



## **DSL Terms and Conditions**

### **Terms of Service**

These Terms of Service (this " Agreement ") and Daraco Services's Acceptable Useage Policy (" AUP ") govern your purchase and use of all services , as described in the order form(s) submitted by you and accepted by Daraco Services. You must register and accept the terms of this agreement and the AUP in order to use the services (collectively, the " Services "). Daraco Services may modify any of the terms and conditions contained in this agreement and the AUP, at any time in its sole discretion. Any modifications are effective upon posting of the revisions on the Daraco Services web site (the " Site "). Your continued use of the services following Daraco Services's posting of any modifications constitutes your acceptance of the modifications. If you do not agree to the terms of any modification, do not continue to use the services and immediately notify Daraco Services of your termination of this agreement in the manner described in these terms of service.

### **Term and Payment for Services**

#### **Term**

This Agreement will be for a " Term " of 1 month from the date the Services are first provided by Daraco Services. This Agreement will be automatically renewed (the " Renewal Term ") at the end of the Initial Term or any Renewal Term for a period of thirty (30) days unless you provide Daraco Services with written notice of termination at least 30 days before the end of the Initial Term or Renewal Term, whichever is then applicable. To provide your notice of termination, you must submit a support ticket via [helpdesk@daraco.com.au](mailto:helpdesk@daraco.com.au) to initiate the cancellation of your service.

#### **Termination**

This Agreement may be terminated: (i) by you or Daraco Services during any Renewal Term, without cause, by giving the other party 30 days prior written notice; (ii) by Daraco Services in the event of nonpayment by you; and (iii) by Daraco Services, at any time, without notice, if, in Daraco Services's sole judgment, you are in violation of any terms or conditions of the AUP. If you terminate this Agreement, or if Daraco Services terminates this Agreement for your breach, before the end of the Initial Term or the Renewal Term, whichever is then applicable, you will be required to pay immediately all fees and costs accrued before the termination date, all monthly recurring fees for each month remaining in the term and any other amounts you owe to Daraco Services under this Agreement.

#### **Charges**

You will pay all charges for your use of the Services at the then current Daraco Services prices. You are responsible for paying all taxes assessed with respect to the Services, other than taxes based on Daraco Services's net income.



## **Payment**

You will pay all charges for the first month of service in advance on the first day of the Initial Term. You will pay all subsequent charges for Services in advance on the anniversary day of each month according to the then current price for the Services." You must pay for the Services by credit card. You authorise Daraco Services to charge your credit or debit card to pay for any charges that may apply to your account. You must notify Daraco Services of any changes to your card account (including, applicable account number or cancellation or expiration of the account), your billing address, or any information that may prohibit Daraco Services from charging your account. Your failure to fully pay any fees and taxes within 72 hours from the applicable due date is a material breach of this Agreement, justifying Daraco Services to suspend its performance and terminate this Agreement.

If Daraco Services terminates for your material breach, you will be required to pay immediately all fees and costs accrued before the termination date, all monthly recurring fees for each month remaining in the term and any other amounts you owe to Daraco Services under this Agreement plus a delinquency fee of \$200 ex GST to cover account delinquency processing costs. You are responsible for any costs Daraco Services incurs in enforcing collection, including reasonable legal fees, court costs and collection agency fees. To reinstate Services, you must pay for 3 months of Service in advance on the first day such Services are reinstated and any fees associated with reinstating Services.

If on your bill date, your credit card is declined, your account may be interrupted temporarily, a \$5.00 failed payment fee will be charged and an email will be sent to the address on file to notify you of this problem. After 7 days services interrupted for nonpayment will be subject to a \$15.00 reconnect charge.

## **Refund and Disputes**

All payments to Daraco Services are non refundable. This includes any applicable setup fees and subsequent charges regardless of usage. All overcharges or billing disputes must be reported within 60 days of the time the dispute occurred. If you dispute a charge to your credit card issuer that, in Daraco Services's sole discretion is a valid charge under the provisions of this Agreement and/or AUP, you agree to pay Daraco Services an "Investigation Fee" equal to \$50.00 per hour.

