERVER CUSTOMER RESTRICTIONS**

The following terms and conditions apply only to Creative Answers' Dedicated Server Customers, and supplement the terms and conditions in **Section C** that apply to all Creative Answers' Customers:

### **1.2.1 CUSTOMER SECURITY RESPONSIBILITIES**

The Customer is solely responsible for any breaches of security affecting servers under Customer control and on no account shall any responsibility be attributed to Creative Answers. If a Customer's server is involved in an attack on another server or system, it will be shut down (without notice to the Customer) and an immediate investigation will be launched to determine the cause/source of the attack. In such event, the Customer is responsible for the cost to rectify any damage caused to the Customer's server and any other consequential loss, claim or damage arising by the security breach.

### **1.2.2 IRC**

Creative Answers allows Dedicated Server Customers the use of IRC inside the Creative Answers' network as long as the use of IRC on a Creative Answers' server does not violate any other terms noted herein. As a policy, Creative Answers will not provide vanity IRC reverse DNS records. To enforce this policy Creative Answers does not turn the reverse address of IPs over to the Customer. Authority over this information remains with Creative Answers at all times.

### **1.2.3 BILLING FOR NETWORK RESOURCES**

The Customer acknowledges and accepts that the Customer is responsible for paying for any network resources that are used to connect the Customer's server to the Internet. The Customer may request that the Customer's server be disconnected from the Internet (in writing), however the Customer will still be liable for paying for any network resources used up to the point of suspension

or cancellation.

## **2 PROJECT SERVICES TERMS AND CONDITIONS (“PSTC”)**

The following terms and conditions apply only to Creative Answers’ consulting, web design, web development and project Customers, and supplement the terms in Section 3 that apply to all Creative Answers Customers:

### **2.1 DEFINITIONS**

Creative Answers Branded means Products and Professional Services bearing a trademark or service mark of Creative Answers.

Deliverable means the tangible work product resulting from the performance of Professional Services excluding Products and Custom Products.

Products and Custom Products means Creative Answers products and third party products, including those products as customised by Creative Answers;

Professional Services means consulting, web design, web development, integration or technical services performed by Creative Answers in accordance with a Statement of Work or Quotation Document.

Quotation Document means a document so titled and executed by both Creative Answers and the Customer, which describes the Professional Services to be performed by Creative Answers under the Terms.

Specification means technical information about Products published in Creative Answers’ product manuals, user documentation, and technical data sheets in effect on the date Creative Answers delivers Products to the Customer.

Statement of Work means a document so titled and executed by both Creative Answers and the Customer, which describes the Professional Services to be performed by Creative Answers under the Terms.

### **2.2 CREATIVE ANSWERS’ PROFESSIONAL SERVICES AND DELIVERABLES**

Creative Answers will provide Professional Services and provide Deliverables described in the relevant Statement of Work or Quotation Document and in accordance with the Terms.

### **2.3 CHANGES**

Requests by the Customer and recommendations by Creative Answers for changes to the Professional Services or Deliverables are subject to Creative Answers’ change management procedures and will only become effective and binding upon agreement by both parties in writing.

### **2.4 ACCEPTANCE**

#### **2.4.1 PROFESSIONAL SERVICES**

Acceptance of Professional Services will occur upon Creative Answers’ performance of the Professional Services.

#### **2.4.2 DELIVERABLES**

Where acceptance testing of a Deliverable is not required, acceptance occurs when the Deliverable is provided to the Customer.

For Deliverables requiring acceptance testing, the parties will develop and agree (in writing) on an Acceptance Test Plan (“ATP”). In the event that the parties are unable to reach agreement on the ATP within thirty (30) days of the effective date of the applicable Statement of Work or Quotation Document (being the date of delivery), each party will have the right to terminate that Statement of Work or Quotation Document by giving written notice to such effect to the other party. In the event of such termination, Creative Answers will be entitled to payment for all work performed prior to the date of such termination.

Creative Answers will notify the Customer when a Deliverable is ready for acceptance testing and such testing will commence within five (5) business days of such notice (or on such day as agreed between the parties). Within five (5) business days after completion of testing, the Customer will either sign the acceptance report provided by Creative Answers or, if Creative Answers was unable to complete the ATP, notify Creative Answers in writing detailing any failure of the Deliverable to

conform to the acceptance criteria in the ATP. Within a reasonable time, Creative Answers will correct any such non-conformance and redeliver the Deliverable for a repeat of the steps in the ATP process necessary to verify conformance with the ATP. In the event that Creative Answers is unable to remedy the non-conformance, the Customer may, as its sole and exclusive remedy, either:

- a. accept the Deliverable without warranty, on an "AS IS" basis, subject to a reasonable price adjustment (as determined by Creative Answers); or
- b. return the affected Deliverable to Creative Answers and receive a refund of amounts paid to Creative Answers for such Deliverable.

Deliverables will be accepted or deemed to be accepted on the earlier of:

- a. the Customer so advising Creative Answers; and
- b. the Customer failing to give Creative Answers written notice of non-conformance within five (5) business after completion of testing

however, if the Customer, prior to either event, uses the Deliverable for productive use, it will be deemed accepted upon such use and notwithstanding any subsequent non-acceptance notice that the Customer may provide to Creative Answers. If acceptance testing is delayed for reasons attributable to the Customer, acceptance will be deemed to occur on the 10th day after notice by Creative Answers that a Deliverable is ready for acceptance testing. If a Deliverable is provided on a time-and-expense basis, all corrections will be performed by Creative Answers at the Customer's expense at the same rate.

