

Client Service Agreement – Terms and Conditions

As at 1st January 2002

The Parties

Easeaccounting.com Pty Ltd (ACN 092 767 630) (“the Company”) will supply to the Customer the application services provision, internet services and such other services (“the Services”) as the Company and the Customer may agree to from time to time upon the following terms and conditions (“the Agreement”) which may be varied at any time in the Company’s absolute discretion by 14 days written notice to the Customer. The notification by the Company to the Customer shall constitute the Agreement in its entirety and supersedes any prior Agreement.

Definitions

Easeaccounting.com Pty Ltd shall mean Easeaccounting.com Pty Ltd, trading as Easeaccounting and all of its directors, officers, employees, agents and affiliates. The Agreement means the Terms and Conditions as contained in this document together with the Schedule of Charges and Rebates, the Acceptable Use Policy and any other attachments to this Agreement, plus any application forms prepared by the Company and signed by the Customer in respect of the Services to be provided by the Company.

The Customer shall be the name or names stipulated on the Application form prepared by the Company and any of the Customer’s directors, employees, agents, users or suppliers whether authorised or unauthorised for use with respect to the Services to be provided by the Company.

User means an individual who is authorised by the Customer to access and/or use the Services.

The Services shall mean the application hosting services, website hosting services, internet services, computer and computing services, communication and such other services known as Easeaccounting Services as are provided by the Company from time to time.

Client Software means software that allows a device to access or utilise the services or functionality provided by the Server Software.

Device means each of a computer, workstation, terminal, handheld PC, pager, telephone, personal digital assistant, “smart phone”, or other electronic device.

Server Software means software that provides services or functionality on a computer acting as a Server.

Redistribution Software means the software described in Clause 13.

In writing shall mean such communication method as is deemed by the Company from time to time and shall include (but shall not be limited to) documents as defined by the Act Interpretation Act, email, notices on the Company’s Website, letters, facsimiles and other textual communications.

1. The Agreement shall commence on the date of the signed application form that accompanies this Agreement and shall continue for the period stipulated in this Agreement or if terminated by the Company or the Customer in accordance with Clause 8.
2. The Customer shall pay to the Company all legitimate charges and fees determined by the Company from time to time for the supply of Services in accordance with the Agreement and the Schedule of Charges and Rebates which may be varied at any time in the Company’s absolute discretion by 14 days written notice to the Customer. If the Customer disputes any amount charged by the Company the Customer may request clarification of the charges and the Company must provide an itemised account to the Customer.

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Payment of Accounts

3. (a) The Customer agrees to pay for all Services in accordance with the Schedule of Charges and Rebates which may be varied by the Company from time to time provided the Company has given at least 14 days written notice of any changes. In particular the Customer must pay all Service time charges, minimum charges and other amounts incurred by the Customer or its designated Users or incurred as a result of any use of the Customer's password, whether authorised or not. Time charges are charged to the next minute in minute increments or may be charged in time blocks exceeding one minute but not exceeding 5 minutes.

(b) The Customer must pay all legitimate charges incurred. No credit terms are given. Upon registration of a Credit Card account or Direct Debit Bank Authority, the Customer automatically gives the Company authorisation to debit their Credit Card or Bank Account for all legitimate charges they incur.

(c) If the Customer sets up a Direct Debit Authority to a Credit Card or Bank Account facility using EzyPay – an external credit service provider, the Customer will be charged a once off setup fee of \$5.50 and no on-going charges.

(d) If the Customer does not provide a Direct Debit Authority to a Credit Card or Bank Account facility then the Company reserves the right to charge the Customer in addition to all the legitimate charges owing the sum of \$2.00 per month per account for administration costs. At the present time the Company does not charge the Customer for these charges.

Privacy Consent

4. The Customer is responsible for the installation and use of all telecommunication equipment, facilities and charges and the payment thereof needed to access the Services of the Company. Privacy Consent
5. The Customer hereby consents within the meaning of the Privacy Act 1988 or any such similar Act to give permission to the Company to use personal information about the Customer to any credit reporting agency for the purpose of the Company to assess the credit worthiness of the Customer or for the purpose of the enforcement of payments which are overdue. The Company agrees not to sell, lend, disclose or otherwise release personal information to any other source for commercial or other gain. A copy of the Company's Privacy Policy is available on request.

Liability

6. (a) Except as provided in this Agreement, in no event shall the Company be liable to the Customer or any other third party or entity whatsoever for any special, incidental, indirect or consequential loss or damage whatsoever including, but not limited to, damages for loss of business profits, loss of business goodwill, revenue, data or use, business interruption, loss of business information, loss of opportunities or any other pecuniary loss, injury, death, delay or other damage under any circumstances, whether in an action in contract or tort or otherwise, arising from the Customer's access to, or use of, the Services pursuant to this Agreement.

