

# Techfusion

## Shared Hosting Terms And Conditions

This is an important document. It sets out the Terms and Conditions on which Techfusion provides Shared Web Hosting and/or Domain Names Services to you, the Customer. You implicitly accept these Terms and Conditions when you agree and pay for the use of any service provided by Techfusion.

These Terms and Conditions, become a legal agreement between you and Techfusion.

### 1. Services

1.1 These Terms and Conditions cover Shared Web Hosting Services and (if appropriate) Domain Name Services (together or separately referred to as “Services”). Shared Web Hosting means that the Customer’s website is hosted with other websites belonging to other customers on a web server connected to the Internet.

1.2 Shared Webhosting Services: includes: (a) internet connectivity services (“Bandwidth”), (b) use of equipment including the server and other equipment used in internet connectivity services (“Hardware”), and (c) licensing of the associated operating system and web server applications (“Software”), all as detailed and for the Fees set out in the online Plan which Customer has selected.

1.3 Shared Webhosting Service Levels: Techfusion will provide the Services in accordance with the Service Level Agreement applicable to the Plan selected by Customer.

1.4 Domain Name Services: includes the registration and maintenance of domain names through Techfusion’s preferred domain name registrar (TPP Internet) in the following domains:

- (a) au (Australia)
- (b) uk (United Kingdom)
- (c) nz (New Zealand); and
- (d) qTLD Global (com net org biz info)

### 2. Domain Name Regulation

2.1 The registration and administration of Domain names is conducted pursuant to general policies determined and promulgated by the Internet Corporation for Assigned Names and Numbers (“ICANN”).

2.2 ICANN has delegated the registration and administration of particular Domain names (au, uk etc) to accredited Domain Name Registrars who conduct the registration and administration of Domain names according to general ICANN policies, as interpreted by each Domain Name Registrar. There may accordingly be significant differences in administration of Domain names for particular Domains.

2.3 By purchasing a Domain name, Customer enters into an agreement with Techfusion's registrar, TPP Internet relating to the relevant Domain. As there may be significant differences between agreements relating to each Domain, it is the sole responsibility of Customer to review and agree to each particular agreement.

### **3. Domain Names**

3.1 Registration: Techfusion accepts no responsibility for the refusal of a Domain name registrar to refuse to register a particular Domain name, and Customer irrevocably waives any rights of any kind whatsoever against Techfusion arising out of the refusal of a Domain name Registrar to register a particular Domain name.

3.2 Renewal: Under ICANN policies Registrars are not permitted to solicit nor pay fees on behalf of Customers for renewal of Domain names. It is Customer's sole responsibility, on receiving a notice for renewal of a Domain name, to promptly pay all fees for renewal or risk loss of the Domain name. Neither Techfusion nor TPP Internet accepts liability for any failure, for any reason whatsoever, to renew a Domain name on a timely basis.

3.3 Cancellation: ICANN policies require cancellation of Domain names in certain circumstances, including fraud, provision of false registration details, interference with the rights of third parties and other grounds. A Customer is not entitled to a refund of registration fees, in whole or in part, on any such cancellation. Techfusion does not, under any circumstances, refund any registration fees, in whole or in part, on any cancellation of a Domain name by a Domain name registrar. It is the sole responsibility of Customer to review and adhere to the terms and conditions of the agreement for each Domain name, including without limitation the terms and conditions which may lead to cancellation of Domain names.

### **4. Control Panel**

4.1 Control Panel: "Control Panel" means a unique, live and interactive website page individualised for the Customer (Shared Webhosting and Domain Names) which the Customer may access at their request after Techfusion has supplied a User ID and Password. When accessed, the Control Panel enables Customer to:

- (a) Review the status of its account;
- (b) View the registration status of its domain names and dates for renewal of registration;

- (c) view the current status of its Shared Webhosting Services and reports of operation of those Services;
- (d) perform maintenance and other functions on components of Services, Hardware and Software, including configuring website and email services; and
- (e) access Customer support services.