## **Use of Services**

### **Acceptable Use Policies**

The AUP governs the general policies and procedures for use of the Services. The AUP is posted on the site at (or such other location as Daraco Services may specify) and may be updated from time to time. BY USING THE SERVICES, YOU AGREE TO BE BOUND BY THE TERMS OF THE AUP AND ANY MODIFICATIONS TO THE TERMS. DARACO SERVICES MAY TERMINATE YOUR ACCOUNT WITHOUT NOTICE FOR ANY VIOLATION OF THE AUP OR THIS AGREEMENT.



## **Domain Names**

Upon registering your domain name, you are bound by the terms of the registration service's then current domain name policy and the policies of the national DNS registration authorities. Daraco Services will not refund any fees you paid with respect to the registration of a domain name you are unable to use. All new web hosting accounts involving new domains will be set up and automatically entered into our DNS servers. Due to unforeseen complications, however, this process may sometimes require up to 7 business days. If the new domain is registered by you, there will be no handling fee. If the domain is registered by Daraco Services on your behalf a handling fee will be incurred. New web hosting accounts which involve the transfer of a domain from another provider to Daraco Services will require a minimum of seven (7) days to be set up and entered into our DNS servers. In some cases, such transfers may take up to sixty (60) days. Due to the unpredictable nature of the transfer process, no guarantees are made regarding the amount of time a specific transfer may take. If the transfer of the domain is done by Daraco Services on your behalf, a handling fee will be incurred. If you cancel service during the transfer period for any reason, all charges are considered earned.

## **Security**

You are solely responsible for any security breaches affecting servers or accounts under your control. If your server is responsible for or involved in an attack on or unauthorized access into another server or system, Daraco Services will shut it down immediately. You will pay any charges resulting from the cost to correct security breaches affecting Daraco Services or any of its other customers.

## **Archiving of Data:**

We will archive data onto backup mechanisms on a regular basis for the purposes of disaster recovery. In the event of equipment failure or data corruption, we will restore from the last known good archive. In the event of corruption of all of our archives, or in the event that an old archive is used to restore data, you should be prepared to upload your data to your web site. You must maintain a recent copy of your data at your premises at all times. We will not be liable for incomplete, out-of-date, corrupt or otherwise deficient client data recovered from our backups.

## **Viruses:**

You are responsible for conducting such tests and computer virus scanning as may be necessary to ensure that data uploaded by you onto or downloaded by you from the Server does not contain any computer virus and will not in any way, corrupt the data or systems of any person.

## **Intellectual Property Rights**

Your Warranties and Representations to Daraco Services. You warrant, represent, and covenant to Daraco Services that: (a) you are at least 18 years of age if an individual, (b) you possess the legal right and ability to enter into this Agreement; (c) you will use the Services only for lawful purposes and in accordance with this Agreement and all applicable policies and guidelines, including the AUP; and (d) your content does not and will not infringe or violate any right of any



third party (including any intellectual property rights) or violate any applicable law, regulation or ordinance.

### **IP Addresses**

Daraco Services will maintain and control ownership of all Internet protocol (" IP ") numbers and addresses that Daraco Services may assign to you. Daraco Services may, in its sole discretion, change or remove any and all IP numbers and addresses.

