

These terms and conditions apply to all Services Requests between the Customer ("You") and the Board of the State Library of Victoria of 328 Swanston Street, Melbourne VIC 3000 ("VICNET").

## OPERATIVE

### 1. Definitions

- 1.1 In these terms and conditions unless the context otherwise requires:
- (a) Agreement means these terms and conditions and any Services Request.
  - (b) Clause means a clause of this Agreement.
  - (c) Development Work means web site content development and integration services work that is to be provided by VICNET.
  - (d) Force Majeure means a circumstance beyond the reasonable control of VICNET, which results in VICNET being unable to observe or perform on time an obligation under this Agreement. Such circumstances shall include, without limitation, telecommunications and internet failures.
  - (e) Intellectual Property Right includes, without limitation, any right arising from or capable of arising from: the Circuits Layout Act 1989 (Cth); the Copyright Act 1968 (Cth); the Designs Act 1906 (Cth); the Patents Act 1990 (Cth); the Trade Marks Act 1995 (Cth); any similar legislation outside the Commonwealth of Australia, any similar unregistered right and confidential information.
  - (f) Internet Services means the supply of goods and services by VICNET including, without limitation those set out in a Services Request which may include, without limitation, dial up connections, permanent connections, satellite services, web site hosting, domain name services and Development Work.
  - (g) Party means a party to this Agreement and its successors, trustees and permitted assigns.
  - (h) Services Request means a request by You for VICNET to supply Internet Services to You which is in the opinion of VICNET properly completed and accepted by VICNET.
  - (i) Sub-clause means a sub-clause of this Agreement.

### 2. Interpretation

- 2.1 In the interpretation of this Agreement unless the context otherwise requires:
- (a) Words denoting a person shall include corporations, statutory corporations, partnerships, joint ventures, associations, boards, governments or semi-government agencies or authorities.
  - (b) Words denoting the singular number shall include the plural number and vice versa.
  - (c) Words denoting any gender shall include all other genders.
  - (d) A reference to a statute or a regulation also refers to any statute or regulation amending, or consolidating or re-enacting same.
  - (e) Money references are references to Australian currency.
  - (f) Headings used in this Agreement are for convenience and ease of reference only, and are not part of this Agreement and shall not be relevant or affect the meaning or interpretation of this Agreement.
  - (g) Every obligation, covenant, agreement, condition express or implied in this Agreement and entered into by more than one party shall bind them jointly and each of them severally.
  - (h) If any provision or part provision of this Agreement is held invalid, unenforceable or illegal for any reason, this Agreement shall remain otherwise in full force apart from such provision or part provision which shall be deemed deleted.
  - (i) Words denoting writing shall include email.
  - (j) To the extent of any inconsistencies, this Agreement shall take precedence over VICNET's Publishing Policy and a Services Request.

### 3. Scope

- 3.1 VICNET shall provide You with Internet Services as detailed in one or more Services Requests.
- 3.2 Where a Services Request refers to periodic Internet Services (eg per annum) then such Internet Services shall automatically be supplied again for a similar period unless You advise VICNET in writing that You do not require such Internet Services 30 days prior to the expiration of such a period.

### 4. Your responsibilities and obligations

- 4.1 You shall, unless agreed otherwise by notice in writing from VICNET:
- (a) pay all accounts rendered by VICNET within 21 days of invoice or as otherwise specified in a Services Request. An account rendered by e-mail by VICNET shall be sufficient evidence for a Court of the provision of such Internet Services to You by VICNET.
  - (b) comply with the licence terms and conditions of any software supplied to You by VICNET.

- (c) be responsible for, and without limitation, taking backup copies of any data owned by You that is stored on VICNET's system or any data transmitted or caused to be transmitted over the Internet.
- (d) keep your password and user account details confidential and not disclose same to any other party. Should any such disclosure occur You shall report same to VICNET in writing as soon as possible. You shall be responsible for all use of such Internet Services whether authorised or not by You.
- (e) properly train yourself and your staff in the use of the Internet.
- (f) provide and only use equipment which VICNET considers suitable to use Internet Services.
- (g) fully comply with VICNET's Publishing Policy which may be updated and changed from time to time and is currently located at <http://www.vicnet.net.au/legal>.
- (h) comply with all relevant laws.

4.2 You hereby release, indemnify and keep indemnified VICNET, its officers, servants and agents against all liabilities, claims, actions, suits, demands, losses, costs (including legal costs on a solicitor and own client basis), taxes or expenses arising out of or in any way connected with the supply of Internet Services to You, including, without limitation, any third party claim, action, suit or demand against VICNET.