4.2 Password Access: Techfusion will provide the Customer with User ID and Password to access the Control Panel for the purposes specified in clause 4.1. The Customer is solely responsible for maintaining the secrecy and confidentiality of its User ID and Password assigned to it or its nominated representatives and is and remains liable for any fees or charges incurred by any person accessing the Control Panel by using that User ID and Password.

## **5. Warranties**

5.1 Sole Warranties: Techfusion warrants that the Services will be supplied with due care and skill and that any material supplied in connection with the Service is reasonably fit for the purposes for which it is supplied.

5.2 Exclusion of All Other Warranties: With the exception of the warranties set out in clause 5.1 and to the full extent permitted by law, all other all express or implied warranties, representations, terms and conditions regarding Services, Hardware and/or Software and their use or regarding the Agreement are hereby expressly excluded.

5.3 Limitation of Liability: Techfusion's liability for breach of the warranties set out in clause 5.1 is limited at its option to the resupply of Services, or payment of the cost of having the Services supplied again. In no event shall Techfusion be liable for any loss of data, loss of profits, cost of cover, or any other special, incidental, consequential, indirect or punitive damages, however caused and regardless of theory or liability, notwithstanding that Techfusion has been made aware or advised of the possibility of such damages.

## **6. Payment of Fees**

6.1 Payment of Shared Webhosting Fees: Customer agrees to pay the fees set out in the Plan selected by it (which are inclusive of GST), and such other charges and fees as may properly be incurred by it under this Agreement, including without limitation:

- (a) Charges for excess data, traffic, bandwidth and/or power usage by Customer; and
- (b) Additional license fees charged to Techfusion under software licenses where fees are calculated by reference to usage or number of users or mailboxes.

6.2 Usage Charges: Where applicable, Usage Charges for Bandwidth are measured by the billing data collection devices that measure data traffic at the Techfusion router interface

at the edge of the Techfusion network, and are calculated according to the Plan selected by Customer. In the event of a billing dispute, Customer acknowledges and agrees that it will accept these data traffic records as accurate and final records of the data traffic to which they relate.

6.3 Payment of Domain Names Fees: Techfusion will notify Customer of fees for registration and/or renewal of domain names. Under ICANN policies Registrars are not permitted to solicit nor pay fees on behalf of Customers for renewal of Domain names. It is Customer's sole responsibility, on receiving a notice for renewal of a Domain name, to promptly pay all fees for renewal or risk loss of the Domain name. Neither Techfusion nor TPP Internet accepts liability for any failure, for any reason whatsoever, to renew a Domain name on a timely basis.

6.4 Delays in Payment of Domain Name Fees: Techfusion cannot take action to register or renew Domain names until in each instance it has received payment for the particular service. Customers must allow 3 business days to elapse after making payment and issuing instructions to Techfusion to register or renew a Domain name before Techfusion is able to process the application or renewal. Neither Techfusion nor TPP Internet accepts liability for failure to register or renew a Domain name through delays of Customer in making payments and/or arising out of administrative delays, acts or omissions of Customers or third parties or out of automated systems failures.

6.5 Invoices: Techfusion will issue invoices via email in accordance with its billing cycle, as from time to time notified to Customer:

- (a) For fixed or recurring charges, in advance;
- (b) For variable charges including Usage Charges and excess Usage Charges, in arrears;
- (c) Otherwise as notified by Techfusion from time to time.

6.6 Billing Periods: Techfusion will use its best endeavours to bill all charges for the relevant billing period in the invoice relating to that period. Where charges relating to that billing period arise for any reason after the invoice is issued, including without limitation late notification of a Supplier of billing errors, Techfusion may include such charges on a later invoice.

6.7 Payment Authorities: Customer hereby authorizes Techfusion to debit all fees under any invoices rendered by it under this Agreement, as the Customer chooses, to its nominated Bank Account or to Customer's nominated credit card and all subsequent renewals of that credit card.

