

Definition. "AppServe" in this document shall mean AppServe Pty Ltd

When you request AppServe Pty Ltd ABN 34 129 779 835, of Leichhardt, NSW 2040, to host on AppServe's server, the software listed on your application form, you should be aware of certain obligations and conditions once the sign up form is received by AppServe. Firstly, please be aware that when you sign the application form you are signing to say that you acknowledge and accept the AppServe Standard Form of Agreement. So you should take the time to read and understand it and call us if you would like any help interpreting these documents. IMPORTANT: IF YOU CHOOSE TO ACCEPT THIS AGREEMENT, YOU MUST DO SO AS IT IS PRESENTED TO YOU—NO CHANGES (ADDITIONS OR DELETIONS) WILL BE ACCEPTED BY APPSERVE. AppServe Pty Ltd may change, add or remove any part of this Agreement, at any time. If it does so, AppServe will pre inform you via the email address you enter on this form.

Using AppServe as a Host

To use AppServe as a host, please complete all information contained in this form. This information will be used for the purposes of supplying you with the service, and to administer your account with us. You may review, save or print any part of this Agreement. For your security and privacy, it is important that you provide all the information we request. We will use it to verify your identity when dealing with you over the phone or via email. The requested information includes your date of birth and company IT Personnel details. Your email address will be used to alert you of your order status via emails as well as service disruptions and maintenance schedules.

You cannot use AppServe as a host until you have accepted the terms of this Agreement, and you must abide by the terms of this Agreement in order to have the right to use AppServe as a host. Your use of AppServe as a host is also subject to AppServe's corporate Privacy Policy (attached as section 3). This applies to this Agreement and the Privacy Policy as they currently exist and as they may be revised from time to time by AppServe.

You must also be aware that some software companies require you to obtain a special hosting licence or registration number before we can allow the hosting of that software on our servers. One such company is MYOB Pty Ltd. All Software companies require you to have fully up to date legal licences of their software.

Payment Details

The setup fee has to be paid at the signing of the Hosting Application form.

Please note AppServe will not refund the set up fee if the applicant terminates the contract at any time. The setup fee is a one off payment.

The AppServe hosting service is normally provisioned and activated by no later than 7 days thereafter at which time AppServe will commence billing.

AppServe reserves the right to change prices or to institute new charges for its services or any portion of the contract at any time, upon prior notice of 30 (thirty) days.

Price changes and institution of new charges implemented during your membership period will apply to subsequent membership periods and to all new AppServe users after the effective date of the change. All pricing changes will be posted on the AppServe website and emailed to you, and such posting shall be considered sufficient notice to you of such changes. You are responsible for regularly reviewing pricing information as posted and emailed so that you have notice of such changes. Your continued use of AppServe or your failure to terminate your subscription, after any such changes are posted (or made effective) will constitute your acceptance of the prices. AppServe will charge the usage fee and/or its services to the credit card account provided by you. You also agree that AppServe may automatically charge your credit card for continued usage without further authorisation from you, unless and until you provide AppServe with at least five (5) days' prior notice that you do not wish to continue your subscription to AppServe or that you wish to change your previously designated credit card account. You will be required to provide notice that you do not wish to continue your subscription with AppServe by an email followed by a phone call. If you do not elect to continue your subscription with AppServe, all Content you have created and stored using AppServe as a host will be incarcerated (not be accessible to you) and you may incur charges to retrieve your data. (See "Authorisation to Incarcerate Content", below.)

If AppServe does not receive payment from your credit card issuer or its agents, you agree to pay all amounts due from you upon demand by AppServe.

Availability of Service

While AppServe makes reasonable efforts to ensure that its service is available at all times, AppServe does not guarantee, represent or warrant that AppServe's services will be uninterrupted or error-free, and AppServe does not guarantee that users will be able to access or use all the features at all times. Subject to any specific license agreements for various hosted softwares, AppServe may change, suspend or discontinue any (or all) aspects of its services at any time. You must read and accept any separate software or other license agreement or terms of use for particular services if you elect to use those services.