## **2.5 CONTENTS OF WEB PAGES AND UNDERTAKINGS**

The Customer will be solely responsible for the content of its Web Page undertakings and content except where the content has been provided as part of Professional Services. Creative Answers is not responsible for proof reading any content unless specifically agreed in writing between the parties.

Creative Answers makes no representations to the Customer concerning the content or functionality of its web site. The Customer is responsible to ensure that the Customer's web site meets the Customer's requirements.

Creative Answers reserves the right not to include any material supplied by the Customer if Creative Answers deems it inappropriate or offensive, or otherwise.

The Customer is solely responsible for dealing with persons who access its data or web page and warrants that it will not refer complaints or inquiries in relation to such data to Creative Answers.

## **2.6 THIRD PARTY SOFTWARE & LICENSES**

During the course of providing Professional Services, Creative Answers may be required to install copies of third-party software. As part of the installation process, Creative Answers may be asked to accept licence terms accompanying such Software (collectively "Shrink-Wrap Terms") on behalf of the Customer. Shrink-Wrap Terms may be in electronic format, embedded in the Software, or contained within the Software documentation. Customer hereby acknowledges and accepts that it is the Customer's responsibility to review the Shrink-Wrap Terms at the time of installation, and hereby authorises Creative Answers to accept all Shrink-Wrap Terms on its behalf.

## **2.7 HOSTING FOR SITES DESIGN AND DEVELOPED BY CREATIVE ANSWERS**

If Customer chooses to organise web hosting arrangements, final exported sites will be uploaded to the Customer's preferred host company at the cost set out in the Fee Schedule unless included in the Statement of Work or Quotation Document. Construction files of the site can be supplied on request at the fees set out in the Fee Schedule.

## **2.8 SEARCH ENGINE PLACEMENT**

Whilst Creative Answers will try to improve the position of the Customer's Web Site in the search engine's results in response to a search request, Creative Answers does not warrant that this effort is in any way guaranteed.

Creative Answers cannot be held responsible for any changes to the position of the Customer's web site in the search engine's results in response to a search request.

# **3 GENERAL TERMS AND CONDITIONS**

## **3.1 CUSTOMER**

The following terms apply to ALL Creative Answers' Customers:

Creative Answers' services and deliverables include, but are not limited to: any act of preparing, consulting, designing, developing, setting up, connecting, maintaining, terminating, or reconnecting Customers' account (including all billing data and the space on the particular Web server that Creative Answers provides to Customers); any use by Customers, or any access provided to Customers by Creative Answers, of computing, telecommunications, software, information, hardware, and equipment; any act, or provision of any service, by Creative Answers to Customers, related to Web hosting and domain name registrations (including server usage and technical support), regardless of duration and whether paid for or not; any provision by Creative Answers to Customers, of any space, Internet connectivity, or electrical power; any access or use related to the Creative Answers Web site, including the Web site itself; any other service mentioned in the HTC; any other service provided by Creative Answers to Customers, whether used or not; any other Creative Answers services that are used by Customers, whether offered or provided by Creative Answers to Customers .

### **3.1.1 OWNERSHIP OF WEB SITE**

The legal owner of Customers' Web sites and accounts with Creative Answers will be the individual or organisation whose name is listed in Creative Answers' database as the owner. Customers will fully cooperate with and abide by any and all of Creative Answers security measures and procedures in the event of any dispute over ownership of Customers' Web sites and accounts with Creative Answers.

### **3.1.2 ILLEGAL USE**

Creative Answers' servers may be used for lawful purposes only. Transmission, storage, or distribution of any information, data, or material in violation of any applicable law or regulation, or that may directly facilitate the violation of any particular law or regulation is prohibited. This includes, but is not limited to: copyrighted material; trademarks; trade secrets or other intellectual property rights used without proper authorisation; material that is obscene, defamatory, constitutes an illegal threat, or violates export control laws.

### **3.1.3 SPAMMING**

Sending unsolicited bulk and/or commercial messages over the Internet (known as "spamming") is prohibited, regardless of whether or not it overloads a server or disrupts service to Creative Answers Customers. The term "spamming" also includes, but is not limited to, maintaining an open SMTP policy, engaging in spamming using the service of another Internet Service Provider ("ISP") or Internet Presence Provider ("IPP") and referencing in the spam a Web site hosted on a Creative Answers' server, and selling or distributing software (on a Web site residing on a Creative Answers server) that facilitates spamming. Violators will be assessed a minimum fine of AUD\$300 and will face immediate suspension. Creative Answers reserves the right to determine, in its sole and absolute discretion, what constitutes a violation of this provision.

### **3.1.4 SYSTEM AND NETWORK ABUSE**

Violations of system or network security are prohibited and may result in criminal and civil liability. Examples of system or network security violations include, without limitation the following: unauthorised access to or use of data, systems or networks, including any attempt to probe, scan or test the vulnerability of a system or network or to breach security or authentication measures without express authorisation of the owner of the system or network; interference with service to any user, host or network including, without limitation, mail bombing, flooding, deliberate attempts to overload a system and broadcast attacks; forging of any TCP/IP packet header or any part of the header information in an email or a newsgroup posting.

