

## **TOS - Terms of Service Penguin Web Hosting Australia: (TOS - PenguinWebHosting.com.au)**

### **Acceptance of Terms:**

Use of the PenguinWebHosting.com.au Service(s) constitutes an acceptance and agreement to PenguinWebHosting.com.au's TOS ("Terms of Service").

PenguinWebHosting.com.au ("The Company") agrees to furnish services to the client, subject to the following TOS.

All provisions of this contract are subject to the TOS of PenguinWebHosting.com.au. The TOS may be changed from time to time at the discretion of the Company. The Client(s) understand that any change(s) to the TOS by the Company shall not be grounds for early contract termination or non-payment.

This Agreement shall be construed in all respects in accordance with the laws of the state of Illinois applicable to contracts enforceable in that state. Venue will be the city of Glen Ellyn, Illinois, United States of America.

The Client ("Client(s) and the Client(s) Company") as is applicable is also bound in all respects in accordance with the laws of the Country in which they operate and or conduct their Business which relates to or is part of the services and or activity or information stored on the PenguinWebHosting.com.au server(s).

**Right to Refuse Service:** PenguinWebHosting.com.au reserves the right to refuse its services to anyone for any reason. This policy is enforced to ensure a professional and secure environment for all Client(s) on our systems.

**Disclosure to Law Enforcement:** The TOS specifically prohibits the use of our service for illegal activities. Therefore, the Client agrees that the Company may disclose any and all of the Client 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 the Client. In addition PenguinWebHosting.com.au shall have the right to terminate all service set forth in this Agreement.

**Service Rates:** The Client acknowledges that the nature of the service furnished and the initial rates and charges have been communicated to the Client. The Client is aware that the Company may prospectively change the specified rates and charges from time to time. The promotional offer is contingent upon the Company achieving and maintaining its cost of service goals including but not limited to rates charged to the Company by its suppliers.

### **Payments and Fees:**

**Payment:** Establishment of this service is dependent upon receipt by the Company of payment of stated charges from the Client. Subsequent payments are due on a reoccurring date that coincides with the date of signup of the service.

**Failure to Pay:** The Company may temporarily deny service or terminate this Agreement upon the failure of Client to pay charges when due. Such termination or denial will not relieve the Client of the responsibility for the payment of all accrued charges, plus reasonable interest and any collection fees.

The Client acknowledges that the service provided is of such a nature that the service can be interrupted for many reasons other than the negligence of the company and that damages resulting

from any interruption of service are difficult to ascertain. Therefore, the Client agrees that the company shall not be liable for any damages arising from such causes beyond the direct and exclusive control of the company. The Client further acknowledges that the company's liability for its own negligence may not in any event exceed an amount equivalent to charges payable by Client for services during the period that damages occurred. In no event shall the company be liable for any special or consequential damages, loss or injury.

**Refund and Disputes:** All hosting plans are recurring billing cycles. To cancel the service the Client must fill out our online cancellation form located at <https://www.PenguinWebHosting.com.au/cancellation/> or fax your cancellation request to 630-469-9737. A confirmation of the cancellation request with a confirmation number will be sent within 24 hours. We do not accept cancellation requests via email or in the form of a charge back. Refunds will not be given in the form a charge back. To obtain refund call 630-469-9735 or fax a refund request to 630-469-9737.

**Support Boundaries:** Where PenguinWebHosting.com.au provides technical support to its Client(s) such technical support is limited to the Company's area of expertise. The following guideline is used when providing support: PenguinWebHosting.com.au provides support related to your server or functioning thereof. PenguinWebHosting.com.au does not offer technical support for application specific issues such as CGI, JavaScript, PHP or ASP programming, html or any other Software Application issue. PenguinWebHosting.com.au Services does not provide technical support for any 3<sup>rd</sup> party associated with the Client(s). If you can email, we encourage you to email support@PenguinWebHosting.com.au or utilize the online ticket system for assistance. Any request for technical support warrants the possibility of being charged a system administration fee if the request related to the Operating System functionality, software application functionality, the Client(s) installed software and or scripts, or the Control Panel ("cPanel") functionality.

