



Habitat3 Virtual Private Cloud

Service Supply Agreement

EXAMPLE PTY LTD

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THIS DEED dated _____ day of _____ 2021

BETWEEN Habitat3 PTY LTD ACN 102 628 893 of L5, 20 Bond Street, SYDNEY NSW 2000
(principal place of business) ("Habitat3")

AND EXAMPLE PTY LTD ACN: of Address (principal place of business) ("Client")

RECITALS

- A. Habitat3 is an Australian company providing Australian based Virtual Private Servers (VPS) hosting and other cloud-based services.
- B. Client wishes to utilise those services.
- C. This Deed sets out the terms and conditions of the provision of those services by Habitat3 to Client.

OPERATIVE PART

1. Interpretation

This deed is governed by the laws of Queensland and the parties submit to the non-exclusive jurisdiction of the courts of that jurisdiction.

In the interpretation of this deed:

- (a) References to legislation or provisions of legislation include changes or re-enactments of the legislation and statutory instruments and regulations issued under the legislation;
- (b) Words denoting the singular include the plural and vice versa, words denoting individuals or persons include bodies corporate and vice versa, words denoting one gender include all genders, and references to documents or agreements also mean those documents or agreements as changed, novated or replaced;
- (c) Defined words or phrases are listed at clause 21 of this Deed.
- (d) Grammatical forms of defined words or phrases have corresponding meanings;
- (e) Parties must perform their obligations on the dates and times fixed by reference to the capital city of Queensland;
- (f) Reference to an amount of money is a reference to the amount in the lawful currency of the Commonwealth of Australia;

- (g) If the day on or by which anything is to be done is a Saturday, a Sunday or a public holiday in the place in which it is to be done, then it must be done on the next business day;
- (h) References to a party are intended to bind their executors, administrators and permitted transferees; and
- (i) Obligations under this deed affecting more than one party bind them jointly and each of them severally.

2. Our Service

- (a) We warrant that all of our storage is located within the Commonwealth of Australia.
- (b) Our service related obligations are published in Our *Service Level Statement* at: www.habitat3.net.au/service-level-statement
- (c) We set out Our obligations in terms of protecting Your Personal Information within Our *Privacy Policy* published at: www.habitat3.net.au/privacy-policy

3. Your Data

- (a) Your data stored within Our Virtual Private Servers remains Your property.
- (b) We will only allow access to Your data on receipt of a verified request from the Account Holder.
- (c) At any time including as part of a service cancellation We will only provide access to Your data by way of an email to the Account Holder's registered email address.
- (d) We set out Our obligations in relation to the provision of Your data within Our Data Provision Policy published at: www.habitat3.net.au/data-provision-policy

4. Billing and Payments

4.1. First Invoice

- (a) Your first VPS subscription invoice will be issued on the day you are provided with passwords and are able to log in to your VPS.
- (b) The go live date is the date your VPS is required to be accessible to you or your software vendor to deploy their software.
- (c) You will confirm in writing your required go live date prior to the commencement of the server build process.
- (d) We will confirm the go live date with you and book that into our schedule.
- (e) If you delay your go live date for any reason, we will still invoice you on the initial nominated and agreed go live date as we will have built and deployed the server within our platform on your request.

4.2. Monthly billing cycle

- (a) Your monthly subscription invoice will be issued on the same date each month. Payment of this invoice is due within 7 days of the invoice date. Your Direct Debit will be processed in accordance with the email you receive with this invoice.
- (b) All invoices are issued for all services in advance (eg. adding or removing user accounts or data storage) that are active at midnight (Sydney time-zone) on the date of invoicing.
- (c) Any changes to your service (eg. adding or removing user accounts or data storage) will be reflected on the next invoice following the date the changes were requested.

