

## MICRON21 WHOLESALE SERVICES AGREEMENT

### Scope

This Wholesale Services Agreement (the "Wholesale Services Agreement") governs the use of all products and services (collectively, the "Services") offered by Micron 21 Data Centre Pty Ltd, its parent company Micron 21 Pty Ltd, and their affiliates and subsidiaries ("Micron21") to its customers ("Customer"). Micron21 may modify this Policy at any time during the term of the Agreement, whereby the current version will be available on our Micron21 website [www.micron21.com](http://www.micron21.com) at all times.

These are the definitions that apply to this agreement unless the context requires a different interpretation:

### Term Definitions:

**"Acceptable Use Policy"** means Micron21's policy of regulation of the manner of use of Micron21 services.

**"Agreement" "hereof", "hereunder"** and similar expressions refer to this Agreement and not to any particular paragraph or other portion hereof and include any Agreement or instrument supplemental or ancillary hereto and the expression "paragraph" followed by a number means and refers to the specified paragraph of this Agreement.

**"Authorized Personnel"** shall mean the personnel of the Customer authorized to provide notice to and to otherwise deal with representatives of the Micron21 pursuant to this Agreement.

**"Business Day"** means each day from Monday to Friday inclusive, except where any of these days occurs on a statutory holiday observed in Victoria

**"Commencement Date"** shall mean the date of execution of this Agreement.

**"Computer Facility"** shall mean the Customer's computer installation located at the 2/7 Eastspur Court Kilsyth 3137 or any other Point of Presence Sites ("POP Sites") Micron21 has.

**"Contract"** means the contract between Micron21 and the Customer as defined by this agreement.

**"Customer's Installation"** means the computer hardware and software placed by the Customer in the premises of Micron21 or related Points of Presence Sites ("POP Sites")

**"Disaster Notification"** shall mean the written notice which the Customer is to provide to the Micron21 upon the occurrence of a Disaster requesting access to and use of the facilities provided by Micron21.

**"Disaster"** shall mean any unplanned interruption or inaccessibility to the Customer's provided services or to another User's services to a cause beyond the control of the Customer projected to last over 4 consecutive hours. Any interruption due to system hardware, software or peripheral upgrades, maintenance or peripheral device malfunctions shall not constitute a Disaster.

**"Equipment Configuration"** shall mean the configuration of the Customer's computer equipment as modified from time to time.

**"Functional Specifications"** means the specifications of the functions the services provided by Micron21 is intended to perform.

**"Installation Completion Date"** means the date on which installation or provision of the Customers services is complete.

**"Price"** means the price for the services.

**"Schedule"** means a schedule to a Services agreement.

**"Services"** means all of the services supplied under the terms of this agreement.

**“Subscription Fee”** means the fee charged by the Micron21 to the Customer entitling the Customer access to and use of Micron21 facilities and services.

**“Term”** means the initial period of one year unless otherwise specified

**“User(s)”** shall means other customer(s) who have entered into agreements with the Micron21 similar to this Agreement.

**Representative Liaison:**

With effect from the service contract being signed the Customer shall each nominate at least one representative who shall be authorised to make decisions relating to the Contract and who shall be responsible for all liaison between Micron21 and the Customer (Primary Contact).

Micron21 provides provision for multiple contacts to be assigned to Customer accounts with differing roles and responsibilities. It is the Customers responsibility for maintaining this list of Authorized Personnel at all times and all associated information (Emails, Address, and Phone numbers).

**Price and payment:**

**The Price shall include:**

The total sum payables for the Services set out in the service contract any other money due to Micron21 under this agreement. The Price shall be paid by monthly instalments on the first day of each month in advance with the addition of goods and service tax.

No part of the Price shall be payable until Micron21 has submitted an invoice to the Customer for such part of the Price as is due.

Without limiting any other right Micron21 may have, the Customer must pay Micron21 interest on all overdue payments, excluding any invoice(s) that are subject to a bona fide dispute, under this Agreement at a rate of 15% above the National Australia Bank prime rate for 90 days for prime commercial bills calculated daily from and including the due date to and including the date of payment. If the interest rate specified is not quoted during the particular period, Micron21 acting reasonably may nominate an equivalent alternative interest rate.