### **3.1.5 VIRUSES AND OTHER DESTRUCTIVE ACTIVITIES**

Use of Creative Answers' services or deliverables or equipment for creating or sending Internet viruses, worms or Trojan horses, or for pinging, flooding or mail bombing, or engaging in denial of service attacks is prohibited. It is also prohibited for any Customer to engage in other activity that is intended to disrupt or interfere with, or that results in the disruption of or interference with, the ability of others to effectively use Creative Answers Services and equipment (or any connected network, system, service or equipment) or conduct their business over the Internet.

### **3.1.6 COPYRIGHT VIOLATIONS**

The Copyright Act 1968 (Commonwealth) ("CA") sets forth the law regarding the use of copyrighted materials on the Internet. All Customers are subject to the requirements of the CA. Individuals or entities submitting notifications of copyright infringement by a Customer (per the CA) to Creative Answers must follow the below procedures. Copyright infringement notifications submitted to Creative Answers according to these procedures will be processed within 21 days of receipt. Customers who are the subject of a CA notification that meets the below criteria may be subject to account termination at Creative Answers' sole discretion.

### **3.1.7 CA COPYRIGHT INFRINGEMENT NOTIFICATION REQUIREMENTS**

1. Signature of the copyright owner or a person authorized to act on the copyright owner's behalf (the "Claimant").
2. Identification of the copyrighted work(s) claimed to have been infringed.
3. Identification of the material claimed to infringe the copyright(s), and enough information for Creative Answers to locate it including URLs and specific descriptions of the infringing material at each URL.
4. The Claimant's name, address, and telephone number(s).
5. A statement that the Claimant has a good faith belief that use of the disputed material is not authorized by the copyright owner or his agent.
6. A statement that the Claimant has a good faith belief that use of the disputed material is not authorized by the copyright owner or his agent.
7. A statement, under penalty of perjury, that the information in the notification of copyright infringement is accurate and that the Claimant is authorised to act on behalf of the copyright owner.

Mail the notification to:  
ITechnique Australia Pty Ltd  
CA Complaints  
Suite 2, 7 Leeds Street  
Rhodes, NSW 2138  
AUSTRALIA

### **3.1.8 CHILD PORNOGRAPHY**

The use of Creative Answers' services to store, post, display, transmit, advertise or otherwise make available child pornography is prohibited. Creative Answers is required by law, and will, notify law enforcement agencies when it becomes aware of the presence of child pornography on, or being transmitted through, its services.

### **3.1.9 PRIVACY**

Creative Answers is concerned with the privacy of on-line communications and Web sites. In general, the Internet is neither more nor less secure than other means of communication, including mail, facsimile, and voice telephone service, all of which can be intercepted and otherwise compromised. As a matter of prudence, however, Creative Answers urges its Customers to assume that all of their on-line communications are insecure. Creative Answers cannot take any responsibility for the security of information transmitted over Creative Answers facilities.

### **3.1.10 INTERNET SERVICE PROVIDERS**

Creative Answers accepts no responsibility for delays or down time, breakdowns or data loss caused by ISPs.

### **3.1.11 CUSTOMER RESPONSIBILITY**

Customers are required to use the Creative Answers' network responsibly. This includes respecting the interests and rights of the other Customers of Creative Answers. Creative Answers reserves the right to suspend and/or cancel service with any Customer who uses the Creative Answers' network in such a way that adversely affects other Creative Answers' Customers. While Creative Answers may monitor its service electronically to determine that its facilities are operating satisfactorily, as a general practice, Creative Answers does not monitor its Customers' communications or activities to determine whether they are in compliance with the Terms. However, when Creative Answers becomes aware of any violation of the Terms or other user agreements, Creative Answers may take any action to stop or correct such violation, including, but not limited to, denying access to Creative

Answers' Services and equipment or to the Internet. In addition, Creative Answers may take action against a Customer or a customer of such Customer because of the activities of such Customer. Customers who offer Internet services will cooperate with Creative Answers in any corrective or preventive action that Creative Answers deems necessary. Failure to cooperate with such corrective or preventive measures is a violation of Creative Answers' policy and Creative Answers reserves the right to take any such action even though such action may affect other Customers of Creative Answers.

### **3.1.12 ACTIONS TAKEN BY CREATIVE ANSWERS**

The failure by a Customer to meet or follow any of the HTC is grounds for account deactivation. Creative Answers will be the sole arbiter as to what constitutes a violation of the HTC. Creative Answers reserves the right to remove any account without prior notice and to refuse service to anyone at any time. When Creative Answers becomes aware of an alleged violation of the HTC, Creative Answers will initiate an investigation. During the investigation, Creative Answers may restrict a Customer's access in order to prevent further potentially unauthorised activity. Depending on the severity of the violation, Creative Answers may, at its sole discretion, restrict, suspend, or terminate a Customer's Web hosting account and/or pursue other civil remedies. If such violation is a criminal offence, Creative Answers will notify the appropriate law enforcement authorities of such violation. An unlisted activity may also be a violation of the HTC if it is illegal, irresponsible, or constitutes disruptive use of the Internet as determined by Creative Answers. Creative Answers does not issue credits for outages incurred through service disablement resulting from HTC violations. Violators of the policy are responsible, without limitations, for the cost of labour to rectify any damage done to the operation of the network and business operations supported by the network, and to respond to complaints incurred by Creative Answers.