6.8 Account Maintenance Fee: where Customer's authority to Techfusion to debit invoiced fees and charges against a nominated bank Account, debit card or credit card expires or is otherwise terminated, Techfusion may charge, and Customer agrees to pay, an account maintenance fee of \$3.50 on each monthly or quarterly invoice rendered by Techfusion to Customer, including, where Customer has multiple services, on each

invoice rendered for each of those services.

6.9 Downgrade Fee: where Customer requests a change to the specifications for its Services which results in lower monthly fees, and Techfusion agrees to such request, Techfusion may charge Customer a Downgrade Fee of \$100.

6.10 Credit Information: The Customer hereby agrees and consents to Techfusion acquiring a credit report from any credit reporting agency containing personal information (as well as information concerning commercial creditworthiness and activities) for purpose of assessment by Techfusion of an application for credit (whether commercial or private) or for the collection of payments which are overdue. The Customer also agrees and consents to Techfusion reporting information to any credit reporting agency that the Customer is in default of the trading terms of this Agreement or that it has handed over collection of the Customer's account to a collection agency.

## **7. Proprietary Rights in Hardware and Software**

Customer shall have no right, title, or interest of any kind whatsoever in the Software, Hardware, documentation, or any copyrights, patents or trademarks, embodied or used in connection therewith, except for the limited licence to use the Hardware and Software provided in this Agreement.

## **8. Maintenance of Hardware and Network**

8.1 Techfusion Hardware: Techfusion will maintain and support Hardware in accordance with best industry practice or, where applicable, vendor specifications.

8.2 Scheduled Maintenance: Techfusion will perform all regularly scheduled maintenance to maintain Hardware and the Techfusion network outside Business Hours. Techfusion will give Customers notice by email at least 48 hours in advance if scheduled maintenance requires interruption to Services for more than 30 minutes.

8.3 Replacement of Hardware: Techfusion may substitute, change or modify the Hardware at any time, but shall not thereby substantially alter the technical parameters of the Services without the prior approval of Customer unless the effect of the substitution, change or modification is to enhance the capacity or specifications of the Hardware.

8.4 Technical Support: Techfusion will provide technical support by enabling Customer access through the Control Panel to correct operational procedures for tools and modules specified in this Agreement and to links to operational resources on the Techfusion Website. Customer acknowledges that technical support is limited to hardware/network failures and utilities provided by Techfusion.

## **9. Software**

9.1 Operating System and Web Server Software License: During the Term Techfusion grants the Customer a non-transferable, nonexclusive license to use and install the Software specified in the Cover Sheet on the Hardware specified in the Cover Sheet for purposes of the Services. Techfusion warrants that it has full right, title and interest in the Software to grant sublicenses by virtue of a license granted by the vendor of the Software (“Vendor License”) to Techfusion to use and sub-license the Software. Techfusion does not warrant third party Vendor Software in any way whatsoever, but undertakes to pass onto Customer the benefit of all warranties and indemnities relating to use of the Software under the Vendor License.

9.2 Software License Restrictions: Customer agrees that it will not, directly or indirectly (and it will not allow others to):

- (a) copy the Software, except as necessary to install on Hardware and for internal, archival purposes. In the event Customer makes authorized copies of the Software, Customer shall reproduce all proprietary notices on such copies;
- (b) sell, lease, license, transfer, give possession of, or sub-license the Software to others, other than as permitted in the Vendor License; and/or
- (c) write or develop any derivative or other software programs, based, in whole or in part, upon the Software or any Confidential Information.

9.3 Exclusions: Customer acknowledges that breach of clause 9.2 may result in invalidation of warranties relating to Software, including the benefit of third party Vendor warranties.

9.4 Software Provided by Customer: Where Customer provides or uses other software on or in connection with its website, Customer warrants that it has full right title and interest under a valid license to use that software and to grant a valid sub-license to Techfusion to install and run that software during the Term solely in connection with providing Services under this Agreement.