If Micron21 terminates this agreement because the Customer has not made a payment when due or because the customer has failed to give notice of cancellation then the following will be due to Micron21:

1. All of the Price for Services to the end of the month of cancellation, whenever that is;
2. The Price for one additional month to compensate Micron21 for the failure to give notice;
3. Interest as described above.

**Bandwidth and Disk Usage:**

The Customer agrees that bandwidth and disk usage shall not exceed the data usage per month for the Services set out in the Service Contract.

If the Customer’s usage exceeds the amount set out in the Schedule, rather than restricting service operation, Micron21 will allow the Customer to exceed the amount set out in the Schedule. Micron21 will charge the Customer’s for actual usage at a rate of. If in the opinion of Micron21 the Customer’s usage puts at risk the continued service provision to other customers, Micron21 may terminate service to the Customer.

**Duration and termination:**

This agreement shall continue until terminated unless a following condition is met:

1. After the prescribed duration of a Micron21 Service Schedule contract and by 30 days’ notice in writing by either party to the other.

2. If the Service has been provided without a contracted duration (month by month) then by 30 days' notice in writing by either party to the other.
3. Immediately by Micron21 if the Customer fails to pay any sum due within a calendar month of the due date.
4. Immediately by either party if the other commits any material breach of any term of this agreement and which in the case of a breach capable of being remedied is not remedied within a calendar month of a written request to remedy it.
5. Immediately by either party if a trustee receiver administrative receiver or similar officer is appointed in respect of all or any part of the business or assets of the other party or if a petition is presented or a meeting is convened for the purpose of considering a resolution
6. Other steps are taken for the winding up of the other party or for the making of an administration or bankruptcy order (otherwise than for the purpose of an amalgamation or reconstruction).

Any termination of this agreement by this paragraph shall be without prejudice to any other rights or remedies to which a party may be entitled.

Upon termination, Micron21 will disconnect Customer's server, discontinue all services and remove the configuration information on the date for renewal of the Agreement. The Customer may request immediate cancellation, but Customer's obligation for payment of the service fees to the renewal date or contracted period shall continue. Micron21 will retain possession of Customer's equipment until any outstanding balance owing by Customer to Micron21 has been paid in full.

Receipt will be given to the client of this notification period and the effective end-date and any other associated costs outstanding with Micron21 as a result of the termination of an agreement.

#### **Confidential Information**

##### **Obligation to keep confidential**

Each Party will:

- a) Keep the Confidential Information of the other party confidential and will not disclose it or make it available directly or indirectly to any third party;
- b) Use the Confidential Information solely for the purpose of performing its obligations under this Agreement;
- c) Provide training to Personnel on an annual basis of the importance of maintaining the confidence of the Confidential Information of the other party. In relation to Micron21, Micron21 will ensure that its Personnel are trained in the particular obligations of confidence surrounding financial records and privacy obligations of the Customer;
- d) Only disclose the Confidential Information of the other party to its officers, employees, professional advisers and permitted subcontractors who have a need to know the Confidential Information for the purposes of this Agreement (and only to the extent that it is needed), have undertaken to maintain the confidentiality of the Confidential Information, and if required by a party, execute an appropriate confidentiality undertaking in favour of that other party; and
- e) Immediately notify the other of any actual, or potential breach of confidentiality, disclosure or unauthorised use of the other party's Confidential Information; and take all steps to prevent or stop a suspected or actual breach of this clause.

### **Return of confidential Information**

Upon demand or upon termination or expiry of this Agreement, each party must:

- a) Deliver to the other party all of that other party's Confidential Information in its possession which is capable of being delivered; and
- b) Delete, erase, or otherwise destroy any of the other party's Confidential Information contained in Computer memory, magnetic, optical, laser, electronic, or other, media in its possession or, control, which is not capable or delivery to the other party.

### **Breach of Confidence**

Micron21 must immediately advise the Customer of any unauthorised use, access, copying or disclosure of the Customer's Confidential Information.

### **Disclosure required by law**

Micron21 may disclose the Customer's information only if required by law; provided;

- a) It gives the Customer prior notice of the requirements; and
- b) The disclosure is only to the extent and to the person required by law.

### **Exclusions**

The obligations in clause 15.1 do not apply to any information which a party can reasonably demonstrate:

- a) Is in the public domain through no fault of that party; or
- b) Is already known to that party (as evidenced by written records) at the date of disclosure and was not subject to any obligation of confidentiality.