Daraco Services may provide you access to other third party software and/or services ("Third Party Products ") through reseller relationships Daraco Services has established with certain commercial vendors, including without limitation, Microsoft Corporation ("Third Party Vendors"). Unless otherwise notified, Customer understands that product support for Third Party Products is provided by Daraco Services and not by the Third Party Vendor. Neither Daraco Services nor any Third Party Vendor makes any representations or warranties, express or implied, regarding any Third Party Products. CUSTOMER EXPRESSLY ACKNOWLEDGES AND AGREES THAT USE OF THIRD PARTY PRODUCTS IS AT CUSTOMER'S SOLE RISK AND SUCH THIRD PARTY PRODUCTS ARE PROVIDED "AS IS" AND WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND FROM DARACO SERVICES OR ANY THIRD PARTY VENDOR, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, LACK OF VIRUSES, ACCURACY OR COMPLETENESS OF RESPONSES OR RESULTS, CORRESPONDENCE TO DESCRIPTION, OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NEITHER DARACO SERVICES NOR ANY THIRD PARTY VENDOR WILL BE LEGALLY RESPONSIBLE FOR ANY DAMAGES, WHETHER DIRECT, INDIRECT, OR CONSEQUENTIAL, ARISING FROM THE USE OR INABILITY TO USE ANY THIRD PARTY PRODUCT. CUSTOMER AGREES TO OBSERVE THE TERMS OF ANY LICENSE AND/OR APPLICABLE END USER SUBSCRIBER AGREEMENT FOR THIRD PARTY PRODUCTS AND THAT CUSTOMER SHALL BE FULLY LIABLE TO THIRD PARTY VENDORS AND DARACO SERVICES WITH RESPECT TO ANY IMPROPER USE OF SUCH THIRD PARTY PRODUCTS OR VIOLATION OF LICENSE AGREEMENTS WITH THEM AND/OR APPLICABLE END USER SUBSCRIBER AGREEMENTS.

You shall not (i) remove, modify or obscure any copyright, trademark or other proprietary rights notices that appear on any Third Party Product or that appear during use of any Third Party Product; or (ii) reverse engineer, decompile, or disassemble any Third Party Product, except and only to the extent that such activity is expressly permitted by applicable law notwithstanding this limitation.

### **Enforcement Actions**

Daraco Services reserves the right to suspend or terminate the Service immediately or take any other corrective action it deems appropriate in its sole discretion if in the sole judgment of Daraco Services your server is the source or target of any violation of the AUP or for any other reason which Daraco Services chooses. If inappropriate activity is detected, all of your accounts



in question will be deactivated until an investigation is complete. Prior notification to you is not assured. In some cases, law enforcement will be contacted regarding the activity. These rights of action, however, do not obligate Daraco Services to monitor or exert editorial control over the information made available for distribution via the Services. If Daraco Services takes corrective action because of a possible violation, Daraco Services will not refund to you any fees you paid in advance of the corrective action.

## **Disclosure Rights**

The AUP specifically prohibits the use of our service for illegal activities. Therefore, you agree that Daraco Services may disclose any and all of your information including assigned IP numbers, account history, account use, etc. to any law enforcement agent who makes a written request without further consent or notification to you. In addition, Daraco Services shall have the right to terminate all service set forth in this Agreement.

Disclaimed Warranties. Daraco Services exercises no control over, and accepts no responsibility for, the content of the information passing through Daraco Services's host computers, network hubs and points of presence, or the Internet. USE OF THE SERVICES OR ANY INFORMATION THAT MAY BE OBTAINED THEREFROM IS AT YOUR OWN RISK. ALL SERVICES PERFORMED UNDER THIS AGREEMENT ARE PERFORMED "AS IS" AND WITHOUT WARRANTY AGAINST FAILURE OF PERFORMANCE INCLUDING, ANY FAILURE BECAUSE OF COMPUTER HARDWARE OR COMMUNICATION SYSTEMS. DARACO SERVICES DOES NOT MAKE AND DISCLAIMS, AND YOU WAIVE ALL RELIANCE ON, ANY REPRESENTATIONS OR WARRANTIES, ARISING BY LAW OR OTHERWISE, REGARDING THE SERVICES, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR ARISING FROM COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE IN TRADE. DARACO SERVICES DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED, ERROR-FREE, OR COMPLETELY SECURE.

