

Last modified on: 23 May, 2008

Our motto of "No Surprises" is what we have strived to provide with regard to our policies and pricing for services we offer. So before you agree to do business with us, we want you to read and fully understand the following User Agreement / Terms of Service. This way there are no surprises!

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This Services Agreement (the "Agreement") contains the complete terms and conditions which govern your subscription of web hosting, e-Commerce and other Internet-related services provided by Digital Frog Web Hosting (the "Services"). As used in this Agreement, "Digital Frog Web Hosting" and by default, our hosting partners ET Webhosting, and "Client", "you", or "your" means you. By clicking on the "Submit Order" or "Sign Up" button, you acknowledge that you have read the Agreement, and you agree to its terms and conditions and all policies posted on the Digital Frog Web Hosting site. As referred to in this Agreement, "Site" refers to a World Wide Web site, "Digital Frog Web Hosting Site" refers to the Site located at the URL <http://www.digitalfrog.com.au/index.html>, <http://www.australiancomputerresellers.com>, or any other successor Sites owned or maintained by Digital Frog Pty.Ltd or Digital Frog Web Hosting.

Digital Frog Web Hosting reserves the right to change this Policy any time, so please, check this page at least once a month or when in doubt. Digital Frog Web Hosting strives to provide the best possible service to all our customers, but we will not tolerate any unlawful activity or abuse on our servers. This Agreement is imposed to protect you, other Digital Frog Web Hosting customers, and us against harm.

## 1. APPROPRIATE USE OF THE SERVICES

Digital Frog Web Hosting provides the Services exclusively and makes no effort to edit, control, monitor or restrict the content of data other than as necessary to provide such Services.

- Client Content. Client agrees that it will not distribute, electronically transmit or display any materials supplied by Client - or through Client by a third party - to any Digital Frog Web Hosting server in connection with Client's use of the Services which:
  - infringe on any intellectual property rights (e.g., copyright, trademark, patent or other proprietary rights) of Digital Frog Web Hosting or any third party;
  - violate any provincial, state, federal or foreign laws or regulations;
  - are defamatory, slanderous or trade libelous;
  - are threatening or harassing;
  - are discriminatory based on gender, race, age, or promotes hate;
  - violate any Digital Frog Web Hosting policy posted on the Digital Frog Web Hosting Site including, but not limited to, our **Acceptable Use Policy** (includes Adult Material Policy), **UCE (SPAM) Policy**, and **CGI Abuse Policy**.
  - contain viruses or other computer programming defects which result in damage to Digital Frog Web Hosting or any third party.
- Bandwidth. Client may occupy only the amount of disk space on the Digital Frog Web Hosting Server and utilize no more than the network bandwidth that is allotted by Digital Frog Web Hosting. Additional fees, specified in the plans and packages page, will be charged for exceeding the disk space and/or network bandwidth allowance of your selected plan.
- No "SPAM". Client shall not use the Services for chain letters, junk mail, spamming, or any use of distribution lists to any person who has not given specific permission to be included in such a process. Client also shall not engage in any unsolicited email practices at Digital Frog Web Hosting, or otherwise, that mentions or reference any domain hosted on Digital Frog Web Hosting servers or parked on Digital Frog Web Hosting

DNS servers. NOTE: THIS POLICY APPLIES TO VIRTUAL SERVER AND RESELLER ACCOUNTS, AND ALL DOMAINS, NAMES SERVERS AND PARKED DOMAINS HOSTED ON THE SERVER. **(Violators will be fined! Refer to our UCE (SPAM) Policy).**

- Licensed Software Only. Client agrees to use only properly licensed third party software in connection with Client's use of the Services.
- Back-Up Files. Client will have the ability to reinstate files which are automatically archived by Digital Frog Web Hosting; however, Digital Frog Web Hosting does not guarantee the existence, accuracy, or regularity of its backup services and, therefore, Client is responsible for making back-up files in connection with its use of the Services. Backup capability is available through the Client's Control Panel. If data loss occurs due to negligence of Client in securing their account or by an action of the Client, Digital Frog Web Hosting will attempt to recover the data from the most recent archive for a \$50.00 AU fee.
- Termination. Digital Frog Web Hosting reserves the right to refuse service to anyone, for any reason. Digital Frog Web Hosting, in its sole discretion, may immediately terminate this Agreement for any reason.

