

# ESCAPENET - MASTER SERVICES AGREEMENT

*This Agreement forms the foundation Terms and Conditions of our service. It should be read in conjunction with the Service Supplements as detailed at <http://www.esc.net.au/terms> or as otherwise supplied.*

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## 1. DEFINITIONS

“**Accepted**” means the signing of this Agreement, or acceptance of by confirmation of password, creation of an Account, or the use of any Service provided by EscapeNet.

“**Acceptance Date**” is the date that this Agreement is Accepted.

“**Acceptable Use Policy**” refers to Our policy that forms part of this agreement and specifies our requirements in relation to Your use of Our Services.

“**Account**” refers to the account created for You by EscapeNet.

“**Agreement**” means the Terms and Conditions for Services, as included on the Application and as set out by this Document and all related documents, such as Service Supplements, and Addendums as varied from time to time.

“**Anniversary Date**” means the date which a Service will renew and begin a new period.

“**Application**” means the request for Service, whether by a paper application form, or online form or verbal contract, or email as appropriate.

“**AutoPay**” means automatic credit card or direct debit payments which are performed by EscapeNet.

“**Availability Commitment**” refers to EscapeNet’s commitment to meet the availability and restore targets (that only apply if you have an agreed service agreement).

“**Available hours**” refers to the actual number of hours that the service is available to you during a calendar month.

Available Hours also includes any unavailability of a Service that is due to the following situations:

- I. Scheduled Maintenance;
- II. unavailability of the Service due to Third Party circuits or service failures;
- III. unavailability of the Service due to your acts, omissions, your applications, your equipment, your facilities or any use that you have authorised;
- IV. unavailability of the Service due to force majeure

“**Client**” refers to the legal entity applying for the Service, being the person or company who has Accepted this Agreement.

“**Company**” means EscapeNet and its related entities.

“**Early Termination Charges**” refers to charges payable by You for terminating the Service prior to a fixed or minimum term.

“**End-User**” has the same meaning as Client.

“**EscapeNet**” means Making The Network For you Pty as Trustee for the EscapeNet Trust (ABN 27 133 173 957) and related entities.

“**Include, Including**” has its original meaning, but is to imply “but not limited to” in each usage.

“**Parties, Party**” means both EscapeNet and the Client.

“**MyAccount**” means the set of web pages at <http://www.esc.net.au/myaccount>, which allow the user to control various features of the Service.

“**Rollover Date**” has the same meaning as Anniversary Date.

“**Service(s)**” refers to the Internet access service, or other such product or service provided by EscapeNet to the Client.

“**Spam**” has the same meaning as the Internet Industry Associate Spam Code as referred to in the Spam Act 2003.

“**Such As**” has its original meaning, but is to imply “but not limited to” in each usage.

“**Ticket**” means a job or request lodged with EscapeNet’s job management and tracking software.

“**Ticket Case Number**” means the unique job number allocated from Ticket as verbally advised or returned by email to the requestors email address.

“**We, Our(s), Us**” has the same meaning as Company.

“**[Our] Website**” means a webpage within <http://www.esc.net.au>.

“**You, Your(s)**” has the same meaning as Client.

“**1 (Mb) Megabyte**” is 1,000,000 bytes.

“**1 (Gb) Gigabyte**” is 1,000 Mb.

A reference to a person includes a partnership and a body, whether corporate or otherwise;

Words in the singular include the plural and vice versa.

Headings are for convenience only and shall not affect the meaning or construction of any provision within this Agreement.