### **Register of disclosure**

Micron21 must maintain a register of:

- a) Persons who have access to the Customer's Confidential Information or to whom the Customer's Confidential information has been disclosed in accordance with this clause 15;
- b) The nature of the Customer's Confidential Information disclosed or able to be accessed; and
- c) The reasons for and purpose of the access or disclosure,

And provide the customer with a copy of the register on demand.

### **Further confidential deed**

At any time during the Term, the customer may require any person who has or may have access to the Customer's Confidential Information or to whom the Customer's Confidential Information has been or is likely to be disclosed, to execute a deed of confidentiality with the customer that is consistent with Micron21's obligations under this Agreement.

### **Confidentiality:**

The parties are aware that in the course of the Contract they will each have access to and be entrusted with information in respect of the business and operation of the other and their dealings, transactions and affairs, all of which information is or may be confidential.

Micron21 commits to adhere to the Australian Privacy Principles (APP's) contained within the [Privacy Act 1988](#)

Subsequent [Rights and responsibilities](#) relating to the Act can be found on the government [website](#).

Micron21 has a Privacy Policy that is located on the Micron21 website of which outlines our commitment to Privacy and the guidelines surrounding any service provided under this Wholesale Services Agreement.

**Third party software rights:**

The Customer undertakes to obtain all necessary licenses to operate their services that are hosted by Micron21 and to indemnify Micron21 against all costs claims and expenses arising from any failure to do so.

Micron21 undertakes to obtain all necessary licenses required to provide the Services and to indemnify the Customer against all costs claims and expenses arising from any failure to do so under the Micron21 monthly leased licensing platform.

Unless licensing is purchased through Micron21 for software running on infrastructure provided by the client or Micron21 directly, it is assumed that the Customer is responsible for all licensing pertinent to their service.

**Acceptable Use Policy ("AUP"):**

The Customer agrees to comply with the AUP as modified by Micron21 from time to time without prior notice to the Customer.

Micron21 agrees that the AUP shall not be altered in such a way as to change any fundamental provision of this agreement or to impose on the Customer an unreasonable or unduly expensive obligation.

If in the absolute discretion of Micron21, if Micron21 believes the Customer has violated Micron21 AUP, Micron21 shall notify the Customer of this by email. Micron21 may suspend service to the Customer pending further investigation.

If within 12 months of any violation, the Customer commits a second violation whether in a similar or different way Micron21 reserves the right to terminate part or all of the Services without notice.

Micron21 may suspend part or all of the Services without notice if Micron21 reasonably believes the circumstances and evidence available justifies this to protect themselves or others or to comply with any Commonwealth or International law.

In making the decision to suspend Micron21 are not obliged to consider the cost or damage to the Customer that may be caused by suspension of the Services to the Customer.

Money will not be refunded to the Customer in respect of any period during which Services are suspended.

**Systems and Network Security:**

The Customer agrees that he will not, and will not allow any other person to, violate or attempt to violate any aspect of the security of the systems of Micron21.

The Customer understands that any such violation is unlawful in many jurisdictions and that any contravention of law may result in criminal prosecution.

**Examples of violations are:**

1. Accessing data unlawfully or without consent;
2. Attempting to probe, scan or test the vulnerability of a system or network or to breach security or authentication measures;
3. Attempting to interfere with service to any user, Micron21's services or network, including, without limitation, via means of overloading,
4. "Flooding", "Mail Bombing", "Crashing" or "Denial of Service";
5. Forging any TCP/IP packet header or any part of the header information in any unsolicited manner.

6. Taking any action in order to obtain services to which the Customer is not entitled.

**Customer Equipment Installation warranty and indemnity:**

The Customer warrants that the Customer Installation will not emit excessive electro-magnetic radiation, noise or other pollutant and that its output signals will conform to relevant telecommunications standards.