4.3. Payment process and fees

- (a) You agree to pay each invoice via the Integrapay direct debit service (this can be done using your bank account or credit card).
- (b) Your relationship is directly with Integrapay for making payments. We do not collect or store or control your personal information in relation to your payments including your credit card or bank account details.
- (c) Integrapay does store and collect your personal information including your credit card or bank account details. The Integrapay Privacy Policy at <https://www.integrapay.com.au/privacy-policy> outlines how this information is managed.
- (d) Integrapay charges fees as follows:- Credit Card direct debit: A credit card surcharge is applicable on all direct debit transactions paid with a credit card. This surcharge fee will be included in the total transaction amount appearing on your credit card bank statement and will therefore not match your invoice total. We are not able to include the processing fee in your monthly invoice as this surcharge is garnered directly by Integrapay (our payment processing provider). Surcharge is \$0.33 plus 1.98% of invoice (3.50% for AMEX)
- Bank Account direct debit: Surcharge is FREE
- (e) Payments are processed within 4 business days of your invoice being issued.
- (f) If a direct debit payment is declined a \$4.40 fee will be added to your invoice.
- (g) If payment is not received within 7 days after the date of issue an email reminder will be sent to your nominated email address.
- (h) If payment is still not received within 9 days after the date of issue a text message reminder will be sent to your nominated mobile phone, your server will no longer be accessible and a reconnection fee of \$55 inc GST will be added to your invoice.
- (i) The server will not be reconnected until the full invoice has been paid including the reconnection fee.
- (j) If we have not received payment after 30 days of the date of issue your unpaid invoice will be made void and your service will be terminated. Once your service has been terminated your virtual server and all associated data will be permanently deleted from our system. You will be advised of the termination of server and data deletion by email at least 24 hours prior to the termination date.

4.4. Pricing and Pricing amendments

- (a) Monthly subscription pricing is listed at: <https://www.habitat3.com.au/pricing-hosted-servers>.

- (b) Monthly Fees may be amended from time to time and any change in our fees will be communicated to you by email providing at least one days' notice before your next invoice.
- (c) We are an online merchant located in Australia.
- (d) All time-billed invoices are treated in the same way as your subscription fees. After-hours service requests will incur additional fees.
- (e) Our pricing may increase between 2-5% per year (in July each year) unless otherwise advised.

5. Managing Your Account

5.1. Account Holder

- (a) The Account Holder is defined in clause 21 of this Agreement. You must provide the Account Holder's mobile telephone number and email address at Schedule B of this Agreement. The Account Holder must sign this Agreement
- (b) If the Account Holder changes due to the sale of the client entity, a restructure or any other cause, the existing Account Holder must sign a Change of Account Holder form. This form is provided on request. The form must also be signed by the new Account Holder and a copy of photographic identification for the new Account Holder provided.

5.2. Authorised Representative

- (a) The Account Holder may nominate an Authorised Representative who can manage most aspects of your Virtual Private Server (VPS) service but cannot:
 - (i) Terminate this Agreement;
 - (ii) Nominate another Authorised Representative;
 - (iii) Request a full copy of data via FTP or Hard Drive;
 - (iv) Make any changes to the identity or details of the Account Holder.
- (b) It is the Account Holder's responsibility to monitor the activities of the Authorised Representative. We are not liable in any way for any damage or loss which flows, howsoever caused, by the activities of the Authorised Representative in managing your VPS service.
- (c) Only the Account Holder can nominate a new Authorised Representative.
- (d) It is the responsibility of the Account Holder to remove an Authorised Representative when appropriate to do so.

5.3. Passwords

It is Your responsibility to select strong passwords for all Our related services (eg; servers and secure web-portal), to change them regularly and to safeguard them appropriately.

6. Microsoft Licencing

You agree to be bound by the Microsoft End User licensing terms as set out in Schedule A of this agreement.

7. Insurance

It is Your responsibility to maintain appropriate levels of Cyber Insurance cover at all times.

8. Australian Privacy Legislation

- (a) You are responsible for ensuring that You comply with Australian privacy legislation. If you are unsure of Your obligations under that legislation You should seek independent legal advice.
- (b) Outsourcing the hosting of your applications or data to Us does not relieve You of Your obligations under Australian privacy legislation or any other law.
- (c) We recommend that you undertake a Privacy Impact Assessment in accordance with the guidelines published by the Office of the Australian Information Commissioner.