## 2. GENERAL

- 2.1 You agree to be bound by the Terms and Conditions as set out in this Agreement, as of the Acceptance Date for;
  - (i) Any Goods, or Quotation of Goods, or offer to supply Goods; and
  - (ii) Any Services provided by Us.
- 2.2 Acceptance of this Agreement and any future Amendments, and all their consequences, is implied by the creation of an Account, purchase of Goods, or by the use of any Service.
- 2.3 This Agreement includes any application or order form, and may be extended by more specific Service Supplements, which will be published and made available as specified in Clause 2.4, all of which shall be deemed to constitute one and the same document.
- 2.4 This Agreement and Supplemental policies and conditions can be retrieved from our public web server at <http://www.esc.net.au/terms>, or by request, mailed to You.
- 2.5 This Agreement is the entire agreement and supersedes any previous Agreement, whether verbal or written, between the Parties.
- 2.6 We may make amendments to this Agreement from time to time and they will become effective 21 days after being published on our public Website.
- 2.7 If the changes are considered major You will receive Notification as prescribed in Clause 15.2(i), and in addition we may publish the fact that changes have been made in our Newsletter and on the MyAccount login page. This classification decision is at our sole discretion.
- 2.8 Any Addendums to, or Modification of, this Agreement, unless provided by Us, must be in writing and counter signed by the Managing Director of EscapeNet.
- 2.9 Failure to receive or read our Terms and Conditions does not constitute acceptance-to-variation of this Agreement.
- 2.10 Should the Client be a body corporate, the directors jointly and severally accept any liabilities arising from the Agreement.
- 2.11 No waiver whether expressed or implied of any provisions of this Agreement for any breach or default of the other party will constitute a continuing waiver or a waiver of any other

provision of this Agreement unless made in writing.

- 2.12 If any section or sub sections of this Agreement are inconsistent with the provisions of the Trades Practices Act or other such Laws, those terms shall be read down in order to comply with the relevant Laws.
- 2.13 If any part of this Agreement becomes unenforceable, that part shall be separated from this Agreement so that all other parts remain effective.
- 2.14 This Agreement shall be interpreted and enforced according to the laws of South Australia ("SA"), and be subject to the non-exclusive jurisdiction of the Courts of SA and the Courts of appeal for determining any dispute concerning this Agreement.

## 3. CONDITIONS OF SERVICE

- 3.1 You agree to comply with all Policies published by Us.
- 3.2 All requests for application, change, cancellation and or suspension, where possible, of a Service, must be done in accordance with Clause 15.
- 3.3 Any alterations to this Agreement or any application forms including hard copy, verbal and/or electronic are not accepted as part of this Agreement.
- 3.4 The Goods and Services are supplied on an as-is basis.
- 3.5 You agree to be responsible for all carrier or third party charges such as telephone call costs, associated with the use of the Goods and/or Service.
- 3.6 You must bear the cost of any computer service, or repairs that are required in order to access the Service, whether or not the fault is found to be a fault or found to be within an EscapeNet system.
- 3.7 EscapeNet, in its unfettered discretion, reserves the right to deny Your Application for any of its Goods or Services. Reasoning need not be communicated to You.
- 3.8 We reserve the right to examine, modify, prioritise, delay, restrict access to and/or delete any or all such data as is stored and/or passes through Our network and/or computers.
- 3.9 We are not under any obligation to monitor stored or transiting data on Our network.
- 3.10 We will use all reasonable endeavours to ensure that the Service is promptly made available to You. We make no guarantees as to any service delivery time frame.
- 3.11 We do not warrant or represent that the Service will be error free or uninterrupted, that defects will be corrected or that any site or server that

- makes it available are free from viruses or other such dangers.
- 3.12 We do not warrant that all emails will be forwarded in a timely manner and cannot be held liable for any delay in forwarding emails. Furthermore, We will not be liable for loss of any emails caused by spam filters or by any other reason whatsoever.
- 3.13 We will take great care in ensuring data is routed correctly through our network, however we cannot and do not guarantee that all such data will reach its intended destination either within or out of Our network.
- 3.14 You agree that We may take all reasonable steps to ensure efficient operation of the Service.
- 3.15 We do not represent or warrant that virus protection software and or the firewall protecting Our Services will at all times be operating and efficient against all threats.
- 3.16 Any software provided by Us is used, installed, or resold, at Your own risk. We cannot be held liable for any claim of loss of productivity, damage to hardware or software resulting from the use of software provided.
- 3.17 You acknowledge that You have been provided with an opportunity to independently seek advice and verify the accuracy of any representation made by Us.
- 3.18 We may allocate You one or more IP Addresses for use with the Service. These addresses remain the property of EscapeNet at all times.
- 3.19 We have the right to change the IP Address which we have allocated to you by giving thirty days Notice.
- 3.20 Both Email Accounts and web hosting unless otherwise specified have a 20Mb storage.