**Customer agrees to indemnify Micron21 against all costs claims and expense arising directly or indirectly from:**

1. the Customer's failure to comply with paragraph above;
2. the Customer's failure to comply with the law of any country;
3. the posting by the Customer of any content on the Customer's web site, related web sites or hosted content;
4. breach of the intellectual property rights of any person;
5. the posting by any third party with or without the Customer's knowledge of any material on the Customer's website, related web sites or hosted content;
6. any action taken or omitted by any third party in relation to the Customer's hosted content;
7. any use of the Customer's hosted equipment for a purpose forbidden by this agreement;
8. the actions of the Customer or any person authorised by the Customer at the premises of Micron21;

**Provided that Micron21:**

1. gives notice to the Customer of any infringement immediately he becomes aware of it;
2. Gives the Customer the sole conduct of the defence to any claim and does not at any time admit liability or otherwise settle or compromise.
3. or attempt to settle or compromise the claim except upon the express instructions of the Customer;
4. Acts in accordance with the reasonable instructions of the Customer and give to the Customer whatever assistance he reasonably requires in respect of the conduct of his defence.

The Customer shall reimburse Micron21 his reasonable costs incurred in complying with the above provisions and for the purpose of this paragraph the Customer agree that the cost of our management and technical time is properly recoverable and can reasonably be valued at \$120.00 per hour without further proof.

**Interruption to the Service:**

If it is necessary for Micron21 to interrupt the Services and Micron21 reasonably believes the prospective duration of downtime does not justify communicating the outage with the Customer in advance, then Micron21 need not do so. Micron21 will provide 24 hours of advance notice for any planned outage of greater than 30 mins. Any unannounced service interruption in excess of 30 mins will incur a service credit equal to, but not exceeding, 5% of the monthly services fee for each block of sixty minutes of outages to the provisioned service.

If notice of prospective maintenance or other downtime is given by Micron21, Micron21 shall at its discretion give whatever period of notice it believes is reasonable and necessary.

The Customer acknowledges that the Services may also be interrupted for reasons beyond the control of Micron21.

The Customer agrees that Micron21 is not liable for any loss whether foreseeable or not, arising as a result of interruption to the Services.

**General Disclaimer:**

Micron21 does not represent that the Services are suitable for the Customer's use. The Customer acknowledges that in entering into this agreement he has not relied on any representation or other information not contained in this agreement.

**Micron21 accepts no responsibility for:**

1. Any firewall provision not specified in the Services;
2. Any malfunction in any software whether provided by the Customer or by Micron21;
3. Any aspect whatever of the content or functionality of the Customers hosted services;
4. The security safety and care of the Customer's services. (Accordingly it is for the Customer to make arrangements for proper insurance);
5. The maintenance or operation of the Customer's Installation or services;
6. Any firewall provision not specified in the Services;
7. Any aspect whatever of the content or data within of the Customer's services.

**Limitation of liability:**

The following provisions set out Micron21's entire liability (including any liability for the acts and omissions of its employees) to the Customer in respect of:

1. Any breach of its contractual obligations arising under this agreement; and
2. Any representation statement or tortious act or omission including negligence arising under or in connection with this agreement

Any act or omission on the part of Micron21 falling within this paragraph shall be known as an "Event of Default". Micron21's entire liability in respect of any Event of Default shall be limited to damages of an amount equal to the total Price paid or payable by the Customer for this Contract for one year.

Micron21 shall not be liable to the Customer in respect of any Event of Default for loss of profits goodwill or any type of special indirect or consequential loss (including loss or damage suffered by the Customer as a result of an action brought by a third party) even if such loss was reasonably foreseeable or Micron21 had been advised of the possibility of the Customer incurring the same.

If a number of Events of Default give rise to substantially the same loss then they shall be regarded as giving rise to only one claim under this agreement.

The Customer hereby agrees to give Micron21 not less than 24 hours in which to remedy any Event of Default.

Nothing in this paragraph shall confer any right or remedy upon the Customer to which he would not otherwise be legally entitled. Micron21 shall not be liable to the Customer for loss arising from or in connection with any representations agreements statements or undertakings made prior to the date of this agreement.

**No duty to monitor:**

Micron21 is under no obligation to monitor or record the activity of any customer for any purpose, nor does Micron21 assume any responsibility through its AUP or otherwise to monitor or police Internet-related activities.

**Visitors to Micron21 site:**

Admittance to the premises of Micron21 shall be in the sole discretion of Micron21 and subject to whatever terms Micron21 shall from time to time impose.

Micron21 shall not be responsible for the actions of the Customer at Micron21's premises.