### **3.1.13 INDEMNIFICATION**

A Customer agrees to protect, defend, hold harmless, and indemnify Creative Answers, any third party entity related to Creative Answers (including, without limitation, third party vendors), and Creative Answers executives, directors, officers, attorneys, managers, employees, consultants, contractors, agents, parent companies, subsidiaries, and co-subidiaries with the same parent company as Creative Answers, from and against any and all liabilities, losses, costs, judgments, damages, claims, or causes of actions, including, without limitation, any and all legal fees and expenses, arising out of or resulting in any from the Customer's use of Creative Answers services or deliverables.

### **3.1.14 ASSIGNMENT**

Customer may not assign, delegate or otherwise transfer all or any part of its rights or obligations under these Terms without the prior written consent of Creative Answers. Any such attempted assignment, delegation, or transfer will be null and void.

Creative Answers may assign, delegate or otherwise transfer all or any part of its rights or obligations under those obligations under these Terms without the prior written consent of the Customer.

### **3.1.15 SURVIVAL**

Any provision in the Terms which by their nature extend beyond the termination or expiration will remain in effect until fulfilled and will apply to both parties' respective successors and permitted assigns. Any termination will be without prejudice to the terminating party's legal rights and remedies, including injunction and other equitable remedies.

### **3.1.16 ENTIRE AGREEMENT**

The Terms and the relevant Statement of Work or Quotation Document represent the entire agreement between Creative Answers and the Customer regarding the Customer's purchase of Products and/or Services, and supersedes and replaces any previous communications, representations, or agreements, or the Customer's additional or inconsistent terms (including any pre-printed terms on Customer's orders), whether oral or written. In the event any provision of the Terms is held invalid or unenforceable the remainder of the Terms will remain enforceable and unaffected thereby.

### **3.1.17 WAIVER**

Neither party's failure to exercise or delay in exercising any of its rights under the Terms will constitute or be deemed a waiver or forfeiture of those rights.

### **3.1.18 DISCLAIMER**

To the maximum extent permitted by applicable law, the services and deliverables provided by Creative Answers are done so on an 'as is', as available basis without warranties of any kind, either express or implied, including, but not limited to, warranties of merchantability, fitness for a particular purpose or non-infringement. Creative Answers expressly disclaims any representation or warranty that Creative Answers' services or deliverables will be error-free, secure or uninterrupted. No oral advice or written information given by Creative Answers, its employees, licensors or the like, will create a warranty; nor may the Customer rely on any such information or advice. Creative Answers and its partners and suppliers will not be liable for any cost or damage arising either directly or indirectly from any transaction or use of the services or deliverables.

### **3.1.19 TERMINATION FOR BANKRUPTCY OR INSOLVENCY**

If a Customer becomes insolvent or any bankruptcy petition is filed by the Customer, or any third party against the Customer, Creative Answers may immediately terminate any agreement it has with the Customer without prior notice or penalty.

### **3.1.20 TERMINATION FOR CONVENIENCE**

For Professional Services performed either party may terminate the relevant Statement of Work or Quotation Document to which the Terms are attached for convenience upon seven (7) days prior written notice to the other party, unless otherwise prohibited by the Terms

### **3.1.21 TERMINATION FOR CAUSE**

Either party may terminate the relevant Statement of Work or Quotation Document to which the Terms are attached on written notice if the other party fails to comply with the Terms after it has been notified in writing of the nature of the failure and been provided with a reasonable time to cure the failure.

### **3.1.22 EFFECT OF TERMINATION**

Upon termination of any Statement of Work or Quotation Document, the Customer will pay Creative Answers for all Services performed and charges and expenses incurred by Creative Answers up to the date of termination, and the Customer will receive all work in progress for which the Customer has paid. Should the sum of such amounts be less than any advance payment received by Creative Answers, Creative Answers will refund the difference within thirty (30) days of such termination.

### **3.1.23 LIMITATION OF LIABILITY**

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT, WHETHER IN CONTRACT OR TORT OR AT EQUITY WILL CREATIVE ANSWERS (INCLUDING, WITHOUT LIMITATION, CREATIVE ANSWERS' EXECUTIVES, DIRECTORS, OFFICERS, ATTORNEYS, MANAGERS, EMPLOYEES, CONSULTANTS, CONTRACTORS, AGENTS, PARENT COMPANIES, SUBSIDIARIES, CO-SUBSIDIARIES WITH THE SAME PARENT COMPANY AS CREATIVE ANSWERS, AFFILIATES, THIRD-PARTY PROVIDERS, MERCHANTS, LICENSORS, OR THE LIKE) OR ANYONE ELSE INVOLVED IN CREATING, PRODUCING, OR DISTRIBUTING CREATIVE ANSWERS SERVICES OR DELIVERABLES, BE LIABLE FOR THE LOSS OF A DOMAIN NAME, OR ANY BUSINESS OR PERSONAL LOSS, REVENUES DECREASE, EXPENSES INCREASE, COSTS OF SUBSTITUTE PRODUCTS OR ANY OTHER LOSS OR DAMAGE WHATSOEVER, OR FOR ANY CONSEQUENTIAL, SPECIAL, INCIDENTAL, PUNITIVE OR INDIRECT DAMAGES OF ANY KIND ARISING OUT OF ANY USE OF, OR ANY INABILITY TO USE, ANY CREATIVE ANSWERS' SERVICES OR DELIVERABLES EVEN IF CREATIVE ANSWERS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. CREATIVE ANSWERS' TOTAL CUMULATIVE LIABILITY, IF ANY, TO THE CUSTOMER, OR ANY THIRD PARTY, FOR ANY AND ALL DAMAGES, RELATED TO THE PROVISION OF ANY WEB HOSTING, EMAIL HOSTING OR THE PROVISION OF PROFESSIONAL SERVICES OR ANY OTHER SERVICES AND DELIVERABLES BY CREATIVE ANSWERS, INCLUDING, WITHOUT LIMITATION, THOSE FROM ANY NEGLIGENCE, ANY ACT OR OMISSION BY CREATIVE ANSWERS OR CREATIVE ANSWERS REPRESENTATIVES, OR UNDER ANY OTHER PRINCIPLE OF LAW OR EQUITY (OTHER THAN ANY APPLICABLE STATUTE), WILL BE LIMITED TO, AND WILL NOT EXCEED, THE ACTUAL DOLLAR AMOUNT PAID BY THE CUSTOMER FOR THE WEB HOSTING OR EMAIL HOSTING OR PROFESSIONAL SERVICES OR DELIVERABLES WHICH GAVE RISE TO SUCH DAMAGES, LOSSES AND CAUSES OF ACTIONS DURING THE 3-MONTH PERIOD PRIOR TO THE DATE THE DAMAGE OR LOSS OCCURRED OR THE CAUSE OF ACTION AROSE.