#### 4. YOUR RIGHTS AND OBLIGATIONS

- 4.1 You must be over 18 to apply for an Account or any of Our Services.
- 4.2 You must provide complete, truthful and accurate information as necessary for the purposes of this Agreement and Your Account.
- 4.3 In respect to Our Services which are add-ons to Services provided by other companies, You agree that You are the legal lessee or an Authorised Representative of the said service.
- 4.4 You have an obligation to pay for the services that You, or a third party whilst using Your Account or Service incur.
- 4.5 You may not assign or transfer Your obligations under this Agreement, unless agreed to by Us.
- 4.6 You have an obligation to notify Us of any changes to;
- (i) The ownership of Your corporate entity;

- (ii) Your ability to pay for Services, or changes to Your solvency;
- (iii) Your contact details including phone numbers, mobile, work and fax, Postal Address, Site Address.
- 4.7 You have an obligation to minimise any breach of this Agreement.
- 4.8 If this Agreement is cancelled or terminated You have an obligation to allow Us to recover any of Our goods, equipment or software from Your premises or any third party premises.
- 4.9 It is Your obligation to:
- (i) Regularly check Your EscapeNet Account, including the provided email accounts, for Notices and updates.
- (ii) Maintain the confidentiality of Your username and password.
- (iii) Implement and maintain network security on Your network & systems.
- 4.10 You may choose to cancel a Service at any time, providing Us with Notice as set out in Clause 14 and subject to the following:
- (i) You provide us with a minimum of seven days notice of the Service to be cancelled or that You are going to transfer Your Service using the Churn process;
- (ii) The termination of the Services will be made as soon as practicable on or after Your notified specific termination date. In most cases this will be within seven days of that date;
- (iii) You will be liable for all outstanding monies incurred prior to termination for the current billing period;
- (iv) You must pay the Early Termination Charges as set out in the Fees Schedule(see Fees Schedule) within thirty days after the termination of this Agreement, if the Service is cancelled before the end of the fixed or minimum Term.
- (v) You must pay any Termination fees which are applicable on the cancellation or termination of Your service;
- (vi) If we are in material breach of this agreement for more than 30 days from Your Notice to Us, Clauses 4.10(iv) & (v) do not apply.
- 4.11 Order Withdrawals/Cancellations
- (i) If You request a service from us and cancel that request before We provide the Service, You may be liable to Us for our costs incurred in preparing to provide the Service to You, refer to the Fees Schedule.
- 4.12 Clients Rights to Change services
- (i) You can request a change to a Service with seven days Notice;

- (ii) All requests to change a service are processed on Your anniversary date, no changes will be made prior to this;
- (iii) You agree to pay the new charges ("charges") in accordance with this Agreement.

- (i) Access to relevant facilities during business hours;
- (ii) Relevant Information;
- (iii) Relevant Assistance where necessary;
- (iv) Use of customer equipment;
- (v) Telecommunication facilities;

## 5. GOODS

- 5.1 Title of Goods does not pass to You until You have paid for them in full.
- 5.2 You agree to insure and take all liability associated with any of the Goods purchased from Us, at the time of delivery.
- 5.3 It is Your responsibility to check that the Goods delivered are those documented.
- 5.4 We require payment of Goods prior to delivery. In the event that Goods are delivered to You and You do not pay for them ownership of those Goods remains with Us.
  - (i) You will be required to keep those Goods clearly marked as EscapeNet property and in addition they must be safely stored and protected.
  - (ii) We can request You deliver those goods to Us at any time, if You fail to do so, You authorise us to enter Your premises or a third parties premises to recover those goods. In reference to Clause 9 We are not held liable for any damages or losses resulting from recovering or attempting to recover those goods.
  - (iii) Clause 9.8 applies.
- 5.5 If You ordered incorrect Goods, they must be returned within seven days unopened at Your expense.
- 5.6 We will refund the retail price of those goods minus \$20 or 15% whichever is greater.