4.3 You shall not:

- (a) interfere with the network or disrupt any other user, service or equipment.
  - (b) Use any unauthorised software, hardware and or use or connect to any authorised software or hardware in an authorised manner.
  - (c) use Internet Services for any illegal, unauthorised or dangerous purpose including, without limitation, unsolicited commercial e-mail.
  - (d) publish any material for which You are not the Intellectual Property Right owner or are authorised to publish or is defamatory.
  - (e) where you are a Library, use the Internet Services for any purpose other than ordinary library use by Library members and staff.
  - (f) transfer, assign, sell to or share with any other person any right under this Agreement without the prior written consent of VICNET.
- 4.4 You acknowledge that VICNET does not and cannot monitor or control the content and information accessed via the Internet and shall not hold VICNET responsible in any way for any content or information accessed via the Internet.

### 5. VICNET's rights

5.1 VICNET may, whilst being under no obligation to do so and at its sole discretion, without notice or giving any reason or incurring any liability for doing so:

- (a) delete any material found on its equipment and/or refuse to accept or publish any material which is in VICNET's opinion unauthorised; illegal or possibly illegal; unlawful; obscene; infringes any Intellectual Property Right of any third party; defamatory; excessive in volume; uncollected for an excessive period; in an unauthorised area; dangerous; or in breach of VICNET's Publishing Policy which may be updated and changed from time to time and is currently located at <http://www.vicnet.net.au/legal>.
- (b) take action as it deems appropriate if it suspects that malicious, illegal or unacceptable usage of Internet Services is occurring or has occurred, including without limitation loss, destruction or disposal of your access passwords.
- (c) Suspend Internet Services immediately if You are in breach of Sub-clause 4.
- (d) Increase the Fees on 30 days written notice. In the event of a periodic Services Request the charges may change each renewal of such an order. Each periodic Services Request shall be automatically renewed each period unless terminated by You or VICNET in writing 30 days before expiration.

5.2 VICNET shall provide support as detailed in a Services Request.

### 6. Intellectual Property Ownership

- 6.1 You shall retain the Intellectual Property Right in materials supplied by You to VICNET.
- 6.2 VICNET shall retain the Intellectual Property Rights in all software and Internet Services supplied by VICNET.
- 6.3 Title in any goods or software licences supplied by VICNET does not pass until VICNET receives payment in full for such goods and software licences.

## **7. Fees**

7.1 Unless stated expressly to the contrary, all fees and charges payable to VICNET pursuant to this Agreement or otherwise are exclusive of all taxes, duties, fees or other government levies or charges (including without limitation any GST). Such taxes, duties, fees or other government charges shall to the extent permissible by law be paid by You to VICNET.

7.2 Accounts which are rendered to You by any means other than electronic means (eg email) shall attract an additional fee of \$1.00 per account.

## **8. Limited Warranty (Services)**

8.1 VICNET shall supply Internet Services with all due care and skill.

8.2 VICNET shall re-supply any Internet Services which are not supplied in accordance with Sub-clause 8.1 provided that You notify VICNET of same within a reasonable time from the supply of the Internet Services. This remedy shall be your sole and exclusive remedy for breach of this Agreement or any other cause of action against VICNET in relation to Internet Services.

8.3 VICNET cannot and does not warrant that Internet Services will be available 24 hours a day or that any fault will be corrected within a specific time frame

## **9. Limited Warranty (Hardware and Software)**

9.1 To the extent permitted by law, VICNET offers no warranty in relation to hardware and software other than the relevant manufacturer's or developer's warranty. To the extent that VICNET cannot exclude such liability it shall be limited, at the option of VICNET, to any one or more of the following: if the breach related to goods: the replacement of the goods or the supply of equivalent goods; the repair of such goods; the payment of the cost of replacing the goods or of acquiring equivalent goods; or the payment of the cost of having the goods repaired.

## **10. Exclusions and Limitation of Liability**

10.1 Except as expressly provided to the contrary in this Agreement, all warranties whether express, implied, statutory or otherwise, relating in any way to the subject matter of this Agreement or to this Agreement generally, are excluded.

10.2 Unless VICNET otherwise agrees in writing, VICNET is not responsible for, without limitation:

- (a) ensuring that Internet Services are suitable for your requirements or fit for any purpose;
- (b) any interruption to Internet Services due to, without limitation, equipment failure, the need for routine maintenance, peak demand and so on;
- (c) the supply or maintenance of your equipment, software or telephone lines;
- (d) monitoring, controlling or ensuring the accuracy, appropriateness or content of any information on the Internet and does not do so; and
- (e) any software available on the Internet.

10.3 VICNET does not endorse or approve of any materials on the Internet and shall not be liable in any way for such materials.

10.4 Save for Clause 8, and to the extent permitted by law, VICNET shall not be under any liability to You in respect of any loss or damage (including, without limitation, consequential loss or damage) however caused, which may be suffered or incurred or which may arise directly or indirectly in respect to the supply of goods or Internet Services pursuant to this Agreement or the failure or omission on the part of VICNET to comply with its obligations under this Agreement.