**Force majeure:**

Neither party shall be liable for any breach of its obligations resulting from causes beyond its reasonable control including fire, natural disaster, war or military Micron21 facilities and strikes of its own employees, and the date of delivery of the work/assignment shall be extended to the extent of any delay resulting from such force majeure event.

And in such a situation:

Each of the parties agrees to give notice immediately to the other upon becoming aware of an event of force majeure such notice to contain details of the circumstances giving rise to it.

If a default due to force majeure shall continue for more than 6 weeks then the party not in default shall be entitled to terminate this agreement. Neither party shall have any liability to the other in respect of the termination of this agreement as a result of force majeure.

Successors to the agreement:

The benefit and obligations of this agreement shall be binding on any successor in title.

Neither party shall be entitled to assign this agreement nor all or any of their rights and obligations hereunder without the prior written consent of the other.

The Customer shall not permit any part of the benefit of this agreement to be used by any other person except a person to whom the services have been sold or transferred.

**Contract is divisible**

Each sub paragraph in this agreement is independent and severable from each other paragraph and enforceable accordingly. If any restriction is unenforceable for any reason but would be enforceable if part of the wording were deleted, it will apply with such deletions as may be necessary to make it valid and enforceable.

**Notices:**

Any notice to be served on either of the parties by the other shall be sent by Australia post or pre-paid recorded delivery or by facsimile and shall be deemed to have been received by the addressee within 72 hours of posting or 24 hours if sent by facsimile to the correct number.

**Dispute Resolution:**

In the event of a dispute arising out of or in connection with this Contract and which has not been resolved following discussions and negotiations between a person or persons appointed or authorised by the Customer and Micron21 then they undertake to attempt to settle the dispute by engaging in good faith with the other in a process of mediation before commencing arbitration or litigation.

**Waiver:**

The failure by either party to enforce at any time or for any period any one or more of the terms or conditions of this Contract shall not be a waiver of them or of the right at any time subsequently to enforce all terms and conditions of this Contract.

**Jurisdiction:**

This Contract shall be interpreted according to the Laws of Australia and the parties agree to submit to the exclusive jurisdiction of the Australian courts.

**Services:**

Micron21 maintains infrastructure for the provision and rendering of its services. Customer's services are connected to the Micron21 Infrastructure at Micron21's facilities. Micron21 will perform the installation and provisioning of all Customer services to Micron21's Infrastructure. The term "installation" shall mean placement of Customer's server on racks, connecting to the raw power source and UPS (maximum 1A per RU), and an Ethernet port on Micron21's switch. Customer agrees to have its server fully operational upon connection.

Micron21 will perform installations during its regular business hours, unless alternative prior arrangements are made.

Micron21 can be reached at all times via e-mail, or via Micron21's phone support.

The terms of this Agreement do not provide for troubleshooting or maintenance of Customer's server, with the exception of performing hardware reboots when necessary. Customer is solely responsible for troubleshooting, maintenance and system administration of Customer's server as per our colocation hands on policy.

**Service Credits:**

In order to claim Service Credit the customer must service notice of request of credit via submission of e-mail or fax within one (1) Calendar month of the incident against which the Service Level has been breached. Eligibility of service credit request must include:

1. Date(s) of outage
2. Estimated duration; timing of incident(s) relating to service(s) interruption(s)
3. Notification of affected service(s)
4. Impact Statement

**Fees:**

All fees specified are in Australian currency. Customer agrees to pay all fees payable under this Agreement in advance, prior to activation of Customer's connection. Micron21 accepts payment by Visa, MasterCard and American Express.

The Customer hereby authorizes Micron21 to charge the credit card number on file (if applicable) with surcharge relevant for each card for all recurring monthly charges, service charges, excess bandwidth charges, managed services fees and any other fees or charges for services provided pursuant to this Agreement.

Monthly fees will be charged to Customer's credit card in advance of the monthly services being rendered. Micron21 also accepts payments by company check, direct bank deposit and money order.

Returned and Credit Card Failure: If a payment is returned due to insufficient funds, improper signature or any other reason,

Micron21 will immediately notify Customer of the same and Customer will have 7 days to rectify the problem.

Micron21 will charge a fee of \$100.00AUD dishonour fee. If payment is by credit card and the credit card on file fails due to expiry, loss, theft, cancellation, or any other reason whatsoever or if the issuer declines a transaction,

Micron21 will notify Customer by e-mail of the same and Customer will have 7 days to rectify the problem.