## 6. SUPPORT OBLIGATIONS

- 6.1 It is Your responsibility to seek training to use the Goods and/or Services provided by us.
- 6.2 We are under no obligation to support due to:
  - (i) Your wireless device not being able to communicate with Your Wireless Equipment;
  - (ii) Interactions between various Software packages.
- 6.3 We offer free support for use with various Services we provide. This support is deemed fulfilled after three hours per year. Additional support may be provided at our discretion.
- 6.4 In order to allow us to fulfil our obligations under this Agreement, You must make available free of charge:

## 7. OUR RIGHTS

- 7.1 We may assign Our rights and the benefit of this Agreement to a third party.
- 7.2 We may at any time schedule periods of planned interruption to the Service for the purpose of but not limited to carrying out maintenance, changes or improvements to the Service. Notice of such interruptions may be made available on Our website.
- 7.3 We have the right to route, redirect and block traffic at Our discretion and You shall have no recourse against Us for doing so.
- 7.4 We may without notice Scan and or probe any IP address ranges routed through Our network for infected systems, mis-configurations, such as open mail or proxy servers and or malicious activity.
- 7.5 We may by Notice to the You change the specifications of a Service.
- 7.6 Without limiting the above, EscapeNet, in its sole discretion, may remove or disable access to blacklisted sights as determined by the Australian Communication and Media Authority (ACMA), or copyright material, or offensive, abusive or otherwise inappropriate, which You have made accessible on the Service or Our network, without any recourse against Us. If EscapeNet;
  - (i) Becomes aware that the material infringes the copyright of a third party; or
  - (ii) Becomes aware of the facts and circumstances that make it apparent that the material is likely to infringe the copyright of a third party.

## 8. SUSPENSION & TERMINATION

- 8.1 We reserve the right to suspend or terminate any or all Services provided to You at any time without notice, for any breach of this Agreement and including but not limited to the following:
  - (i) For operational reasons;
  - (ii) For material breach of this Agreement by You, including breaches of any associated Policies as set out in Clause 2.4;
  - (iii) You have provided us with false or misleading information;

- (iv) If we reasonably suspect, or evidence suggests, illegal conduct in relation to the Service by You or any other user of the Service we provide to You;
- (v) If You represent a credit risk and we have taken all reasonable steps to give You Notice;
- (vi) For non payment of accounts and services as set out in Clause 11;
- (vii) If You become bankrupt, insolvent, subject to liquidation, receivership, administration or manager or We become aware of public notices of Your pending bankruptcy, insolvency, liquidation and that it is reasonable to believe that We are unlikely to receive or retain amounts which are due and payable;
- (viii) If there are reasonable grounds to believe that there is a threat or risk to the security of the service or the integrity of the network;
- (ix) Or that the service may cause death, personal injury or damage to property;
- (x) In an emergency, including to support emergency and other essential services;
- (xi) If, without Our written approval, You resell the Service or act as a Carriage Service Provider;
- (xii) As required or authorised by law;
- (xiii) That have not been used by You for 3 continuous months (refers to Dial-up Service only);
- (xiv) You die.
- (xv) If the Service is suspended and the grounds upon which it was suspended are not remedied by You within seven days of our Notification to You, We may terminate the Service without written notice.

You will be liable for any fees and charges incurred up to the time that the Service was terminated.

- 8.2 We can suspend or terminate any or all Services provided to You at any time with thirty days written notice, regardless of whether You are in breach of this Agreement or not. You will be liable for any fees and charges incurred up to the time that the Service is suspended or terminated.
- 8.3 On termination or cancellation of this Agreement for any reason we;
  - (i) may delete any data on any storage device;
  - (ii) send You a bill for outstanding monies (fees, charges, outstanding payments etc);

- (iii) request access to premises to recover any goods, equipment or software provided by us;
- (iv) may pursue legal avenues or remedies;
- (v) are discharged from obligations of this Agreement;
- (vi) Upon the expiration or termination of this Agreement for any reason, the provisions of Clauses 4.8,5,6,8 and 11 shall remain in force in accordance with their respective terms.