As our Clients are ultimately responsible for the actions of any 3<sup>rd</sup> party associated with the Client where they may interact with or communicate over the PenguinWebHosting.com.au network, it is advisable that the Client develops a similar or stricter policy for their staff and any 3<sup>rd</sup> party associated with the Client.

#### **Domains:**

Registration, and or Transfer Data Requirement.

When you register or transfer a domain name to PenguinWebHosting.com.au, you are required to provide us with certain information. This information includes but is not limited to;

Your (the Client including the Client Company) full name, postal address, e-mail address, voice telephone number, and fax number if available; The name of an authorized person for contact purposes in the case of a registrant that is an organization, association, or corporation; The IP addresses of the primary nameserver and any secondary nameserver(s) for the TLD name; The corresponding names of those nameservers; The full name, postal address, e-mail address, voice telephone number, and fax number if available of the technical contact for the TLD name; The full name, postal address, e-mail address, voice telephone number, and fax number if available of the administrative contact for the TLD name; The name, postal address, e-mail address, voice telephone number, and fax number if available of the billing contact for the TLD name; and Any remark concerning the registered TLD name that should appear in the WHOIS directory.

You, the Client agree to update this information to keep it current, complete and accurate. You also agree and understand that the foregoing registration data will be publicly available and accessible on the WHOIS directory as required by ICANN Registry Policy and may be sold in bulk in accordance with the ICANN Agreement.

**Network:**

**IP Address Ownership:** If PenguinWebHosting.com.au assigns Customer an Internet Protocol (IP) address for the Client(s) use, the right to use that Internet Protocol address shall belong only to PenguinWebHosting.com.au Services, and the Client shall have no right to use that Internet Protocol address except as permitted by PenguinWebHosting.com.au in its sole discretion in connection with the Services during the term of this Agreement. PenguinWebHosting.com.au shall maintain and control ownership of all Internet Protocol numbers and addresses that may be assigned to the Client by PenguinWebHosting.com.au and PenguinWebHosting.com.au reserves the right to change or remove any and all such Internet Protocol numbers and addresses in its sole and absolute discretion. The Company's allocation of IP addresses is limited by ARIN's new policies. These new policies state that the use of IP addresses for IP based virtual hosts will not be accepted as justification for new IP addresses. What this means to the Client is that the Client MUST use name based hosting where possible. PenguinWebHosting.com.au will periodically review IP address usage, and if PenguinWebHosting.com.au finds that Client(s) are using IP addresses where name based hosting could be used, PenguinWebHosting.com.au will revoke authorization to use those IP addresses that could be used with name based hosting.

**PenguinWebHosting.com.au's Unlimited Bandwidth Policy:**

PenguinWebHosting.com.au provides Unlimited Bandwidth for Mega Business Plan Client(s). To prevent possible abuse, PenguinWebHosting.com.au has the following policy which regulates the use of our Unlimited Bandwidth Policy.

There are two types for PenguinWebHosting.com.au - hosted websites.

These are:

1. Unlimited Qualified.
2. Unlimited Unqualified.

To be classified as "Qualified" the Client website must follow the following rules:

- \* 85% or more of your images, download files, etc. must be linked from an HTML or equivalent web page that is accessible to the public from your domain.
- \* The Client website is comprised mostly of web pages, and images used on those pages.
- \* The Client website is NOT primarily designed to provide files for download.
- \* The Client website is NOT adult in nature.
- \* The Client domain is on PenguinWebHosting.com.au nameservers.

If the Client(s) website falls into any of the following, it will be Ineligible for Unlimited Bandwidth and will be restricted to a bandwidth limit of 200 GB per month.