## **10. Acceptable Use Policy and Use of Services**

10.1 Acceptable Use Policy: Customer agrees and acknowledges that it has read Techfusion’s Acceptable Use Policy published on the Techfusion Website at: <http://www.techfusion.com.au/tf/conditionsofuse.pdf> and agrees and undertakes that it will at all times observe and comply with that Acceptable Use Policy, as may be amended from time to time by publishing of amendments on the Techfusion Website.

10.2 Sole Responsibility: Customer acknowledges and agrees that it is solely responsible for all information, material, content or data (“Content”) of any postings, data or transmissions utilizing the Services or any other use of the Services by Customer or User.

10.3 Removal of Offending Content: Customer acknowledges that Techfusion has the right to remove Content in accordance with the terms of the Acceptable Use Policy, including without limitation and without notice to Customer any Content deemed by it in

its sole opinion to breach or offend its Acceptable Use Policy, or to suspend Services or disconnect or deny access to Services if in its sole opinion it deems Content to breach or offend its Acceptable Use Policies.

10.4 Excessive Use: Customer covenants and agrees that it will at all times observe and comply with and not breach usage limitations, including bandwidth, traffic (inbound, outbound and aggregated), data storage and backup, server resources and mailboxes, applicable to the plan or product chosen by the Customer. Customer also agrees and covenants that it will not use the Services in an excessive or unusual way.

10.5 Suspension: Customer acknowledges that Techfusion is entitled to suspend or cancel Services, permanently or temporarily, if Customer breaches clause 10.4, and that if at any time Techfusion does suspend or cancel the Services, the Customer remains liable for any charges incurred:

- (a) through excessive or unusual usage; and
- (b) where the suspension is temporary, during such suspension.

10.6 Indemnity: Customer agrees to and shall hold harmless and indemnify Techfusion against any loss, expenses, liability, damages or claim made against it by any party whatsoever (including without limitation Customer, a User or any party claiming through Customer) which Techfusion may suffer, directly or indirectly, resulting from or arising out of Customer's or User's breach of the Acceptable Use Policy or the misuse or abuse of the Services in any way whatsoever by Customer or any User.

## **11. Release of Information to Authorized Agencies**

11.1 Monitoring Use of Services. In order to comply with, and subject to, any applicable laws, including without limitation the Telecommunications Act 1997 and the Telecommunications (Interception) Act 1979, Techfusion may at any time:

- (a) When required by a warrant issued by a Regulatory Agency or an authorised law enforcement agency or court, intercept or monitor Services, or enable another person authorised by a warrant issued by a Regulatory Agency or an authorised law enforcement agency or court, to intercept or monitor Services, including data hosted on or being transmitted through Services;>
- (b) Monitor and/or examine use of Services, including email, records and other data in the course of installation, connection or routine maintenance of the Services, but only to the extent permitted by legislation; >
- (c) Suspend Services; and/or
- (d) Release information obtained by any of these actions to any Regulatory Agency.

11.2 Indemnity. Customer agrees to and shall hold harmless and indemnify Techfusion against any loss, expenses, liability, damages or claim made against it by any party whatsoever (including without limitation Customer, a User or any party claiming through

Customer or a User) which Techfusion may suffer, directly or indirectly, resulting from or arising out of any actions taken by it pursuant to clause 11.1.

## **12. Term and Termination**

12.1 Term: This Agreement shall be effective for the term (“Term”) of the online Plan selected by Customer. Unless Customer gives at least 30 days notice of termination prior to the expiration of the Term, this Agreement shall automatically be extended for a further period identical to the period of the initial Term, which further period shall be referred to as “the Term” or “Subsequent Term”, and where appropriate any reference in this Agreement to Term shall be deemed to include a reference to a Subsequent Term.

12.2 Mutual Termination: This Agreement shall be terminated prior to the expiration of the Term in the following circumstances:

- (a) either party gives written notice of a material breach of this Agreement, and the breach is not remedied within 30 days after receipt of the notice; or >
- (b) if either party goes into administration or liquidation either compulsorily or voluntarily (save for the purpose of reconstruction or amalgamation) or if a receiver is appointed in respect of the whole or any part of its assets or if either party makes an assignment for the benefit of or composition with its creditors generally or threatens to do any of these things, and in either event the other Party gives notice that it elects to terminate the Agreement which notice shall be effective immediately.