## 9. INDEMNITY & LIMITED LIABILITY

- 9.1 You agree to release and indemnify EscapeNet, our staff, agents, contractors, suppliers and any other person for whose acts or omissions You are held liable, for all liability and against any damages or loss resulting from (but not limited to);
  - (i) Termination of this Agreement;
  - (ii) Any advice or support or directions provided by an employee of EscapeNet. This advice is provided in good faith;
  - (iii) Descriptions, illustrations or specifications contained in any document including catalogues or publicly available documents produced by Us; Any Client acting on the advice of EscapeNet does so at their own risk;
  - (iv) Negligence;
  - (v) Wilful misconduct;
  - (vi) Loss or damage to any property, or injury or death of any person
  - (vii) Delays and/or inability to provision or cancel a Service or Goods;
  - (viii) Your EscapeNet Account or Service;
  - (ix) Any software provided by us;
  - (x) Data Loss;
  - (xi) Opportunity;
  - (xii) Goods;
- 9.2 This indemnity covered in Clause 9 includes without limitation an indemnity against all:
  - (i) Actions;
  - (ii) Claims and demands, including the cost of defending or settling any action claim or demand which may be instituted against us;
  - (iii) Expenses, penalties, fines (including statutory, regulatory or government);
  - (iv) Losses and damages;
  - (v) Costs (on a solicitor and own client basis and whether incurred by or awarded against us) ;

that we may sustain or incur as a result whether directly or indirectly, consequential or inconsequential.

- 9.3 Neither party is liable for any failure to perform or delay in performing its obligations under this Agreement, if failure or delay is due to anything beyond that party's reasonable control, such as acts of God, acts of war, riot, power outages, terrorism, fire, earthquakes and other disasters. If this failure or delay exceeds 60 days the other party may immediately terminate this Agreement, by giving notice. This Clause does not apply to Your obligation to pay money.
- 9.4 We make no express warranties to You except those expressly set out in this Agreement.
- 9.5 We exclude all liability to You;
- (i) For damages whether direct or indirect arising out of or in connection with this Agreement, even if we had knowledge of such liabilities, including without limitation, lost profits and damages suffered as a result of claims by any third person or one of Your customers.
  - (ii) In negligence for acts or omissions from us or our employees, agents, Suppliers or contractors arising out of and in connection with this Agreement.
- 9.6 Our liability to You for breach of any provision of this Agreement, or Non Excludable Conditions as implied by Section 69 of the Trade Practices Act 1947, is limited at Our decision to:
- (i) Resupplying the Product or Service;
  - (ii) Repairing the Product; or
  - (iii) A refund of the Product or Service;

for the period in breach, which may be considered by Us as a remedy to Our liability.

- 9.7 We disclaim all liability for, and do not accept any responsibility for, anything that may happen to You or the Your equipment, or any loss incurred by You through use of EscapeNet, the use of any of the Goods or Services provided by Us, or the suspension or termination of Your Service by Us.
- 9.8 This disclaimer of liability does not supersede or replace any other obligation expressly provided in any EscapeNet Service Level Agreement.

## 10. PRIVACY POLICY

- 10.1 It is Our policy not to disclose Your personal information to any third party unless required to do so by the Telecommunications Act 1997, or in order to:
- (i) Provide the Service;
  - (ii) Rectify faults with the Service;
  - (iii) Confirm Your identity;
  - (iv) Seek professional advice;

- (v) Notify Credit Providers;
  - (vi) Receive Credit Reporting;
  - (vii) Notify Insurers;
  - (viii) Comply with a Court order, or any lawful request;
  - (ix) Investigate, with good reason, suspected unlawful or unacceptable activity;
  - (x) As permitted under the Privacy Act 1988.
- 10.2 We may make, store and utilise any data or information pertaining but not limited to Your Account and Services with Us, such as information to establish Your identity, credit worthiness, credit standing, credit history, and credit capacity.
- 10.3 We will not disclose Your Personal Information except as prescribed in Clause 10.1, and to any extent other necessary in order to provide the Service that You have requested.
- 10.4 All communication, including emails and phone calls with EscapeNet may be recorded for training, contractual or other purposes.
- 10.5 We may receive Caller ID information regardless of whether it has been blocked.
- 10.6 We collect and store Caller ID information for calls that You make into our network or office, in order to enhance the Services that We can provide.
- 10.7 You acknowledge that Personal Information may be disclosed to a credit reporting agency. The Client acknowledges that this information may be used to notify credit providers of any credit default committed by the Client against the Company.
- 10.8 We do not sell, or share, Your Personal Information with any third party.
- 10.9 We only collect information which is necessary in order to best provide the Service to You.
- 10.10 You agree that We are able to contact You about any Goods and/or Service provided by Us.