(b) The Customer acknowledges that the provision of Services is made at the Company's absolute discretion and that the Company shall not be liable in any way whatsoever for any loss or damage arising from any non-compliance by the Customer of the terms of this Agreement, any computer or equipment error, any technical failure, power failure or any other circumstances which may be beyond the control of the Company.

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(c) The Customer agrees that it will be legally responsible directly to Microsoft Corporation for any breach of the terms and conditions contained in Clause 13.

(d) Where conditions, warranties or other rights for the Customer's benefit are implied in this Agreement or otherwise conferred by the Trade Practices Act 1974 (Commonwealth) and it is not lawful to exclude them, then those conditions, warranties and other rights will (but only to the extent required by law) apply to this Agreement. Other than as set out in this Agreement, all implied conditions, warranties and rights are excluded from this Agreement.

(e) The Company including its directors, employees, officers, agents or affiliates makes no representations or warranties whether express or implied about the suitability or otherwise of any proprietary software, website content, links to third party sites or any other Services for use by the Customer including all implied warranties and conditions of merchantability, fitness for purpose, title and non-infringement to the extent permitted by law. The entire risk arising out of their use remains with the Customer.

(f) The materials and content provided by the Services may from time to time become superseded or out of date or include omissions, inaccuracies or other errors. Except where expressly provided otherwise in a separate written Agreement between the Customer and the Company, all materials, content and Services are provided "as is" without any warranty of any kind. The Company hereby disclaims all warranties with respect to materials, content or Services, whether express or implied, including the implied warranties of merchantability and fitness for purpose to the extent permitted by law.

(g) If the Customer is dissatisfied with the Services offered by the Company or any portion thereof, the Customer's exclusive remedy shall be to cease using the Services. The Customer thereupon will be entitled to a refund of any security deposit and any monies paid in advance for use of the Services. The Customer is also entitled to the return of the Customer's software, data and computer files provided all outstanding monies have been paid that are owing to the Company on behalf of the Customer. Where applicable, the Customer will not be entitled to any refund for the initial website development, any set up costs and charges, or the current monthly access fees.

Security Deposit

7. (a) The Company may, at any time, require the Customer to lodge with the Company a security deposit. Such security deposit may be required at the commencement of this Agreement or at any time during the period of this Agreement.
- (b) The Company shall have the right to credit the security deposit for any legitimate monies owing to the Company by the Customer at any time.
- (c) (i) At the end of this Agreement after all legitimate monies owing by the Customer to the Company have been satisfied, the Company shall refund the balance of the security deposit to the Customer.
- (ii) The Company shall not be liable to pay the Customer any interest on the security deposit.

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Termination

8. (a) Without prejudice to any other rights, the Company may terminate the Agreement if the Customer:-

- (i) breaches any term of the Agreement; or
- (ii) fails to pay any legitimate monies owing to the Company by the due date; or
- (iii) being a natural person commits an act of Bankruptcy or being a corporation is subject to any form of insolvency administration or receivership practices; and fails within (7) days after written notice has been served to rectify any breach of the Agreement or pay any outstanding monies owed to the Company.

(b) The Customer may terminate the Agreement if:

- (i) the Customer gives the Company 30 days written notice of its intention to cease using the Services;
- (ii) the Company breaches any term of the Agreement.

(c) On termination of the Agreement, the Customer is entitled to the return of the Customer's software, data and computer files provided all outstanding monies have been paid that are owing to the Company on behalf of the Customer, and in the event that the Company is entitled to terminate the Agreement under Clause 8(a) or the Customer elects to terminate the Agreement, the Data Release Fee has been paid. In the event of termination or cancellation the Customer must stop using and/or accessing the Software Products and destroy all copies of the Software Products and all of its component parts.

(d) The term of this Agreement is perpetual, provided that this Agreement may be terminated by the Company if the Customer is in breach of this Agreement or if the Company gives the Customer 30 days written notice of its intention to cease the provision of Services to the Customer, or as otherwise set out in this Agreement.

(e) Clauses 6, 10, 11, 12, 13, 14, 15 and 17 will survive the termination of this Agreement. Termination of this Agreement will not prejudice any rights which the Company may have, or but for the termination may have had, against the Customer for a breach of this Agreement.

Suspension of Services

9.(a) The Company may from time to time, and without notice, suspend any of the Services provided by this Agreement in any of the following circumstances, including but not limited to:

- (i) Any technical failure, power failure, modification or maintenance of the Services or computer systems or website updates;
- (ii) Any virus attack or other security threat;
- (iii) Any failure by the Customer to pay any amounts as and when they fall due;
- (iv) Any failure by the Customer to provide evidence of the legitimate purchase of the Software that the Customer intends to access through the Company's Services;
- (v) Any notification by the Customer of any potential security threat or breach;
- (vi) Any installation of product updates or software upgrades;
- (vii) Any publication or transmission of any illegal or defamatory material by the Customer.