### **3.1.24 WARRANTIES & ACKNOWLEDGEMENTS**

Creative Answers DOES NOT WARRANT, AND THE CUSTOMER ACKNOWLEDGES AND ACCEPTS THAT CREATIVE ANSWERS DOES NOT WARRANT, THAT WEB HOSTING, EMAIL HOSTING PROVIDED OR THE PROFESSIONAL SERVICES OR DELIVERABLES PROVIDED WILL BE ERROR FREE OR THAT THE DELIVERABLES WILL BE COMPATIBLE WITH PRESENT OR FUTURE PRODUCTS of Creative Answers OR OTHER VENDORS. Creative Answers will use all due care to ensure its services and deliverables are free of errors. Creative Answers provides third-party products, software, and services that are not Creative Answers Branded "AS IS" without warranties of any kind, although the original manufacturers or third party suppliers of such products, software and services may provide their own warranties.

Customer acknowledges that web sites cannot be guaranteed to be 100% error free in construction and acknowledge that the existence of errors falling short of a complete failure of consideration in the site shall not constitute a reason to terminate this agreement.

### **3.1.25 MODIFICATIONS**

Creative Answers may discontinue, upgrade, replace, modify, or change in any way, without limitation, any software, application, program, data, hardware, equipment, or portions or components thereof, used to provide Customers with Creative Answers Professional services or deliverables. Certain changes to Creative Answers' Professional Services may affect the operation of Customers' personalised applications and content. Each Customer is solely responsible, and Creative Answers is not liable, for any and all such personalised applications and content, except as expressly agreed to by Creative Answers.

### **3.1.26 BACKUP OF DATA**

Except where Creative Answers has expressly agreed in writing to the contrary, Customers are solely and entirely responsible, and Creative Answers is in NO way responsible, for the management and backup of all Customer data, and all updates, upgrades, and patches to any software that Customers use in connection with Creative Answers services or deliverables. However Creative Answers does maintain daily backups as part of disaster recovery policy.

### **3.1.27 THIRD PARTY LICENSES**

Creative Answers makes a reasonable effort to provide Customers with technologies, developments, and innovations (collectively "Technologies"), part of which may be licensed, or co-branded, from or by, third party entities. However, Creative Answers makes NO warranty of any kind, either express or implied, regarding the quality, accuracy, reliability, validity, or continued existence of any or all aspects of such Technologies. Moreover, Creative Answers specifically disclaims all warranties of merchantability and - fitness for a particular purpose for such Technologies. Furthermore, no Customer will hold Creative Answers liable in any way for the revocation of any license, which has been licensed to Creative Answers. The use of the Technologies obtained from or through Creative Answers, or any other referred third party, whether directly or indirectly, is at the sole risk of Customers.

### **3.1.28 NON-CREATIVE ANSWERS' PRODUCTS**

Any mention of non Creative Answers' products by Creative Answers, its employees, or any third party entity related to Creative Answers is for information purposes only and does not constitute an endorsement or recommendation by Creative Answers. Creative Answers disclaims any and all liabilities for any representation or warranty made by the vendors of such non Creative Answers products or services.

### **3.1.29 INTELLECTUAL PROPERTY**

The Customer will not, without Creative Answers express and prior written consent, copy, reproduce, republish, or otherwise use any material, in whole or in part, that is located on Creative Answers' Web site, and Customers will not use any of Creative Answers' trademarks, service marks, copyrighted materials, or other intellectual property without Creative Answers express and prior written consent. Customers will not, in any way, misrepresent their relationship with Creative Answers, attempt to pass themselves off as Creative Answers, or claim that Customers are Creative Answers.

### **3.1.30 INTELLECTUAL PROPERTY RIGHTS**

All files created by Creative Answers pursuant to a Statement of Work or Quotation Document remain the property of Creative Answers.

Customer grants Creative Answers a non-exclusive, royalty-free right and licence (or sub-licence) to use, copy, make derivative works of, distribute, display, perform, and transmit Customer's and third parties' intellectual property rights only to the extent necessary for Creative Answers to perform its obligations and exercise its rights under these Terms.

The Customer will obtain all the necessary permissions and authorities in respect of the use of all copy, graphics, registered company logos, names and trademarks or any other material supplied by Customer to Creative Answers.