## 11. ACCOUNTS & PAYMENTS

- 11.1 All accounts which are not paid within the specified terms may be referred for debt collection and any additional costs incurred may be borne by the Client on a full indemnity basis.
- 11.2 You agree to pay Late Fees as specified in our Fee Schedule.
- 11.3 Failure to pay an account may result in appropriate action taken to affect Your credit rating. Please note that this may affect Your ability to receive future service and finance.
- 11.4 Unless otherwise agreed in writing with EscapeNet, Accounts must be paid by one of the following approved methods:
- (i) Credit card;

- (ii) Direct debit;
  - (iii) BPAY;
  - (iv) EFTPOS;
  - (v) Cheque; or
  - (vi) Cash.
- 11.5 You agree that all monies are non-refundable, and that periodic Services are payable in advance.
- 11.6 Non-use of the Service or Account does not relieve You of any obligation to pay for the Service.
- 11.7 EscapeNet reserves the right to suspend Services provided to You for non-payment or rejection/dishonour of any payment.
- 11.8 Charges will continue to accumulate whilst any Service is suspended or disconnected where such disconnection or suspension is the result of non-payment or late payment of monies due.
- 11.9 We may terminate a Service or an Account on seven days Notice, after not receiving payment for an account that remains unpaid twenty eight days after the due date. A termination Notice will be issued advising You of the termination date. Cancellation and reconnection fees may be applicable in some circumstances.
- 11.10 At Our discretion an account keeping fee will be applied to any account which is not on AutoPay, (see Fees Schedule).
- 11.11 You agree that all periodic Services are renewed automatically until Notice is given to indicate otherwise. Such notification must be received thirty days prior to the account Anniversary Date.
- 11.12 You acknowledge that all Services are recurring, and will automatically be renewed on an ongoing basis on the Anniversary Date, unless otherwise notified in writing thirty days prior to the contract expiring.
- 11.13 We may change Your Anniversary Date with thirty days Notice.
- 11.14 You take responsibility for all recurring fixed and variable charges for the account.
- 11.15 Any payments which have been dishonoured, such as cheque and or direct debit will be subject to an Account Dishonour fee, (see Fees Schedule). This fee will be automatically added to Your next invoice.
- 11.16 At any time during the term of this Agreement We may review and modify fees for Services provided. The revised fee will become the amount payable by the You to Us for the provision of Services from their next Anniversary Date, or the date specified by Us.
- 11.17 If the revised Fee is greater than those currently payable and is not acceptable You, then You may by written notice to Us, given within forty two days of receipt of notice of the fee revision elect not to continue receiving the Services in which event this agreement shall be terminated forthwith. After termination;

- (i) You may receive an account for any outstanding monies (for usage, access, installation or equipment) owed up to the time that the service is terminated.
- 11.18 If no notice is received after forty two days it is deemed that You have agreed to the new fees.
- 11.19 Only Services which have increased in price may be terminated, if part of a fixed term contract.
- 11.20 Bundled packages may have a component increased, and another decreased in which case Clause 11.17 will only apply if the total of the bundle is greater.
- 11.21 Unless We agree in writing You must pay the fees without setoff or counterclaim or deduction.
- 11.22 At Our discretion We may charge interest, in addition to any late payment fees, on any amounts not paid by the Due Date. Interest is calculated as 2% above the Business Overdraft rates as quoted by National Australia Bank.
- 11.23 Any Notice of dispute of an invoice or claim for refund due to over payment must be received within six months of the Due Date of the invoice in question or from when the payment was made.
- 11.24 Any outstanding fees (including Early Termination Fees) and charges must be paid within 30 days of terminating this agreement.

## 12. AUTO PAY

- 12.1 You acknowledge that the addition of new Autopay details will result in all outstanding amounts being debited from your nominated Autopay account.
- 12.2 Unless alternative arrangements have been made, your Autopay will be automatically billed on:
- (i) Direct Debit - Your Anniversary or within 14 days.
  - (ii) Credit card – Your Anniversary or anytime before the Invoice Due Date.
- 12.3 Upon removal of your Autopay authority, you first give Us the right to debit all outstanding monies.