## **11. Waiver**

11.1 No right of VICNET shall be deemed to be waived except by notice in writing from VICNET.

11.2 Any failure by VICNET to enforce any Clause of this Agreement, or any forbearance, delay or indulgence granted by a Party will not be construed as a waiver of VICNET's rights.

## **12. Force Majeure**

12.1 VICNET shall not be liable for any delay or failure to perform its obligations if such a failure or delay is due to Force Majeure.

## **13. Sub Contracts**

13.1 VICNET may sub-contract for the performance of this Agreement or any part of this Agreement.

## **14. Notices**

14.1 Notices under this Agreement may be delivered by hand, by mail, facsimile or e-mail to the above addresses.

14.2 Notices shall be deemed given, in the case of:

- (a) hand delivery, upon written acknowledgment of receipt by an officer or other duly authorised employee, agent or representative of the receiving Party;
- (b) posting, 3 days after dispatch;
- (c) facsimile, upon completion of transmission; and
- (d) e-mail, immediately after dispatch.

## **15. Termination**

15.1 Without limiting the generality of any other Clause in this Agreement, VICNET may terminate this Agreement or any Services Request immediately by notice in writing if:

- (a) any payment due from You to VICNET pursuant to this Agreement remains unpaid for a period of 30 days;
- (b) You breach any Clause of this Agreement and such breach is not remedied within 14 days of written notice by VICNET;
- (c) You are otherwise no longer capable of complying with its obligations under this Agreement; or
- (d) You become, threaten or resolve to become or are in jeopardy of becoming subject to any form of insolvency administration; You, being a partnership, dissolves, threatens or resolves to dissolve or is in jeopardy of dissolving; You being a natural person, die; or You cease or threaten to cease conducting its business in the normal manner.

15.2 VICNET may otherwise terminate this Agreement or any Services Request on 30 days notice without reason.

15.3 If this Agreement or any Services Request is terminated then VICNET may in its sole discretion:

- (a) retain all moneys paid, which is agreed to be a genuine estimate of part of VICNET's loss and damage suffered;
  - (b) charge a reasonable sum for Internet Services performed in respect of which no sum has been previously charged;
  - (c) be regarded as discharged from any further obligations under this Agreement; and
  - (d) pursue any additional or alternative remedies provided by law.
- (e) Further, VICNET shall not be liable to pay any compensation as a result of such termination.

15.4 The provisions of this Agreement which are capable of having effect after the expiration of this Agreement shall remain in full force and effect following the expiration of the Agreement.

## **16. Privacy Notice**

16.1 We at VICNET are committed to your privacy. Our policy on the handling of personal information is to comply fully with the national privacy Principles for the fair handling of personal information, as set out in the Privacy Act, 1988 and the information privacy principals as set out in the information privacy act 2000.

(a) Individuals will be given access to their personal information on request. If you have any questions or concerns about this Privacy Policy, please direct your requests to the Privacy Officer at VICNET, 328 Swanston Street Melbourne Victoria 3000.

(b) The information provided may be disclosed to our related companies, contractors, other credit providers whether or not your account is overdue, and, if necessary, our risk insurer, debt collectors and credit reporting agencies.

(c) If all or part of the information requested is not provided, we may not be able to process your Application for Commercial Credit.

16.2 The Customer hereby authorises VICNET: (a) obtain from a credit reporting agency a credit report concerning the Customer's credit information for the purpose of determining whether or not to supply the Products to the customer on credit or to collect unpaid accounts from the Customer;

(b) give to and seek from any credit providers information about the Customer's credit arrangements. The Customer acknowledges that this information may include any information about the Customer's creditworthiness, credit history or credit capacity that credit providers are allowed to give or receive from each other under the Privacy Act;

(c) report any overdue payments owing by the Customer to other credit providers or credit reporting agencies pursuant to the terms of the Privacy Act, 1988; (d) make credit inquiries of any person, company or firm with whom the Customer had or may have dealings with concerning the Customer's creditworthiness, credit history or credit capacity.

## **17. Entire Agreement**

17.1 This Agreement constitutes the entire agreement between the parties for the subject matter referred to in this Agreement. Any prior, including without limitation, verbal, arrangements, agreements, representations or undertakings are superseded.

17.2 This agreement may only be modified, varied or altered by

(a) VICNET notifying you on 30 days written notice of such modification, variation or alteration at the expiration of which time such modification, variation or alteration shall be deemed accepted by You.

(b) With the consent of both VICNET and you as recorded in e-mails passing between the parties.

17.3 No modification, variation or alteration of any provision of this Agreement shall be valid except in writing signed by each Party.

## **18. Governing Law**

18.1 This Agreement will be governed by and construed according to the law of the State of Victoria.

18.2 The parties irrevocably submit to the exclusive jurisdiction of the Courts of Victoria and Australia and any Courts hearing appeals from such Courts.