## 2. PAYMENT OBLIGATIONS

Our policy on payment is very simple. If you pay your bill on time then you will not have any problems. Here is the "fine print":

Full payment is required from Client before any Service is rendered, including hosting account renewals and domain name renewals. All payment-due notices will be sent by electronic mail to the email address we have on file for your account. No bills or invoices will be sent by postal mail or fax. If your email address is rejected (your email address does not work), Digital Frog Web Hosting will not attempt to contact you again. It is your sole responsibility and obligation to keep your email address current with us.

- Prompt Payment. Client must promptly remit payment to Digital Frog Web Hosting when it is due. It is Client's responsibility to remit maybe when due, even if a bill or statement is not sent.
- Recurring Payments. Recurring payments are due in advance on or before Client's billing cycle anniversary date. (ie: If Client is on a 30-day billing cycle, then payment is due every 30 days.)
- Recurring Invoices. Invoices for recurring Services are sent out (by email only) 10 days before payment due date.
- Payment Overdue Notice. Notice of payment being overdue are sent out (by email only) 2 days after due date.
- Non-Payment Status. Any account with an outstanding payment amount due will be considered in violation of this Agreement and will be automatically placed into non-payment status.
- Suspension of Service. All Services will be automatically suspended when account is placed into non-payment status. If Services are suspended for any reason, then there will be a service reinstatement fee imposed, per suspended account, which shall be due along with any late fees and past due amounts, prior to reinstatement of Services. In order to re-activate the suspended account. Digital Frog Web Hosting may also, at its discretion, require a faxed copy of Client's: driver's license (or other federal or national photo identification with signature), and both sides of the credit card that will be used for payment.
- Termination of Service. If Client's account is in non-payment status, Digital Frog Web Hosting reserves the right to delete all of Client's files and content from Digital Frog Web Hosting servers at any time.
- Collections. Digital Frog Web Hosting utilizes the services of collection agencies to collect amounts currently owing or past-due. If our collection efforts fail, unpaid debts WILL be reported to all available credit reporting agencies.

Domain Names. If Client chooses to register a domain name(s) through Digital Frog Web Hosting, IntaServe Pty Ltd, or DomainSmarty.com, Client acknowledges and agrees that Client will pay a registration fee(s) to register the domain name(s) with the applicable domain name registrar. Digital Frog Web Hosting does not offer refunds for domain name registrations or renewals for any reason, including misspelling of the domain

name. Domain renewal notices will be sent to the email address of Client's billing account. If Client's email address is rejected or inoperable (email does not work), Digital Frog Web Hosting will not attempt to contact you again. It is Client's sole responsibility and obligation to keep your email address current with us.

- Resellers/Bulk Accounts. If Client's account is in non-payment status, Digital Frog Web Hosting reserves the right to respond to any and all contact initiated by any prospective client who identifies him or herself as an existing customer or client of Client. Additionally, if Client's account is in non-payment status for longer than one (1) months (30 days), Digital Frog Web Hosting reserves the right to initiate contact with Client's customers, and Digital Frog Web Hosting reserves the right to modify Client's "suspended" webpage to point to the Digital Frog Web Hosting website.
- Chargebacks. There is a \$50.00 AU fee for each chargeback. Chargeback fees will be added to current or past due fees.
- Declined Credit Cards. A Declined Credit Card Fee will be added to the current invoice each time a charge attempt to Client's credit card is declined for any reason.
- Specials/Discounts. Specials or discount pricing are given only to Client's who make payment on time. If Client's account goes into non-payment status, any specials or discounts applicable to the account will be permanently removed and pricing will be reset to whatever is current and normal pricing for their applicable package(s). For example, if Client has special pricing of 10% discount on their web hosting package, this discount will be permanently removed if Client's account goes into non-payment status.

### **3. DOMAIN NAME REGISTRATION, TRANSFER AND RENEWAL POLICY**

Digital Frog Web Hosting, IntaServe Pty Ltd. and /or Domain Smarty will make a best effort to register, transfer and/or renew Client's requested domain name. This is not a guarantee that Client's requested domain name is available for registration, transfer and/or renewal. Client's domain name may go unregistered, untransferred and/or renewed, due to circumstances beyond our control, such as registry, software and other problems or outages, and will not be grounds for compensation of any financial loss of any kind. Client is solely responsible for monitoring Client's domain name registration requests to make sure it is completed correctly. Client is solely responsible for monitoring Client's domain name expiration date and making sure the domain name is renewed before it expires.