Supply of the abovementioned material by the Customer to Creative Answers shall be regarded as a guarantee by the Customer to Creative Answers that all such permissions and authorities have been obtained.

No responsibility will be accepted by Creative Answers for damages to or losses incurred by the Customer from the use of material for which the required permission or authority has not been obtained.

All original graphics designed and supplied by Creative Answers, remain the property of Creative Answers until the Customer's account has been paid in full, at which time ownership and copyright or a licence of said graphics (defined in the Statement of Work or Quotation Document) will transfer to the Customer.

Neither party will gain by virtue of agreeing to the Terms any rights of ownership of copyrights, patents, trade secrets, trademarks or any other intellectual property rights owned by the other. Creative Answers retains exclusive ownership in all Deliverables and will own all intellectual property rights, title and interest in any ideas, concepts, know how, documentation or techniques developed under the Terms including artwork created in advancing the profile of Creative Answers and to be recognised for artwork created by Creative Answers. Creative Answers hereby grants the Customer a non-exclusive, perpetual, royalty-free, non-transferable right and licence to use the Deliverables solely for the Customer's internal use. To the extent that the Deliverables include Software, the Customer's licence as set forth above is to use the Software only. Creative Answers may terminate Customer's licence in the Deliverables upon notice for failure to comply with these Terms. In the event of termination of Customer's licence, Customer will immediately destroy the Deliverables and all partial or complete copies thereof, or provide satisfactory evidence of their destruction to Creative Answers. Notwithstanding the licence grants set forth in this sub-section "Intellectual Property Rights", any third party Software incorporated into any licensed Deliverable will be subject to the licence terms applicable to such Software.

### **3.1.31 INTELLECTUAL PROPERTY INFRINGEMENT**

Creative Answers has no obligation for any claim of infringement to the extent arising from any third party materials, Creative Answers' compliance with or use of Customer's information, technology, designs, specifications or instructions, including those incorporated into any Statement of Work/Quotation Document or Deliverable; modification of the Deliverables by Customer or a third party; use of the Deliverables in a way not indicated in the Statement of Work/Quotation Document or in any specifications or documentation provided with such Deliverable; or use of the Deliverables with products not supplied by Creative Answers, unless otherwise specified by Creative Answers in the applicable Statement of Work/Quotation Document.

In the event that an infringement claim regarding a Deliverable appears likely, Creative Answers may at its sole discretion, and as Customer's sole and exclusive remedy, either: obtain for Customer the right to use the infringing Deliverable; modify the infringing Deliverable so that it is no longer infringing; obtain and substitute a functionally similar deliverable that is not infringing; or if none of the foregoing alternatives are reasonably available, refund a pro-rata portion of the charges paid by Customer for the infringing Deliverable upon return of the same to Creative Answers.

To the extent permitted by local law, this sub-section "Intellectual Property Infringement" states Creative Answers' entire liability for claims of intellectual property infringement related to Deliverables.

### **3.1.32 DISPUTE RESOLUTION**

The parties agree that if any dispute should arise under this agreement, attempts in good faith by both parties will be made to resolve the matter fairly before resorting to court procedures. In doing so, each party agrees to use its best endeavours to:

- Clearly communicate in writing the background facts leading to or causing the dispute;
- Set out clearly what action is required to settle the dispute;
- Select a way of resolving the dispute and explain why that way of resolving the dispute can be said to be a fair resolution;
- Discuss specific means of avoiding such disputes in the future.

Attempts to resolve the dispute must follow the following procedure:

1. The person complaining shall set out in writing the background, the issues and the outcome desired.
2. The person to whom the complaint is addressed will reply in writing within 10 business days to each issue in dispute setting out its perspective on the issue and the outcome desired.
3. If the dispute is not resolved in accordance with this exchange of written issues and outcomes, then the complainant will raise the matter with a neutral professional adviser or the NSW Office of Fair Trading or similar government department within 10 business days.
4. If the dispute is not resolved in accordance with such reference, the matter shall be referred to a single agreed arbitrator within 10 business days; whose decision shall be final.
5. In the case of disagreement on the appointment of a single arbitrator, then the parties shall be entitled to nominate one independent arbitrator with 7 days of disagreement and a coin will be tossed by an independent person to decide which will act as the sole arbitrator of the dispute. Action taken to settle the dispute at each stage must be undertaken promptly and the parties shall equally share the costs associated with the dispute settlement procedure.

### **3.1.33 MINIMUM AGE REQUIREMENT**

Customers must be at least 18 years of age. Any individual under the age of 18 years ("Minor") must have a parent or guardian accept the Terms in order for the Minor to become a Customer. A parent or guardian who accepts the Terms on behalf of a Minor will be primarily liable for ensuring complete and proper compliance with the Terms, including the timely and full payment of the charges for Creative Answers services, and such primary liability will continue even when the Minor has attained the age of 18, unless the parent or guardian obtains Creative Answers' express written consent to the contrary. Any acceptance of the Terms or any other agreement for Creative Answers Services will be deemed null and void to the extent that Creative Answers will not be liable in any way as a result of the Minor's age or legal incapacity or the Minor's use of Creative Answers services or deliverables.

### **3.1.34 GOVERNING LAW AND SEVERABILITY**

The Terms and any other agreement for Creative Answers' services or deliverables, will be governed by and construed in accordance with the laws of the State of New South Wales, Australia. Any litigation or arbitration between a Customer and Creative Answers will take place in New South Wales, and the Customer will consent to personal jurisdiction and venue in that jurisdiction. If any provision or portion of the Terms or other Creative Answers' agreement is found by a court of competent jurisdiction to be unenforceable for any reason, the remainder of the Terms or the agreement will continue in full force and effect.