\* If the Client(s) website is a download website (designed primarily to provide files for download by visitors, or if over 90% of the Client(s) bandwidth is used for video, audio and or flash files) software downloads or is an adult website, a website comprised of an image gallery only, a website which contains a message board as its primary 'attraction' or any websites that contain shopping carts with over one thousand items are not eligible and as such become ineligible for Unlimited Bandwidth and will be assigned limits as stipulated above.

\* Unlimited Bandwidth Increases. All PenguinWebHosting.com.au accounts will start with their normal packages bandwidth limit. Once the Client(s) have used 80% of their bandwidth, simply contact tech support for an increase. At this time, we will verify the type of account the Client(s) are on and insure that the Client(s) you are eligible for Unlimited Bandwidth and then increase it by an equal-to-original increment.

**System and Network Security:** Users are prohibited from violating or attempting to violate the security of the PenguinWebHosting.com.au Network. Violations of system or network security may result in civil or criminal liability action. PenguinWebHosting.com.au will investigate occurrences which may involve such violations and may involve and cooperate with law enforcement authorities in prosecuting Users who are involved in such violations. These violations include, without limitation:

**Excessive Resource User Policy:** Resources are defined as processor and ram utilization. A website is considered to be using "Excessive amounts of resources" when it monopolizes the resources available by using 10% or more of system resources for longer than 60 seconds. There are numerous activities that could cause such problems; these include: CGI scripts, PHP, FTP, HTTP, etc. This policy is only implemented in extreme circumstances and is intended to prevent the misuse of our servers. PenguinWebHosting.com.au reserves the rights to suspend or terminate any hosting account that is jeopardizing the PenguinWebHosting.com.au network. PenguinWebHosting.com.au will be the sole and final arbiter as to what constitutes a violation of this policy.

PenguinWebHosting.com.au has a 99.9% average uptime across the entire PenguinWebHosting.com.au network at large, which includes webservers, mailservers, and more - as a whole. If a single server is temporarily offline, the rest of the PenguinWebHosting.com.au servers remain unaffected and uninterrupted, thus contributing to our overall uptime.

**Prohibited Activity(s):**

PenguinWebHosting.com.au does not allow IRC or IRC bots to be operated.

Software distribution, and copyrighted mp3, and other music files may not be used on our network.

Spam, bulk, or unsolicited email is strictly prohibited. PenguinWebHosting.com.au has a zero tolerance for this and any Client(s) account that violates this will be immediately shut down. PenguinWebHosting.com.au will be the sole arbiter of what constitutes a violation. This includes but is not limited to sending a bulk mailing, unsolicited commercial email, emails sent from outside the server advertising your site, opt-in and opt-out lists. Questions on this can be sent to [tos@PenguinWebHosting.com.au](mailto:tos@PenguinWebHosting.com.au)

Due to the special system and network requirements of adult-oriented sites, pornography and sex-related merchandising are prohibited for Web Hosting customers. This includes sites that may infer sexual content or provide links to adult content elsewhere. This is also true for sites that promote any illegal activity or content that may be damaging to our servers or any other server on the Internet, or provide links to such sites.

Accessing data not intended for such User or logging into a server or account, which such User is not authorized to access.

Attempting to probe, scan or test the vulnerability of a system or network or to breach security or authentication measures without proper authorization.

Attempting to interfere with service to any user host or network including without limitation via means of overloading "flooding" "mail bombing" or "crashing".

Forging any TCP/IP packet header or any part of the header information in any e-mail or newsgroup posting.

Taking any action in order to obtain services to which such User is not entitled.

Addition of IP addresses that have not been specifically assigned to the server.

**Notification of Violation:** PenguinWebHosting.com.au is under no duty to look at each Client(s) or user's activities to determine if a violation of the TOS has not occurred, nor does PenguinWebHosting.com.au assume any responsibility through the TOS to monitor or police Internet related activities.