(b) The Company agrees to give suitable prior notice as far as practicable to the Customer of any planned suspension or disruption to the Services and agrees to use its best endeavours to rectify the problem, fault or threat in order to resume the delivery of its Services as soon as practicable.

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Indemnity

10.(a) The Customer shall not publish or transmit in any way whatsoever any information or material which is illegal or defamatory, and the Customer hereby indemnifies the Company and keeps the Company indemnified against any claim for costs, damages, liabilities or demands whatsoever arising out of any illegal or defamatory material so published or transmitted by the Customer.

(b) The Customer will indemnify the Company and keep indemnified the Company against any claim which may be made against the Company with respect to any incorrect, false, deceptive, defamatory or misleading statement that may be made by the Customer to any person or corporation whatsoever in relation to the Company and its Services.

(c) The Company shall not be liable in any way whatsoever for any loss or damage to the Customer or any other third party under any circumstances that results from the Customer's disclosure or publication of the Customer's log-in information or means of access to the Company's Services to any third party.

(d) The Customer will indemnify the Company and keep indemnified the Company against any claim which may be made against the Company with respect to any wilful or negligent acts by the Customer howsoever caused to any third party, the Company or Company's property or to any other Customer's access or property.

Jurisdiction

11. The Agreement will be governed by and construed according to the laws of Australia and the parties to this Agreement agree to submit to the jurisdiction of the Australian Courts.

Provision of Service

12. (a) The parties to this Agreement acknowledge that this Agreement relates to the provision of Services in a new Industry and that such Services are provided in a continually changing environment. Further, the provision of Services relies heavily upon factors outside of the Company's direct control. The Customer acknowledges that the Company may need to suspend services from time to time to provide necessary maintenance, upgrades, improvements, modifications or security enhancement measures and will not hold the Company at fault.

(b) The Customer acknowledges that the Company may, from time to time, need to alter the way in which the Services are provided pursuant to this Agreement and as such the Customer will not object to the Company providing the Services in such a manner to meet the changing circumstances which are inherent to the industry in which the Company is involved in.

(c) The Company agrees to maintain delivery of the Services to the Customer at all reasonable times and every reasonable effort will be made to deliver an uninterrupted Service. The Company also agrees to rectify any problems or defects brought to its attention and within its control (excluding proprietary software errors and defects) that adversely affect the delivery of the Services to the Customer as soon as practicable.

(d) The Company will provide backup of all Customer data on a daily basis for a current week, weekly backup for a current month and monthly backup for a period of six months immediately preceding the present day. The Company will thereafter not keep any backup of any earlier Customer data.

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(e) Where the Customer continues to pay the minimum monthly Service Fee, the Company will maintain the Customers data on the server and access to the Services. Irrespective of the payment of the minimum monthly Customer Service Fee, backups will not be kept of data that was last updated more than six months earlier than the present day. It is the responsibility of the Customer to notify the Company immediately of any request for retrieval of backup data. The Company will provide the backup data on payment by the Customer of the Backup Retrieval Fee.

Customer License Terms

13. (a) The Customer recognises that some of the Services involves the use of Microsoft software which includes computer software provided to the Customer by the Company as described in this Clause and may include associated media, print materials and “online” or electronic documentation (individually or collectively “Software Products”). The Company does not own the Software Products and the use thereof is subject to certain rights and limitations. The Customer’s right to use the Software Products is subject to the Agreement and to the Customer’s understanding of, compliance with and consent to the following terms and conditions which the Company does not have the authority to vary, alter or amend.

(b) The Software Products are licensed to the Company from an affiliate of the Microsoft Corporation (“Microsoft”). All title and intellectual property rights in and to the Software Products (and the constituent elements thereof, including but not limited to any images, photographs, animations, video, audio, music, text and “applets” incorporated into the Software Products) are owned by Microsoft or its suppliers. The Software Products are protected by copyright laws and international copyright treaties as well as other intellectual property laws and treaties. The Customer’s possession, access or use of the Software Products does not transfer any ownership of the Software Products or any intellectual property rights to the Customer.

(c) The Customer may use the Client Software installed on their devices by the Company only in accordance with the instructions and only in connection with the Services provided to the Customer by the Company.

(d) The Customer may not make copies of the Software Products; provided however that you may make one (1) copy of Client Software on your Device as expressly authorised by the Company. The Customer must erase or destroy all such Client Software upon termination or cancellation of the Agreement upon notice from the Company or upon transfer of your Device to another person or entity, whichever occurs first. The Customer may not copy any printed materials accompanying the Software Products.