### **3.1.35 FORCE MAJEURE**

Creative Answers will not be liable for delays in its performance of the Terms or provision of web hosting, email hosting, Professional Services or any other services it provides caused by circumstances beyond Creative Answers reasonable control, including but not limited to acts of God, wars, insurrection, civil commotions, riots, national disasters, earthquakes, strikes, fires, floods, water damage, explosions, shortages of labour or materials, labour disputes, transportation problems, accidents, embargoes, or governmental restrictions (collectively "Force Majeure"). Creative Answers will make reasonable efforts to reduce to a minimum and mitigate the effect of

any Force Majeure. Notwithstanding anything contained elsewhere herein, lack of finances will not be considered an event of Force Majeure nor will any event of Force Majeure suspend any obligation of Customers for the payment of money due.

### **3.1.36 AMENDMENT**

Any waiver, modification, or amendment of any provision of the Terms or other agreement for Creative Answers web hosting, email hosting, Professional Services or other services or deliverables provided by Creative Answers, initiated by a Customer, will be effective only if accepted in writing and signed by an authorised representative of Creative Answers.

### **3.1.37 INDEPENDENT CONTRACTORS**

Nothing in these Terms will be construed as creating a partnership or relationship of employer and employee, principal and agent, partnership or joint venture between Creative Answers and its Customers. Each of Creative Answers and its Customers will be deemed an independent contractor at all times and will have no right or authority to assume or create any obligation on behalf of the other, except as may be expressly provided herein.

### **3.1.38 CONSTRUCTION AND INTERPRETATION**

Wherever in these Terms the masculine, feminine, or neuter gender is used, it will be construed as including all genders, and wherever the singular is used, it will be deemed to include the plural and vice versa, where the context so requires. The division of the Terms into sections/paragraphs, and the insertion of headings/captions, are for convenience of reference only and will not affect the construction or interpretation of the Terms. Any rule of construction to the effect that any ambiguity is to be resolved against the drafting party will not be applicable in the construction or interpretation of the Terms.

### **3.1.39 COMPLETE AGREEMENT AND EXCLUSIVITY**

The Terms, in conjunction with any Statement of Work/Quotation Document for Creative Answers' services and deliverables, constitute the complete understanding and agreement between Creative Answers and its Customers. Except when expressly agreed to the contrary in signed writing by an authorised representative of Creative Answers, the Terms supersede any other written agreement, oral agreement, and/or agreement by conduct. These Terms, and/or any other specific agreement for Creative Answers Services is between Creative Answers and its Customers only and will not confer any rights in any third party except as otherwise expressly provided by Creative Answers.

### **3.1.40 ORDER OF PRECEDENCE**

Unless otherwise agreed or provided herein, documents will apply in the following descending order of precedence:

- a. Statement of Work;
- b. Quotation Document; and
- c. the sections of these Terms

## **3.2 CUSTOMER BILLING POLICY**

The following Terms and Conditions constitute Creative Answers' billing Policy and apply to ALL Creative Answers Customers:

### **3.2.1 PAYMENTS – GENERALLY**

All charges are shown in Australian dollars ("AUD"). Payments are to be made in AUD dollars.

Creative Answers accepts the following types of payment:

- Cheque or Money Order
- Credit Card (VISA, MasterCard)
- Bank Transfer
- PayPal

### **3.2.2 PAYMENTS - HOSTING SERVICES**

All payments are due on the Account Statement Date. The Account Statement Date is the monthly anniversary of the date the account was activated or the date specified in the Statement of Work or Quotation Document [If the Customer provides Creative Answers their credit card information, the Customer authorises Creative Answers to automatically charge their credit or debit card for charges that apply to the Customer's account. Recurring charges will be posted to the Customer's credit card until such time that the Customer cancels their account in accordance with Creative Answers'

Billing Policy. Charges subsequent to the Customer's initial order will accumulate in their account until such charges exceed AUD15. Creative Answers will then automatically charge the Customer's credit card on the next Account Statement Date. Customer is responsible for directly updating, or notifying Creative Answers, of any changes to its credit card (including, but not limited to card number, expiration date, billing address, or card status).

Customers not paying by credit card agree to make payment of their balance due within ten (10) days of the Account Statement Date.

Accounts that are fourteen (14) days past due will be automatically suspended. All past due and unpaid balances are subject to collection. In the event of collection, the Customer will be liable for costs of collection including attorney's fees, court costs, and collection agency fees.

### **3.2.3 PRICES AND TAXES – PROFESSIONAL SERVICES**

Customer must pay all fees and charges as set out in the Statement of Work or Quotation Document.

Customer will remain liable for all fees and charges during any period when Professional Services have been discontinued or suspended due to a failure on Customer part to comply with these Terms.

Customer will be invoiced as stated in the Statement of Work or Quotation Document. All accounts are payable within 14 days of invoice.

Customer is liable to pay overdue interest at 5 % per week on any amounts not paid within 14 days of invoice. All intellectual property rights, title, ownership and/or licenses that are specified as Deliverables remain with Creative Answers until payment.

Customer must pay Creative Answers all charges and fees without any set off, counter claim or deduction unless same is agreed in writing between Customer and Creative Answers.