Services will be suspended until all outstanding balances are paid in full. Micron21 will charge Customer an additional reconnection fee of \$150.00 AUD to restore services after payment in full is received.

If Customer fails to pay the outstanding balance within 7 days of notification, Micron21 has the right to permanently cancel all services and terminate this agreement. Such cancellation and termination shall not relieve Customer of its obligation to pay all amounts owing to Micron21 under the Agreement.

**Interest:**

All accounts more than thirty (30) days past due will be charged interest from the due date at the rate of 20% per annum calculated daily.

**Credit Card Disputes:**

Customer will be responsible for all costs associated with any dispute regarding charges to Customer's credit card, including but not limited to fees assessed by banking institutions for processing any such dispute, provided, however, that Micron21 will be responsible for such costs if the dispute is in regard to any charge resulting from negligence on the part of Micron21.

**Excess Bandwidth:**

Customer has the ability to shut down bandwidth to its server upon reaching the amount of bandwidth purchased pursuant to this Agreement. If Customer fails to shut down bandwidth when the amount purchased is reached,

Customer authorizes Micron21 to charge the credit card on Customer's file for an additional block of bandwidth equivalent in size to that originally purchased.

**Collection of Delinquent Accounts:**

In the event that Micron21 refers Customer's account to a collection agency, the collection agency's fees will be added to Customer's account. Failure to pay an outstanding amount may be reported to any and all credit reporting agencies according to the laws governing of Victoria. All fees and expenses associated with collection of Customer's account, including those incurred by Micron21, will be added to Customer's account and form part of the outstanding debt, including but not limited to charges for long distance, fax, delivery, court appearances and legal fees related to such collection.

**Cancellations and terminations**

The Customer may terminate this Agreement at any time by providing Micron21 with 90 days written notice, and pay out the remainder of the contract term, without any further obligation.

The parties confirm that the notice provisions in this Agreement are valid and reasonable and are fair and equitable. The parties agree that upon any termination of this Agreement in compliance with this Agreement, the payments made by the Client in accordance with this Agreement shall satisfy all of the obligations that Micron21 has to the Contract, and that upon the making of any such payments the client shall not have any action, cause of action, claim or demand against Micron21 or any other person as a consequence of this Agreement or the termination of this Agreement, whether such claim arises pursuant to any applicable legislation, pursuant to this Agreement or otherwise at law.

**Customer's Responsibilities & Assurances:**

Customer is responsible for ensuring that Micron21 is provided with current and up-to-date personal and billing information. Customer shall have access to its personal information profile online at Micron21's web site where applicable. Micron21 is not responsible for actions taken as a result of Customer's failure to receive any notice from Micron21 as a result of information that is incorrect, incomplete or out of date.

Customer acknowledges that Services Provider is providing access for Customer's use only. Customer is responsible for ensuring that no unauthorized use is made by other persons. If Customer allows access by unauthorized persons, service will be discontinued.

In the event that Micron21 issues a user name, password and/or other log-in identifier(s), Customer is solely responsible for maintaining secrecy of the log-in identifier(s). If Customer has reason to believe that this information has been divulged to any other party, or that any unauthorized access has occurred which is not due to negligence on the part of Customer, Customer will immediately notify Micron21 of the same.

Customer hereby indemnifies and holds Micron21 harmless for any loss or damages resulting from the divulgence of any log-in information by Customer [or any of Customer's employees] to an unauthorized person. Micron21 agrees not to cause a breach of the confidentiality of information passing through its services, except by court order, but reserves the right to access such confidential information if required in order to troubleshoot and correct any problems associated with Customer's equipment.

Customer's use of the services will at all times be for lawful purposes only. Customer agrees to comply with the rules and regulations established by Micron21 and by other networks accessible via the system. Customer acknowledges that the transmission of material which violates any state, provincial or federal law, rule or regulation is prohibited, including but not limited to material which is pornographic, obscene, slanderous, malicious, hateful, or otherwise offensive or threatening, or which is subject to copyright, trade secret or other proprietary rights.

Micron21 reserves the right to disconnect Customer's server or services from Micron21's systems if the server is found to contain any such material.