## 13. REFUND POLICY

- 13.1 If We terminate this Agreement for any breach as set out under Clause 8.1, You will not be entitled to a refund with respect to the Service and Goods
- 13.2 If We terminate this Agreement for any breach with written notice as set out under Clause 8.2, we will provide You with a refund with respect to the Services and Goods for which You have



- paid in advance but which have not been supplied by us, calculated at the applicable monthly rate;
- 13.3 If You terminate this Agreement as a result of our breach, Your only remedy will be a refund for the Services for which You have paid in advance but which have not been supplied by Us, calculated at the applicable monthly rate;
- 13.4 If We suspend the Services due to a technical failure for a significant period we will provide You with a pro rata refund in respect of the Supplies for which You have paid in advance but which have not been supplied by us, calculated at the applicable monthly rate;
- 13.5 Each Service is billed in full monthly blocks from the relevant Anniversary Date for that Service. However, if You have used any part of any full monthly block for that Service we will not provide a refund with respect to that month. If We terminate Your Service pursuant to Clause 8.2, or You terminate that Service pursuant to Clause 4.10(vi), we will refund You for any unused portion of that Service that You have paid for in advance in full monthly blocks.

**14. COMPLAINTS HANDLING**

- 14.1 EscapeNet is committed to Awesome Service. If You have a complaint please contact the Support Desk on support@esc.net.au or contact us by phone on 1300 135 235. Your complaint will be dealt with by one of our Customer Service Officers. If the matter still remains unresolved it will be directed to the appropriate manager. If You are still not satisfied with the response, You can escalate the matter to feedback@esc.net.au at which point a review and response to Your complaint will be made. In the rare case that You feel we have not satisfactory resolved Your complaint, You may contact the TIO.

**15. NOTIFICATION**

- 15.1 All notices, or formal communications, to EscapeNet must be done by the following approved methods;

- (i) By Fax to either 08-8292-5299 or 1300-136-236.
  - (ii) By Email to accounts@esc.net.au
  - (iii) By Mail to Managing Director, EscapeNet, 465 South Road, KESWICK SA 5035
- 15.2 All formal communications to the Client will be done by the any of the following approved methods;
- (i) The EscapeNet email address, and or the redirected email address as updated by the Client.
  - (ii) By Fax, Telephone and or Mail to the postal and or site address as stored in our accounting system.
- 15.3 A notice is deemed received by the Client;
- (i) By Email the first business day after it has been sent from an EscapeNet staff member.
  - (ii) By Facsimile the first business day after the successful sending of a fax to the specified fax number.
  - (iii) By Mail 3 business days after sending the letter with standard postal mail to the specified address.
- 15.4 A notice is deemed received by EscapeNet;
- (i) By Email the first business day after a Ticket Case Number has been receive by the Client from Ticket.
  - (ii) By Facsimile the first business day after the successful sending of a fax to our registered fax number.
  - (iii) By Mail 3 business days after sending the letter with standard postal mail to our registered address as shown in Clause 15.1(iii).

**FEES SCHEDULE**

Non-AutoPay Fee	\$4.95/month
Account Dishonour Fee	\$15.00
1 <sup>st</sup> Late Fee	\$5.50
2 <sup>nd</sup> Late Fee	\$55.00
Debit Recovery	\$150.00 + 15%
Post/Fax Additional copy of invoice	\$3.30/invoice

## ACCEPTABLE USE POLICY

### Purpose

This Policy describes the guidelines that EscapeNet uses in providing services to its Clients and the Clients Obligations, Our Rights, Reporting violations of this Policy and other information. Definitions for terms used in this policy can be found in the definitions section of the Master Contract Agreement.

### Application

A breach of any of the Terms and Conditions of this policy by You is strictly prohibited and may lead to the suspension or termination of Your service.

You must take responsibility for distribution, publication and enforcement of the EscapeNet Acceptable Use Policy at Your site(s).