9. Site Requirements

- (a) The computers, local network and Internet connections from which You access Our services must meet Our site requirements. These requirements are set out in Our Site Requirements Policy published at: www.habitat3.net.au/site-requirements-policy . If those requirements are not met We cannot ensure that the Service we provide will function optimally or at all.
- (b) If You host a Webserver with Us, You must install all appropriate security and AntiVirus software, manage IIS and all Webserver related functionality including security and encryption, be responsible for ensuring the use of the VM complies with the law (eg. copyright infringements etc) and submit support tickets to Us via Our website. We are not responsible for any loss howsoever caused in relation to Your hosting of a Webserver.

10. Acceptable Use Policy

10.1. Policy

You agree to at all times abide by the conditions of the Acceptable Use Policy published at www.habitat3.net.au/acceptable-use-policy

10.2. Consequences of Breach

In the event that You fail to abide by the conditions of the Acceptable Use Policy, We may, at our absolute discretion, do any or all of the following:

- (a) warn you of the failure and require you to take steps to remedy it;
- (b) without prior warning, suspend your service until such time as the failure has been remedied;
- (c) without prior warning, terminate this Agreement without notice as set out in clause 11.2(b) of this Agreement.

11. Termination of Service Supply Agreement

11.1 Termination by Client

- (a) You can terminate this Agreement at any time by completing the Termination Request form located within the secure helpdesk portal, accessible only by the Account Holder. No other notice from you to terminate the Agreement will be considered effective.
- (b) Once We receive your Termination Request form, the Agreement will be terminated on the last day of your next billing cycle. Full fees for that billing cycle will be payable.
- (c) Habitat3 will verify the Account Holder cancelling the service is still an Authorised Representative of Client prior to proceeding with cancellation.

11.2 Termination by Us

- (a) We can terminate this Agreement at any time by sending written notice to Your nominated Account Holder's email address, nominating a termination date no less than 30 days after service of the written notice.
- (b) We can terminate this Agreement without prior notice to You should you breach a material term of this Agreement.
- (c) If we have not received payment after 30 days of the date of issue of your last invoice this Agreement will automatically terminated on that day.
- (d) If You have not accessed your server for a period in excess of 6 months, we send written notice to Your nominated Account Holder's email address asking You to confirm that You wish to continue the service. If we do not receive that confirmation after 30 days from the date of that written notice this Agreement will automatically terminated on that day.

11.3 Access to Data after Termination of the Agreement

- (a) If the Agreement is terminated under clause 11.1 or clause 11.2 of this Agreement and You complete the relevant section of the Termination Request Form requesting a copy of your data, We will provide Your data to You in accordance with our Data Provision Policy as published at : www.habitat3.net.au/data-provision-policy
- (b) Your VPS will be deactivated and inaccessible at 1800hrs AEST on the day this Agreement is terminated.
- (c) Fourteen (14) days after the day your VPS is deactivated all data contained within the VPS will be deleted.

12. Confidentiality

The parties must keep the terms of this deed confidential, save for any necessary disclosure to their respective legal and financial advisers.

13. Entire agreement

This deed, including annexures, is the entire agreement and understanding between the parties on everything connected with the subject matter of this deed, and supersedes any prior understanding, arrangement, representation or agreements between the parties as to the subject matter contained in this deed.

14. Amendment

From time to time the terms and conditions under which we provide Services change. We will communicate any significant changes to this agreement to You via email. Your continued use of Our service after any changes have been communicated to You will be deemed acceptance of those changes.

15. Dispute resolution

If a dispute arises between the parties, the complainant must not commence any court or arbitration proceedings, except where that party seeks urgent interlocutory relief, unless it has first complied with this clause:

(a) Notification

The complainant must inform the respondent in writing of the following:

- (i) The nature of the dispute;
- (ii) The outcome the complainant desires, and
- (iii) The action the complainant believes will settle the dispute.

(b) Endeavour to resolve dispute

On receipt of the complaint by the respondent, both parties will make every effort to resolve the dispute by mutual negotiation within 14 business days.

(c) Mediation

Any unresolved dispute or difference whatsoever arising out of or in connection with this contract shall be submitted to mediation under the Mediation Rules of the Resolution Institute.