The fees and charges attributable for the provision of Services is conditional on Customer supplying data, information and/or content as required in the Statement of Work or Quotation Document within 10 working days of the date of the Statement of Work/Quotation Document or any other date, as agreed between the parties, and specified therein. Creative Answers reserves the right to revise its price if that condition is not met.

Unless prices are changed by Creative Answers in accordance with these Terms, prices are valid while these Terms are in effect for the period set forth in the Statement of Work or Quotation Document.

Unless stated otherwise in the Statement of Work or Quotation document, prices are inclusive of, and Customer shall pay, all taxes including goods and services tax ("GST").

Creative Answers may, without any prior notice to the Customer, discontinue providing the Professional Services, and may terminate the order as specified in the Statement of Work or Quotation Document, if Customer fails to pay any sum due, or if after ten (10) days written notice by Creative Answers to the Customer advising of any non-conformance by Customer of the Terms, the Customer has not cured any other failure to perform under the Terms.

### **3.2.4 BILLING CYCLES FOR HOSTING (TERMS)**

Creative Answers offers three Billing Cycles (terms) for hosting charges: Monthly, Quarterly (3 months) and Yearly (12 months). The Billing Cycle begins on the Plan Activation Date, being the date a Customer buys a hosting package. Non-credit card payment methods are limited to Annual or Quarterly Billing Cycles.

A Customer may elect to change their Billing Cycle at any time; however, the new Billing Cycle will only take effect at the time of the next plan renewal.

All additional features added to an account are charged monthly. Additional items are non-refundable.

### **3.2.5 ACCOUNT RENEWALS**

In order to ensure uninterrupted service to the Customer's website, all plans will automatically renew at the end of the plan's Billing Cycle. Plan renewal charges are based on the prevailing rate on the date of renewal according to the service selected. Plans are renewed for the same billing cycle. If the Customer wishes to cancel their plan before plan renewal, the Customer should refer to the **Cancellation** section below.

### **3.2.6 STATEMENTS FOR HOSTING**

Creative Answers does not mail paper invoices or statements. Statements can be viewed and printed through Helm control panel. Customers may elect to receive their monthly account billing statement via email.

### **3.2.7 CANCELLATIONS**

Hosting plans will automatically renew until a plan is cancelled. In order to cancel service, the Customer must raise the support ticket or email to [support@creativeanswers.com.au](mailto:support@creativeanswers.com.au) or contact Creative Answers Customer Service Team, Monday through Friday, 9:00 A.M. to 5:00 P.M. Eastern Standard Time, at (+61-1300-788-301). Creative Answers Customer Service representatives will assist the Customer with the cancellation process. Please be aware that there are no pro-rated refunds after the first 30 days of service.

Cancellation requests must be received by Creative Answers a minimum of thirty (30) days prior to the end of the Customer's billing cycle for dedicated server plans and a minimum of ten (10) days prior to the end of the Customer's billing cycle for all other plans. Cancellations submitted later than this time may result in automatic renewal of the Customer's hosting plan. Cancellations become effective on the day processed by Creative Answers. Creative Answers is unable to cancel the Customer's account effective for a future date. Creative Answers will confirm the cancellation request when it is processed. If the Customer does not receive a confirmation, the Customer should contact Creative Answers as soon as possible.

Creative Answers does not monitor, and will not automatically cancel, hosting plans for problems related to domain name transfers, non-usage, Internic the Customer's ISP, or any other secondary issues not directly related to Creative Answers Professional Services. Cancellation of services does not relieve the Customer from paying any outstanding balance owed on the account. Creative Answers reserves the right to cancel any account, at any time, without notice, for any reason Creative Answers considers appropriate.

### **3.2.8 BILLING/PRICE CHANGES**

Creative Answers' policies and prices are subject to change without notice. Any price changes become effective in the next billing cycle.

## **4 FEES**

### **4.1 RETURNED CHEQUE**

Creative Answers charges an AUD\$40.00 fee for returned cheques. Customers that issue a Cheque that is not accepted for payment will be required to submit future payments with a certified cheque or money order.

### **4.2 BANK WIRE TRANSFERS**

Creative Answers does NOT charge fees for accepting payment via bank wire, however, international wire transfers may be assessed a AUD \$20.00 processing fee by an intermediary bank. In addition, the Customer issuing bank may also charge a fee for sending the wire. The Customer should add these fees to the amount that the Customer is sending to Creative Answers or the amount credited to the Customer account will be less than the Customer's intended payment.

### **4.3 REACTIVATION**

Customers that wish to reactivate a closed account will be assessed an AUD \$30.00 reactivation fee. An AUD\$150.00 fee will be assessed if Creative Answers restores the Customer's data files to the Customer's reactivated account.

### **4.4 HOSTING PLAN CHANGES**

Customers electing to change to a lower priced hosting plan on the same platform will be charged an AUD\$30 downgrade fee. There is no upgrade fee for upgrading to a higher priced plan; however, the Customer will be charged any difference between the setup fee applicable to their new and former plans.

### **4.5 REFUND POLICY**

There are no refunds offered or promised.

### **4.6 CREDIT CARD DISPUTES/CHARGEBACKS**

Creative Answers has a zero tolerance policy for payment rejections (chargebacks). Any Customer

who disputes a credit card payment is subject to a fine, suspension and account termination at Creative Answers' discretion. A charge of AUD\$40.00 per chargeback will be assessed to all accounts that receive a payment rejection (chargeback).