In the event of Client entering into non-payment status or as a result of a charge-back by a credit card company (or similar action by another payment provider allowed by Digital Frog Web Hosting) in connection with the payments of the registration fee for Client's domain name registration, Client agrees and acknowledges that the domain name registration shall be transferred to Digital Frog Web Hosting as the paying entity for that registration to the registry and that Digital Frog Web Hosting reserves all rights regarding such domain name including, without limitation, the right to make the domain name available to other parties for purchase. Digital Frog Web Hosting will reinstate Client's domain name registration solely at Digital Frog Web Hosting's discretion, and subject to its receipt of the initial registration or renewal fee, repayment of incurred expenses, and our then-current reinstatement fee.

### **4. CLIENT LIABILITY AND INDEMNIFICATION**

The parties agree that in no event shall Digital Frog Web Hosting be liable to any third party for Client's breach or alleged breach of any of the terms and conditions set forth in this Agreement. Client agrees to defend, indemnify and hold harmless Digital Frog Web Hosting from any and all expenses, losses, liabilities, damages or third party claims resulting from Client's breach or alleged breach of any Client obligations set forth hereunder.

You agree to use all Digital Frog Web Hosting Services and facilities at your own risk. Digital Frog Web Hosting specifically disclaims all warranties of merchantability and fitness for a particular purpose. In no event shall Digital Frog Web Hosting be liable for any loss, or loss of data, or other commercial damage, including but not limited to special, incidental, consequential or other damages. Client agrees that it shall defend, indemnify, save and hold Digital Frog Web Hosting harmless from any and all demands, liabilities, losses, costs and claims, including reasonable attorney's fees asserted against Digital Frog Web Hosting, its agents, its customers, officers and employees, that may

arise or result from any service provided or performed or agreed to be performed or any product sold by Client, its agents, employees or assigns. Client agrees to defend, indemnify and hold harmless Digital Frog Web Hosting against liabilities arising out of:

- (1) any injury to person or property caused by any products sold or otherwise distributed in connection with Digital Frog Web Hosting Services;
- (2) any material supplied by customer infringing or allegedly infringing on the proprietary rights of a third party;
- (3) copyright infringement and
- (4) any defective products sold to customer from Digital Frog Web Hosting's servers.

Digital Frog Web Hosting shall be the sole judge of what violates this Policy.

## **5. TERM, TERMINATION & CANCELLATION OF SERVICE**

Subject to the terms and conditions hereof, this Agreement shall be effective on the date you register for the Services ("Billing Cycle Date"), and shall automatically renew and continue in effect for the period of time selected during the signup process ("Billing Cycle") or specified by separate agreement or unless terminated earlier pursuant to the provisions of this Section 1 or 2.

Either party will have the right to terminate this Agreement, however, notification of termination must be received at least ten business days prior to Client's Billing Cycle Date in order to avoid charges in full for the next Billing Cycle.

If Client is terminating this Agreement, *Client must request cancellation by emailing the Digital Frog Web Hosting accounts department.* Digital Frog Web Hosting will respond with a cancellation email, *which Client shall retain as proof of termination.* It is the Client's Responsibility to secure email confirmation from Digital Frog Web Hosting that Client's account has been canceled. If the Client has not received email confirmation of account cancellation, then the account remains active, and Client will continue to be invoiced.

If Client has a balance due at the time of termination, this balance must be paid in full before account may be closed. Termination does not absolve Client of any outstanding financial obligations. All Client cancellation requests will become effective within 30 days after termination notice has been provided to Digital Frog Web Hosting. Any other attempt by Client to cancel this Agreement by written or other notice shall be void. Sections 2 - 10 shall survive termination or expiration of this Agreement. In any case that the Client's continuing usage of the service is jeopardizing the stability of Digital Frog Web Hosting's service to other clients, Digital Frog Web Hosting reserves the right to immediately terminate this agreement. Digital Frog Web Hosting reserves the sole right to determine what constitutes what does and does not jeopardize the stability of Digital Frog Web Hosting's service to other clients.

## **6. PRICE CHANGES.**

Digital Frog Web Hosting reserves the right to change the price of any Services at any time. Current Client will not be affected by any price change throughout any existing contract ("Billing Cycle") period.

## **7. TAXES**

Client will pay and indemnify and hold Digital Frog Web Hosting harmless from any and all taxes associated with or arising from Client's use of the Services, including any penalties and interest and any costs associated with the collection or withholding thereof.