(d) Survival of this clause

This clause survives termination of this deed.

16. Waiver

16.1 Delay

No delay or failure by Us to enforce any provision of this Agreement will be deemed to be a waiver or in any way prejudice its rights.

16.2 Previous Waiver

Any waiver by any party to a breach of this deed shall not be deemed to be a waiver of a subsequent breach of the same or of a different kind.

17. Limitation of Liability and Indemnity

17.1 Limitation of Liability

- (a) To the extent permitted by law, We are not liable for any indirect, special or consequential loss or damage incurred by You, including but not limited to liability for loss of profits, loss of business opportunity, loss of savings, or loss of data or access to data.
- (b) In the event that We are held liable for any loss of any kind suffered by You, You agree that the damages to which You are entitled in respect of that loss is capped, in the aggregate, at an amount equivalent to the fees paid by You to Us in the 12 months preceding the breach (or where there are multiple breaches, at an amount equivalent to the fees paid by You to Us in the 12 months preceding the last breach).
- (c) Further, We will not be liable for any direct or other loss or damage to the extent You caused or were responsible for such loss or damage or the loss or damage was caused by a matter beyond Our control, including but not limited to where caused by any of Our suppliers.
- (d) In all cases software vendors are responsible for the functionality of the software they provide including when it is hosted on Our platform. We do not warrant or guarantee any of the functionality of the software and do not accept any liability for any direct or indirect damages suffered by You through the use of the software.
- (e) Neither party shall be liable to the other party for any loss caused by any failure to observe the terms and conditions of this Agreement, where such failure is occasioned by causes beyond its reasonable control including but not limited to by fire, flood, riot, strike, war, restrictions and prohibitions or any other actions by any government or semi government authorities.

17.2 Australian Consumer Law

- (a) Any services supplied by Us to You may come with implied non-excludable guarantees which are regulated by the Australian Consumer Law (ACL). The extent of the implied guarantees depends on whether You are a 'consumer' as defined in the ACL.

- (b) Nothing in this Agreement excludes, restricts or modifies any condition, warranty, guarantee, right or remedy to which you are entitled under the ACL.
- (c) However, if you are entitled to the benefit of the ACL and the services provided by Us are not ordinarily acquired for personal, domestic or household use or consumption, then pursuant to section 64A of the ACL, We limits Our liability for breach of any such non-excludable warranty, guarantee, right or remedy implied by the ACL or expressly given by Us to You, in respect of each of the services, at Our option, to one or more of the following:
 - (i) the supplying of the services again; or
 - (ii) the payment of the cost of having the services supplied again.

17.3 . Release and Indemnity

- (a) You acknowledge that Our obligation to store your data is not ongoing. Following termination of this Agreement, your data will be deleted pursuant to clause 11.3 of this Agreement. You hereby release Us and Our officers, employees and agents from all claims, actions, suits, demands, costs, damages and expenses arising out of or related to the deletion of Your data pursuant to clause 11.3 of this Agreement.
- (b) You indemnify Us and Our officers, employee and agents (Indemnified Parties) against any direct, indirect and consequential liabilities, losses, damages, expenses and costs (including legal expenses on a solicitor and own client basis) incurred or suffered by any of the Indemnified Parties as a result of any allegation, claim or proceedings brought by a third party against any Indemnified Party in connection with:
 - (i) any material, data and/or content generated, uploaded and/or submitted by You (or any of Your customers or clients) to Us, in the course of Your or their use of any services that We make available to You;
 - (ii) any material, data and/or content that You host with Us;
 - (iii) Your breach of the Privacy Act and/or any other applicable law (including, but not limited to, the General Data Protection Regulation (GDPR)); and/or
 - (iv) Your breach of this Agreement.

18. Severance

If anything in this deed is unenforceable, illegal or void, it is severed, and the rest of the deed remains in force.

19. Notices

A notice or other communication to a party must be in writing and delivered to that party or that party's practitioner in one of the following ways:

- (a) Delivered personally; or

- (b) Posted to their address when it will be treated as having been received on the second business day after posting; or
- (c) Faxed to their facsimile number when it will be treated as received when it is transmitted; or
- (d) Sent by email to their email address when it will be treated as received when it enters the recipient's information system.