12.3 Other Termination: Techfusion may terminate this Agreement by giving reasonable notice to the Customer prior to the expiration of the Term set out in the Cover Sheet if:

- (a) a Regulatory Authority directs it to do so; or
- (b) a Supplier terminates an agreement to supply services to Techfusion, and as a consequence Techfusion is unable to supply Service(s) to Customer through an alternative Supplier on reasonable commercial terms.

## **13. Consequences of Termination**

13.1 In the event of termination of the Agreement prior to the expiration of the Term by reason of a default by Customer under clause 12.2(a) or by reason of actions by or on behalf of Customer under clause 12.2(b), all amounts which would have become due and payable under the Agreement had it continued in effect until the expiration of the Term shall immediately become due and payable, and Customer shall immediately pay all amounts so becoming due and payable. If Customer has made a payment for services in advance, Techfusion will apply the balance of any such payment remaining (calculated on a pro rata basis) against any amounts due and payable by the Customer, but in no other case shall Customer be entitled to a refund of such payments.

13.2 In the event of termination of the Agreement prior to the expiration of the Term under clause 13.2, and on the expiration of the Term, Techfusion will bill Customer for all services up to date of termination, and Customer will immediately pay that invoice and any other outstanding invoices.

13.3 On the expiration of the Term or on termination of the Agreement pursuant to clause 12, Techfusion will immediately cancel Services, and Customer will immediately cease using Services and any Software and Hardware provided under this Agreement.

## **14. Suspension of Services**

14.1 Events of Suspension. Techfusion may, in its sole discretion and without derogating from its right to terminate this Agreement pursuant to clause 12, at any time suspend, restrict or disconnect the supply of Services to the Customer and/or any of its customers or Users on the occurrence of any of the following events:

- (a) Customer fails to pay any outstanding invoices within 5 days of written demand by Techfusion;
- (b) Customer breaches Techfusion's Acceptable Use Policy and fails to rectify that breach immediately on written demand by Techfusion;
- (c) Techfusion is directed by any Regulatory Agency and/or authorised law enforcement agency to do so; >
- (d) During any technical failure, modification or maintenance of the Service, provided that Techfusion will use its reasonable endeavours to ensure that the Service are resumed as soon as practicable; and/or
- (e) Techfusion deems it necessary for purposes of scheduled or unscheduled maintenance.

14.2 Consequences of Suspension. Techfusion will not reconnect or re-activate Services suspended pursuant to clause 14.1(a), (b) and (c) until Customer has paid any re-connection or re-activation fee then in effect for each Service. Customer will remain liable under this Agreement for all payments falling due within the period for suspension of Services, including without limitation for all fees accruing and accrued during the suspension.

14.3 Indemnity. Customer agrees to and shall hold harmless and indemnify Techfusion against any loss, expenses, liability, damages or claim made against it by any party whatsoever (including without limitation Customer, a User or any party claiming through Customer) which Techfusion may suffer, directly or indirectly, resulting from or arising out of any actions taken by it pursuant to clause 14.1.

## **15. Amendment of these Terms and Conditions**

15.1 Amendment of Agreement: This Agreement may be amended or varied as follows:

- (a) If this Agreement is automatically extended pursuant to clause 12.1, Techfusion may, during the Subsequent Term or Terms, amend or vary the Fees charged for Services and terms relating to the operation of Services, by posting the amendments or variations in the Control Panel. Such amendment or variation shall become effective 14 days after the date of posting, and the Customer shall be deemed to have accepted such amendment if it continues to use the Services after the amendments become effective.
- (b) Techfusion may from time to time amend or vary these Terms and Conditions, its Acceptable Usage Policy and its Privacy Policy by publishing such amendments or variations on the Techfusion Website. These amendments and/or variations shall take effect from the date they are published on the Techfusion Website.