Use of Customer's services, Micron21's services, or any other network devices or servers by Customer for any of the following purposes is expressly prohibited, and will result in immediate termination of this Agreement:

1. Performing downloads or uploads which interfere with the operation of any part of Micron21's systems;
2. Sending unsolicited e-mails, spam, junk mail, chain letters or any other illegal transmission;
3. Manipulating Micron21's systems to allow operation of programs accessed via the Internet while not actively online;
4. Illegal adult-related web sites.

Customer hereby indemnifies and holds Micron21 harmless for any use of the services by Customer and/or its employees that constitute an illegal activity.

If Micron21 has reason to believe that the services are being utilized for unlawful purposes by Customer, or used in contravention of the terms and conditions of this Agreement, upon written notice, via email, Micron21 may immediately discontinue the services without liability.

#### **Amendments**

Micron21 has the right to modify the terms of this Agreement at any stage during the term of the Agreement. Micron21 will provide the Customer with written notice of amendment or modification to the Agreement within 14 days. The notice may be given by email, fax or regular mail. The notice shall set out the amendments and the effective date thereof. Any changes to the fees shall not be retroactive, and shall take effect at the end of the period for which Customer has already paid. If

Customer continues using the services following the effective date of the amendments, such continued use shall constitute acceptance by Customer of the amendments.

#### **Warranties & Liability**

Micron21 makes no warranties of any kind, either express or implied, for the services or any part thereof. Micron21 specifically denies any responsibility whatsoever for the accuracy or quality of information obtained through its services, and any use of such information is at the sole risk of Customer. Micron21 is not responsible for the status of any data stored or transmitted in any of its facilities.

Customer hereby indemnifies and holds Micron21 harmless for any claims resulting from use of the service which causes damage or loss to the Customer, or any other party, including but not limited to loss of data resulting from delays, non-delivery of information, or service interruptions. Further, Customer acknowledges and agrees that the use of Micron21's facilities includes the possible risk of a damaging event such as electrical surge, theft, line failure, computer viruses or worms, or acts of God which could affect data or access availability. Micron21 is not liable for any losses caused by such events or occurrences.

Micron21 is not responsible for the content on its Customer's hosted content or servers and/or illegal, obscene or harmful material that is accessible through the use of the Micron21 services.

#### **Articles Severable**

If any Article, Section, paragraph or provision of this Agreement is determined to be void or unenforceable in whole or in part, it shall not affect or impair the validity or enforcement of any other provision of this Agreement.

**Remote Access Equipment:**

It is the Customer's responsibility to select, acquire, install, use and maintain the computer hardware and software and communications equipment required to access the provided Services.

The Customer is responsible for ordering the appropriate communications devices and lines from its suppliers.

**Notices:**

All notices required or permitted to be given pursuant to this Agreement shall be delivered by hand to the party for which it is intended, or sent by, fax, telegram, electronic email or other form of transmitted or electronic message or sent by prepaid courier directly to such party at the following addresses, respectively:

**VIA POST:**

Micron21 Pty Ltd:

3 /6-8 Eastspur Crt  
Kilsyth Victoria 3137  
OR VIA FAX:

+61 3 9751 7696

**OR VIA EMAIL:**

support@micron21.com

Or at such other address as either party may stipulate by notice to the other. Any notice delivered by hand or prepaid courier or sent by facsimile or electronic email shall be deemed to be received on the date of actual delivery thereof.

Any notice so sent by telex, telegram or similar form of transmitted message shall be deemed to have been received on the next day following transmission.

**Further Assurances:**

The parties agree that each of them shall, upon reasonable request of the other, execute such further documents or do or cause to be done all further lawful acts, deeds and assurances whatever for the better performance of the terms and conditions of this Agreement.

**Assignment and Inurement:**

This Agreement shall not be assigned by either party without the written consent of the other and shall inure to the benefit of and be binding upon the parties and their respective successors and permitted assigns.

**Entire Agreement:**

This Agreement and any Schedules attached hereto constitute the entire agreement between the parties to this Agreement pertaining to the subject matter hereof and supersede all prior and contemporaneous agreements, understandings, negotiations and discussions, whether oral or written, of the parties and there are no warranties, representations or other agreements between the parties in connection with the subject matter of this Agreement except as specifically set forth herein.

**Governing Law:**

This Agreement shall be governed by and construed in accordance with the laws of the State Victoria and the parties hereby at torn to the jurisdiction of the courts of the State Victoria.