- 1.1 Our Services may only be used for lawful and authorised purposes.
- 1.2 Storage, transmission or distribution of any material in violation of Commonwealth or State legislation is prohibited. This includes copyright material, material legally judged as threatening or obscene, or material protected by trade secret.
- 1.3 Any attempt to access or modify unauthorised computer system information or to interfere with normal system operations, whether on the equipment of EscapeNet or any computer system or network that is accessed by our Services, may result in the suspension or termination of access.
- 1.4 Unauthorised activities include guessing or using passwords other than Your own, accessing information that does not have public permission, and accessing any system on which You are not welcome. Any attempt to disrupt or interfere with users, services or equipment, may result in the termination or suspension of Your access.
- 1.5 Disruptions include distribution of unsolicited advertising or spamming, monopolisation of services, propagation of, or transmission of information or software which contains, computer worms, "trojan horses", viruses or other harmful components, using the network to make unauthorised entry to any other machine accessible via EscapeNet, sending harassing or threatening e-mail, and forgery or attempted forgery of e-mail messages and Usenet news postings.
- 1.6 In this policy "Spam" is considered one or more unsolicited electronic messages with an

Australian link as described in the Spam Act 2003

- (i) You are not permitted to use EscapeNet's Service to send, assist in sending or allow to send Spam;
  - (ii) You are not permitted to use or distribute software that is designed to harvest email addresses;
  - (iii) knowingly or unknowingly breach the Spam Act 2003 or the Spam Regulations 2004 (Cth)
  - (iv) You are not permitted to allow the service provided to You to host any device or service that allows email to be sent to third parties
  - (v) You agree to minimise the risk to any service provided to You by installing and maintaining firewall and antivirus software and application of operating system and application software patches and updates
  - (vi) We reserve the right to suspend, cancel or terminate Your service regardless of whether the breach was committed intentionally or not
  - (vii) We may scan any IP address allocated to You in order to detect misconfigurations on mail and proxy servers
- 1.7 You will be held liable for, and hereby indemnify EscapeNet for, all costs and damages, attributable to the Your unauthorised activities or disruptions.
  - 1.8 You must not use, or allow any other person to use, the Our network and systems for any activities of an illegal or fraudulent nature, including any activities prohibited under the Telecommunications Act 1989 (Cth), the Crimes Act 1958 or under other applicable state and/or Commonwealth Laws.
  - 1.9 It is Your responsibility not to store on any EscapeNet system, transfer or cause to be transferred over the EscapeNet network, reproduce or make available for distribution through the EscapeNet network, any data where the storage, reproduction, transfer, or distribution of, that data is in contravention of the Copyright Act 1968.
  - 1.10 We do not and cannot monitor or control the content and information accessed via any of Our Services; EscapeNet only provides access.
  - 1.11 We shall not be held responsible in any way for the content of the information accessed via EscapeNet or offered for public access via EscapeNet.
  - 1.12 It is Your responsibility to avoid whatever is found to be offensive or obscene on any system.
  - 1.13 The Client must take responsibility for and indemnify EscapeNet against any costs, loss or

damage that we may suffer as a result of material placed on our network and systems, and the statements made in mediums including web pages, e-mail, chat or discussion forums and Usenet news.

- 1.14 Content providers must clearly identify material unsuitable for minors and refrain from contributing prohibited material including material deemed obscene under the Classifications (Publications, Films and Computer Games) Act 1995. Failure to comply with relevant legislation by You or Your users and customers may lead to suspension or termination of Your access.

## **Our Rights**

- 1.15 We reserve the right to act in any appropriate manner, where there are reasonable grounds for suspecting that illegal or unacceptable usage of the EscapeNet network and systems is occurring. This action may involve removing information we consider to be offensive, abusive, and inappropriate whether or not it is considered as unlawful.
- 1.16 We reserve the right to suspend, cancel or terminate Your services if You breach this Acceptable Use Policy
- 1.17 EscapeNet co-operates fully with Commonwealth and State Police and other bodies investigating unlawful behaviour on or via its network or systems.

## **Reporting Violations of this Policy**

- 1.18 To report a violation of EscapeNet's Acceptable Use Policy, please send details, including any documentation, article or email to [abuse@esc.net.au](mailto:abuse@esc.net.au).