Any Client or User which PenguinWebHosting.com.au Services determines to have violated any element of this TOS shall receive an email warning them of the violation. The service may be subject at PenguinWebHosting.com.au's discretion to a temporary or permanent suspension pending a Client(s) and User agreement in writing to refrain from any further violations.

PenguinWebHosting.com.au reserves the right, to drop the section of IP space involved in Spam or Denial-of-Service complaints if it is clear that the offending activity is causing great harm to parties on the Internet. In particular if open relays are on your network or a Client(s) network, or if denial of service attacks are originating from the Client(s) network. In certain rare cases, PenguinWebHosting.com.au may have to do this before attempting to contact the Client. If PenguinWebHosting.com.au does this PenguinWebHosting.com.au will contact the parties involved as soon as is feasible.

**Suspension of Service or Cancellation:** PenguinWebHosting.com.au Services reserves the right to suspend network access to any Client(s) or User(s) if in the judgment of the PenguinWebHosting.com.au network administrators the Client(s) server is the source or target of the violation of any of the other terms of the TOS or for any other reason which PenguinWebHosting.com.au chooses. If inappropriate activity is detected, all accounts of the Client(s) in question will be deactivated until an investigation is complete. Prior notification to the Client(s) is not assured. In extreme cases, law enforcement will be contacted regarding the activity. The Client(s) will not be credited for the time the Client(s) accounts or machines were suspended.

PenguinWebHosting.com.au reserves the right to amend its policies at any time. All Sub-Networks, resellers and managed servers of PenguinWebHosting.com.au must adhere to the above policies. Failure to follow any term or condition will be grounds for immediate Cancellation. You, the Client will be held responsible for the actions of your Staff and any 3<sup>rd</sup> Party User(s) in the matter described in these Terms and conditions. Therefore, it is in you're the Client(s) best interest to implement a similar or stricter Terms and conditions or otherwise called Terms of Use.

**Indemnification:** PenguinWebHosting.com.au wishes to emphasize that in agreeing to the PenguinWebHosting.com.au Terms of Service (TOS), customer indemnifies PenguinWebHosting.com.au for any violation of the Terms of Service (TOS) that result in loss to PenguinWebHosting.com.au or the bringing of any claim against PenguinWebHosting.com.au by any third-party. This means that if PenguinWebHosting.com.au is sued because of a Client(s) or a customer of a Client(s) activity, the Client(s) will pay any damages awarded against PenguinWebHosting.com.au, plus all costs and attorney's fees.

**Miscellaneous Provisions:** The Client MUST provide PenguinWebHosting.com.au with, and keep current the Client(s) contact information for e-mail, fax, and telephone contacts that are in use, in that order of preference.

A waiver by the Company of any breach of any provision of this Agreement by the Client shall not operate as or be construed as a continuing or subsequent waiver thereof or as a waiver of any breach of any other provision thereof.

The Client shall not transfer or assign this Agreement without the prior written consent of the Company. The Company may assign Agreement at anytime without consent from or notice to the

Client. The Company reserves right to cancel the Clients rights under this contract at anytime without further obligation.

PenguinWebHosting.com.au takes no responsibility for any material input by others and not posted to the PenguinWebHosting.com.au Network by PenguinWebHosting.com.au.

PenguinWebHosting.com.au is not responsible for the content of any other websites linked to the PenguinWebHosting.com.au Network; links are provided as Internet navigation tools only.

PenguinWebHosting.com.au disclaims any responsibility for any such inappropriate use and any liability to any person or party for any other person or party's violation of this policy.

PenguinWebHosting.com.au is not responsible for any damages the Client(s) business may suffer.

PenguinWebHosting.com.au does not make implied or written warranties for any of its services.

PenguinWebHosting.com.au denies any warranty or merchantability for a specific purpose. This includes loss of data resulting from delays, non-deliveries, wrong delivery, and any and all service interruptions caused by PenguinWebHosting.com.au.

**Responsibility for Content:** The Client(s) are solely responsible for the content stored on and served by your PenguinWebHosting.com.au server.