20. Costs

Each party will pay their own costs in relation to this deed.

21. Definitions

- (a) "We", "Our", "Us" means Habitat3 Pty Limited ACN 102 628 893.
- (b) "You", "Your" means the Client as identified in this Agreement.
- (c) "Account Holder" means:
 - (i) If the Client is a sole trader, that individual;
 - (ii) If the Client is a single director company, that director;
 - (iii) If the Client is company with multiple directors, the director nominated as the Account Holder in Schedule B of this Agreement;
 - (iv) If the Client is a trust or charity or another form of incorporated body or unincorporated association, the proper officer nominated as the Account Holder in the Schedule B of this Agreement.
- (d) "Authorised Representative" means the person authorised by the Account Holder to manage your VPS save for the exceptions listed in clause 5.2(a) of this Agreement.
- (e) "Personal Information" has the meaning assigned to that term in the *Privacy Act 1988* (Cth).
- (f) "Webserver" means server software, or hardware dedicated to running this software, that can satisfy client requests on the World Wide Web.

SCHEDULE A – Microsoft Licencing Agreement

Microsoft End User Licensing Terms

1. We license Microsoft software under a Service Provider Licensing Agreement between us and Microsoft (SPLA).
2. It is a requirement of the SPLA that Our clients (users of Our services) agree: not to remove, modify or obscure any copyright, trademark or other proprietary rights notices that are contained in or on the Microsoft products (Products); not to reverse engineer, decompile, or disassemble the Products, except to the extent that such activity is expressly permitted by applicable law; to disclaim, to the extent permitted by applicable law, all warranties by Microsoft and any liability by Microsoft or its suppliers for any damages, whether direct, indirect, or consequential, arising from the provision of software services associated with the Products; to abide by all of Microsoft's intellectual property rights protections; not to use the Products in a manner that Microsoft considers a "high risk use" – for example manufacturing machinery (we are able to provide Microsoft's full definition of this type of use on request); to indemnify and hold harmless Microsoft from any third-party claim arising out of your use of the Products in connection with any High Risk Use, and you agree to all of those terms.
3. We agree to: provide technical support to the end user of the Our services in relation to the Products and disclose end user related information (company name and address) to Microsoft if/when requested by Microsoft.
4. Please note that Microsoft will be an intended third party beneficiary of the end user using the Our services as Microsoft licensing is used by the users of the Our services and license fees are paid by us to Microsoft. Microsoft also has the right to enforce provisions of the End User Agreement as part of the SPLA and to verify compliance by you of your obligations under the SPLA.
5. In all cases, on all VPS machines hosted by us, the SPLA applies. This includes the use of "SPLA on SPLA DataCentre licensing" whereby other SPLA holders may use their agreements with Microsoft to license components of servers resold. No other Microsoft licenses may be used for software installed/used on any Habitat3 servers.
6. At all times Habitat3 clients must comply with Microsoft's End User Licensing Agreement (download at www.habitat3.net.au/doc-downloads)

Schedule B: Account Holder & Authorised Representative Details

Account Holder Details

- The Account Holder is in full control of the service provided by Habitat3 to the client and controls access to the service and any data stored by the client within the service
- Account Holder must be a signatory to this Agreement
- Only one person may be nominated as the Account Holder

Name _____

Driver's license (or other photo ID) is required to verify identity

Email _____

Mobile _____

Required for security and verification purposes

Upload signed Agreement, Schedule B and Account Holder's photo ID to the
Secure Data Upload facility or email to contracts@habitat3.net.au

Authorised Representative Details (if required)

- Authorised Representative means the person authorised by the Account Holder to manage the client account save for the exceptions listed in Section 5.2 of the Service Supply Agreement.

Name _____

Email _____

Mobile _____

Required for security and verification purposes

Account Holder photo ID

Execution page

EXECUTED AS A DEED

Executed by
HABITAT3 PTY LTD

ACN: 102 628 893

.....
Sole Director

JOHN PERKINS

Executed by
Example PTY LTD

ACN:

Sign:

Sole Director/Secretary

NAME