## **8. DISCLAIMER OF WARRANTY**

THE SERVICES, THE DIGITAL FROG WEB HOSTING SITE, INCLUDING WITHOUT LIMITATION, ALL PRODUCTS AND SERVICES DISPLAYED OR OFFERED ON THE DIGITAL FROG WEB HOSTING SITE, AND ALL TEXT, GRAPHICS, LINKS AND APPLICATIONS ARE PROVIDED TO CLIENT ON AN 'AS IS' BASIS AND WITHOUT

WARRANTY OF ANY KIND. DIGITAL FROG WEB HOSTING DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO EACH OF THE FOREGOING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR ARISING FROM A COURSE OF DEALING. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, DIGITAL FROG WEB HOSTING SPECIFICALLY DISCLAIMS ANY WARRANTY THAT (1) THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE; (2) DEFECTS WILL BE CORRECTED; (3) THERE ARE NO VIRUSES OR OTHER HARMFUL COMPONENTS; AND (4) THE SECURITY METHODS EMPLOYED WILL BE SUFFICIENT.

## **9. LIMITATION OF LIABILITY**

IN NO EVENT SHALL DIGITAL FROG WEB HOSTING BE LIABLE FOR DAMAGES RESULTING FROM LOSS OF DATA, PROFITS, USE OF THE DIGITAL FROG WEB HOSTING SITE OR ANY DIGITAL FROG WEB HOSTING PRODUCTS OR SERVICES, OR FOR ANY INCIDENTAL, INDIRECT, PUNITIVE, OR CONSEQUENTIAL DAMAGES IN CONNECTION WITH THIS AGREEMENT OR IN CONNECTION WITH ANY PRODUCTS OR SERVICES PROVIDED HEREUNDER. IN NO EVENT SHALL DIGITAL FROG WEB HOSTING'S CUMULATIVE LIABILITY EXCEED AN AMOUNT GREATER THAN FIFTY DOLLARS (\$50 AU).

If any of the provisions, or portions thereof, of this Agreement are found to be invalid under any applicable statute or rule of law, then, that provision notwithstanding, this Agreement shall remain in full force and effect and such provision or portion thereof shall be deemed omitted. This Agreement (including the Exhibits, attachments and/or addenda, if any,) represents the entire agreement of the parties with respect of the subject matter hereof and supersedes all prior and/or contemporaneous agreements or understandings, written or oral between the parties with respect to the subject matter hereof. This Agreement and the rights granted and obligations undertaken hereunder may not be transferred, assigned or delegated in any manner by Client, but may be so transferred, assigned or delegated by Digital Frog Web Hosting. Any waiver or any provision of this Agreement, or a delay by any party in the enforcement of any right hereunder, shall neither be construed as a continuing waiver nor create an expectation of non-enforcement of that or any other provision or right. In any legal proceeding between the parties under this Agreement, the prevailing party shall be entitled to recover its costs, expenses and reasonable attorneys' fees. This Agreement and Digital Frog Web Hosting's policies are subject to change by Digital Frog Web Hosting without notice. Continued usage of the Services after a change to this Agreement by Digital Frog Web Hosting or after a new policy is implemented and posted on the Digital Frog Web Hosting Site constitutes your acceptance of such change or policy. We encourage you to regularly check the Digital Frog Web Hosting Site for any changes or additions.

## **10. GOVERNING LAW AND VENUE**

This Agreement shall be governed by and construed in accordance with the laws of the state of Western Australia in Australia, exclusive of its choice of law or conflicts of law rules.

You irrevocably (i) agree that any litigation or action or proceeding regarding or arising from or relating to this Agreement or your use of Services may be brought only in the courts of Western Australia, (ii) consent, for yourself and in respect of your property, to the sole jurisdiction of each such court in any such action or proceeding, (iii) consent, for yourself and in respect of your property, the exclusive venue for any and all litigation or action or proceeding regarding or arising from this Agreement or your use of Services shall be in Perth, Western Australia, and, (iv) waive any objection to proceeding in such venue, including that the forum is inconvenient.

## **11. UPDATES TO THIS AGREEMENT**

Digital Frog Web Hosting reserves the right to update and modify this Agreement at any time, and such changes will take effect fifteen (15) calendar days from the date they are first published. It is Client's responsibility to check the Digital Frog Web Hosting website for any Agreement updates on a regular basis. In the event Client disagrees with the updated Agreement, Client must notify Digital Frog Web Hosting within fifteen (15) days of the date of first publish, and services to Client will be terminated as detailed in clause five (5) of this Agreement. If Client does not notify Digital

**Digital Frog Pty. Ltd.** Trading as **Australian Computer Resellers**  
ABN:46 126 759 377

Frog Web Hosting within fifteen (15) days after an updated Agreement is first published, Client is acknowledging and agreeing to be bound by the terms of the updated Agreement.