(e) The Customer may not reverse engineer, decompile or disassemble the Software Products.

(f) The Customer may not rent, lease, lend, pledge or directly or indirectly transfer or distribute the Software Products to any third party and the Customer may not permit any third party to have access to and/or use the functionality of the Software Products.

(g) Microsoft nor its affiliates or subsidiaries make any warranties whatsoever and accept no liabilities or remedies of any kind.

(h) Any product support for the Software Products is provided by the Company and not by Microsoft or its affiliates or subsidiaries.

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(i) The Software Products may contain technology that is not fault tolerant and is not designed, manufactured or intended for use in environments or applications in which the failure of the Software Products could lead to death, personal injury or severe physical, property or environmental damage.

General Conditions of Service and Use

14. (a) The Customer shall not use the Services for any activities which are illegal or fraudulent including but not limited to activities prohibited under or in contravention of the applicable Australian State and Commonwealth laws, whether relating to criminal activity, intellectual property, breach of copyright, censorship, defamation or otherwise.

(b) The Customer shall not use the Services in such a manner that could reasonably be expected to substantially impair the use of the Services by other Customers, third parties or the Company.

(c) The Customer acknowledges that the Company has taken and will continue to take significant and reasonable measures to protect the security of all data and Services, but cannot and does not warrant or guarantee the security and confidentiality of that information or Service, and will not be liable for any loss or damage resulting from any security breaches.

(d) The Customer acknowledges that the means of communication between the Customer and the Company's Network is facilitated by third party infrastructure, and the Customer shall transmit data to and from the Company's Network at its own risk.

(e) The Company acknowledges that any electronic material accessed through the Customer's use of the Services is varied and the Company does not and cannot in any way supervise, edit or control the content and form of any information or data accessed through the Services, and the Company shall not be held responsible in any way to the Customer or any third party for the nature and content of that information accessed via the connection or as a result of using the Services.

(f) The Customer agrees that the Company reserves the right at its sole discretion to remove any data without notice which in its judgement or which has come to the attention of the Company is in violation of the Agreement or otherwise is unlawful or harmful to the Company and/or other users. The Company will however give notice to the Customer of the data's removal and allow a reasonable time for the collection thereof before destroying the data.

(g) The Customer is responsible for maintaining the secrecy and confidentiality of all identification and login information required by the Customer to access the Services.

(h) The Customer agrees not to disclose to any third party any identification or log-in information, whether in use or not, nor any other confidential information relating to the Services or the Company.

(i) The Customer acknowledges and agrees not to hold the Company liable in any way whatsoever for the Customer's loss of their personal password to access their data using any proprietary software. The Company does not keep any record of such passwords in the interests of security.

(j) The Customer agrees at all times to abide by the terms and conditions of use of any proprietary Software License Agreement ("License Agreement") that accompanies or is included with any Software. The Company will provide a copy of the Licence Agreement to the Customer on request.

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(k) The Customer agrees to purchase a legitimate copy of any software that the Customer intends to access through the Company's Services including the proper number of additional user licenses. Further, the Customer agrees to notify the Company of the serial numbers, registration numbers or other such numbers or codes to evidence the legitimate purchase of the software and to enable the Company to provide the hosting of that software to the Customer. The Customer also agrees not to install that software on any personal computer whatsoever whilst the Company continues to host the Customer's software in accordance with the terms and conditions of the Software License Agreement.

(l) The Customer agrees to register their details with the software proprietor in accordance with the requirements and obligations in the Software License Agreement.

(m) The Customer agrees to subscribe to the software proprietor's support assistance if the Customer - intends to use those services.

Conditions of Access

15.(a) The Customer must ensure each of its Users has access to a suitable Internet Connection in order to access the Services.

(b) The Customer is responsible for payment of any costs associated with the data communications line (telephone line or similar link) used for connection to the Company's Network.

(c) The Customer shall be responsible to ensure their Users implement and maintain independent network security measures at the User's site to safeguard usernames, passwords and like information. It is the responsibility of the Customer to notify the Company immediately of any breach of this security in order for the Company to limit any risk that the Customer could suffer.

(d) The Customer acknowledges that to the extent permitted by law the Company does not make any representations or warranties concerning the fitness for purpose or effectiveness of any access restrictions to the Company's network or to the security of the Customer's network.

(e) The Customer and all of its directors, employees, agents, users and suppliers agree at all times to be bound by the Company's Acceptable Use Policy.

Force Majeure

16. The Company shall not be liable for any loss or damage whatsoever or howsoever caused to the Customer or any third party by reason of civil unrest, act of war, flood, fire, storm, tempest or other forces of nature or acts of God.

Copyright

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