## **Limitation and Exclusion of Liability**

### **Limitations**

IN NO EVENT WILL DARACO SERVICES OR ITS SUPPLIERS HAVE ANY LIABILITY FOR UNAUTHORIZED ACCESS TO, OR ALTERATION, THEFT OR DESTRUCTION OF INFORMATION DISTRIBUTED OR MADE AVAILABLE FOR DISTRIBUTION VIA THE SERVICES THROUGH ACCIDENT, FRAUDULENT MEANS OR DEVICES. NEITHER DARACO SERVICES NOR ITS SUPPLIERS WILL HAVE LIABILITY WITH RESPECT TO DARACO SERVICES 'S OBLIGATIONS UNDER THIS AGREEMENT, OR OTHERWISE FOR CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES EVEN IF DARACO SERVICES HAS BEEN ADVISED OF THE POSSIBILITY OF THESE DAMAGES. THE LIABILITY OF DARACO SERVICES AND ITS SUPPLIERS TO YOU FOR ANY REASON AND UPON ANY CAUSE OF ACTION IS LIMITED TO THE AMOUNT YOU ACTUALLY PAID TO DARACO SERVICES UNDER THIS AGREEMENT



DURING THE 3 MONTHS IMMEDIATELY PRECEDING THE DATE ON WHICH THE CLAIM ACCRUED. THIS LIMITATION APPLIES TO ALL CAUSES OF ACTION IN THE AGGREGATE, INCLUDING BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATIONS, AND OTHER TORTS. THE FEES FOR THE SERVICES SET BY DARACO SERVICES UNDER THIS AGREEMENT HAVE BEEN AND WILL CONTINUE TO BE BASED UPON THIS ALLOCATION OF RISK. ACCORDINGLY, YOU RELEASE DARACO SERVICES AND ITS SUPPLIERS FROM ANY AND ALL OBLIGATIONS, LIABILITIES, AND CLAIMS IN EXCESS OF THE LIMITATION STATED IN THIS SECTION.

### **Interruption of Service**

Daraco Services and its suppliers are not liable for any temporary delay, outages or interruptions of the Services. Further, Daraco Services is not liable for any delay or failure to perform its obligations under this Agreement, where the delay or failure results from any act of God or other cause beyond its reasonable control (including, any mechanical, electronic, communications or third-party supplier failure).

### **Indemnification**

In agreeing to the Daraco Services AUP and this Agreement, you agree to indemnify, defend and hold harmless Daraco Services, its employees, directors, partners, representatives and affiliates, for any violation by you or your customers of the AUP or this Agreement that results either in loss to Daraco Services or the bringing of any claim against Daraco Services by any third-party. For example, if Daraco Services is sued because of your or your customer's activity related to the Services, you will pay any damages awarded against Daraco Services, its employees, directors, partners, representatives and affiliates, plus all costs and attorney's fees.

### **MISCELLANEOUS PROVISIONS**

Daraco Services and you agree that, except as otherwise expressly provided in this Agreement, the Order Form(s) or the terms and conditions of use of any third party software products, there shall be no third party beneficiaries to this Agreement, including but not limited to the insurance providers for either party or your customers. THIS AGREEMENT IS MADE UNDER AND WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW SOUTH WALES. In the event any provision of this Agreement is held by a tribunal of competent jurisdiction to be contrary to the law, the remaining provisions of this Agreement will remain in full force and effect. The waiver of any breach or default of this Agreement will not constitute a waiver of any subsequent breach or default, and will not act to amend or negate the rights of the waiving party. You may not sell, assign or transfer its rights or delegate its duties under this Agreement either in whole or in part without the prior written consent of Daraco Services, and any attempted assignment or delegation without such consent will be void. Daraco Services may assign this Agreement in whole or part. Daraco Services also may delegate the performance of certain Services to third parties. All notices, demands, requests or other communications required or permitted under this Agreement shall be deemed given



when delivered personally, sent by facsimile upon confirmation, sent and received by return receipt email, or upon receipt of delivery of overnight mail. You and Daraco Services are independent contractors and this Agreement will not establish any relationship of partnership, joint venture, employment, franchise or agency between you and Daraco Services. This Agreement, including all documents incorporated herein by reference, constitutes the complete and exclusive agreement between the parties with respect to the subject matter hereof, and supersedes and replaces any and all prior or contemporaneous discussions, negotiations, understandings and agreements, written and oral, regarding such subject matter.

### **Survival**

All provisions of this Agreement relating to your warranties, intellectual property rights, limitation and exclusion of liability, your indemnification obligations and payment obligations will survive the termination or expiration of the Agreement.