## **16. Privacy**

Techfusion may collect, use and disclose information relating to Customer for purposes related to the supply of Services, including without limitation billing and account management, business management and product development, and to the provision of information about promotions, products and services of Techfusion, in accordance with the Privacy Policy set out on the Techfusion Website <http://www.techfusion.com.au/tf/privacy.html> , but will not use such information so as to breach any Privacy Law.

## **17. Notices**

17.1 Subject to clause 17.2, any notice to be served on either of the parties by the other shall be sent by prepaid recorded delivery or registered post or by facsimile or by electronic mail and shall be deemed to have been received by the addressee within 72 hours of posting, within 24 hours if sent by facsimile to the correct facsimile number (with correct answerback), or within 24 hours if sent by electronic mail to the correct electronic mail address of the addressee.

17.2 Any notice to be served by Techfusion in relation to the variation or amendment of the terms set out in the online Plan selected by Customer, including prices for Services and terms relating to the operation of Services, during Subsequent Terms may be served by posting the amendment or variation on the Customer's Control Panel, and such notice shall be deemed effective 14 days after the date of posting of the notice.

## **18. Governing Law**

This Agreement shall be governed by the law in effect in the State of New South Wales, and the parties submit to the jurisdiction of the Supreme Court of New South Wales

## **19. General Provisions**

19.1 Assignment: The Customer may not transfer its rights or obligations under this agreement to, or share them with, anyone without prior written consent of Techfusion. Techfusion may transfer its rights or obligations under this agreement to, or share them with, anyone on notice to the Customer.

19.2 Severability: If any provision or portion of this Agreement is held to be unenforceable, it shall be enforced to the maximum extent permissible consistent with the terms hereof, and the remainder of this Agreement shall continue in full force and effect.

19.3 Entire Agreement: This Agreement represents the entire agreement of the Parties with respect to the subject matter hereof and supersedes all prior and/or contemporaneous agreements and understandings between the Parties with respect to the subject.

## 20. Definitions

- Acceptable Use Policy means the policy set out at URL <http://www.techfusion.com.au/tf/conditionsofuse.pdf> which defines acceptable and unacceptable use of the Services by the Customer.
- Techfusion means Techfusion, a reseller of Bluecentral Limited, a public corporation listed on the Australian Stock Exchange. Techfusion Network or Techfusion IP Network means the data communications network (based on TCP/IP and other Internet protocols) between the Techfusion IP routers owned and operated by Techfusion.
- Techfusion Website means the website located at the URL, <http://www.techfusion.com.au>
- Business Hours means the hours between 9 am and 5 pm on normal business days in the state of New South Wales, Australia.
- Customer means the end user of Services to whom Techfusion sell Services to, or it's authorized Resellers resell Services to.
- Privacy Law means and includes the Privacy Act (Cth) 1988, the Privacy and Personal Information Protection Act (NSW) 1988, and any other law, statute or code in Australia that regulates the dissemination and use of information about or concerning an individual person or corporation.
- Privacy Policy means the Techfusion Privacy policy as set out from the main URL page <http://www.techfusion.com.au/tf/privacy.html>
- Regulatory Authority means and includes the Australian Communications and Media Authority, the Australian Competition and Consumer Commission, the Australian Communications Industry Forum Limited, the Telecommunications Industry Ombudsman, the Internet Industry Association, the Asia Pacific Network Information Centre, authorized domain name registrars, and any other competent government or statutory body or authority having jurisdiction over Techfusion.
- Service or Services means the service or Services set out in the online Plan selected by Customer and any related Hardware, Software and additional services which Techfusion supplies in connection with the Service or Services.

- Supplier means any supplier of goods or services (including without limitation interconnection services) used directly or indirectly by Techfusion to supply Services under this Agreement.
- Term means the period of the online Plan selected by Customer and Subsequent Term means any further period for which this Agreement is automatically extended pursuant to clause 10.1.
- Usage Charges means any charges for services which are measured, calculated or determined by reference to use of the Services by Customer.
- User means any person or entity authorized by Customer to access and/or use the Services, and includes any person accessing any Customer website.

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