AppServe also does not guarantee or warrant that any Content you may have in your account will not be subject to inadvertent damage, corruption or destruction. Even though AppServe will always automatically back up everything twice daily (2 times a day) and maintain the incremental backup for thirty (30) days, you are responsible for backing up, on your own account, any important documents, images or other Content. Unless otherwise expressly provided in the terms of any service offered as a host, AppServe will not be responsible for any archiving or backup of any such information. If any data, messages, images or other Content in your account and stored on the AppServe system is damaged, lost or corrupted in any way, AppServe will have no obligation or liability to you except as otherwise expressly set forth in any applicable individual software license agreement for any particular software.

Our Liability

These terms and conditions set out the full extent of our obligations and liabilities in respect of the supply of the Services and there are no warranties, conditions or other terms that are binding on us except as expressly stated in the Contract. Any warranty, condition or other term concerning the Services which might otherwise be implied into or incorporated in the Contract by statute, common law or otherwise (including without limitation any implied term as to quality or fitness for purpose) is hereby expressly excluded.

Notwithstanding the above conditions, nothing in the Contract excludes, restricts or modifies any condition, warranty, right or liability implied in this Contract (including any condition, warranty, right or liability imposed by the Trade Practices Act 1974) where to do so is illegal or would render any provision of this Contract void.

Nothing in the Contract shall limit or exclude our liability for death or personal injury caused by our negligence. Subject to the conditions above, we will not be liable under the Contract for any loss of income, loss of profits, loss of contracts, loss of data or for any indirect or consequential loss or damage of any kind howsoever arising and whether caused by tort (including negligence), breach of contract or otherwise.

Illegal and prohibited conduct

Your AppServe host may be used only for lawful and proper purposes. The laws and rules that apply in the off-line world must be obeyed on-line as well. Posting, transmitting, promoting, using, distributing or storing Content that could subject AppServe to any legal liability, whether in tort or otherwise, or that is in violation of any applicable law or regulation, or otherwise contrary to commonly accepted community standards, is prohibited, including information and material protected by copyright, trademark, trade secret, nondisclosure or confidentiality agreements, or other intellectual property rights, and material that is obscene, defamatory, constitutes a threat, or violates export control laws. If AppServe elects to terminate your right to use its service as a result of any illegal or prohibited conduct, AppServe may elect, in its sole discretion (subject to applicable law), not to refund any prepaid fees or other amounts to you.

Examples of prohibited conduct are:

- Posting obscene Content (including child pornography)
- Planning illegal activity, such as building a bomb or counterfeiting money
- Advertising a lottery, ammunition, firearms, tobacco, alcohol, illegal drugs and drug-related paraphernalia
- Pretending to be anyone you are not—you may not impersonate or misrepresent yourself as another person (including celebrities), another AppServe user, an AppServe employee, or a civic or government leader; AppServe reserves the right to reject or block any client user name which could be deemed to be an impersonation or misrepresentation of your identity, or a misappropriation of another person's name or identity
- Using false statements to get, or to attempt to get, account information or other private information from AppServe users
- Engaging in copyright infringement or other intellectual property infringement, or disclosing trade secret or confidential information in violation of a confidentiality or nondisclosure agreement
- If you believe that illegal or other prohibited Content is being transmitted through AppServe service, you may report it by contacting the administrator of AppServe Pty Ltd.

AppServe reserves the right to cooperate with law enforcement authorities, including complying with warrants, court orders and subpoenas. In addition, AppServe reserves the right to comply with any civil court orders and/or subpoenas. If AppServe decides to investigate or resolve possible misuse involving you or anything you do on the AppServe server, AppServe is entitled, except to the extent prohibited by applicable law, to disclose any information about you in AppServe's possession in connection with your use of it as a host and anything you do with AppServe to law enforcement or other government officials, as AppServe in its sole discretion believes to be necessary or appropriate. By your acceptance of this Agreement and your use of AppServe as a host, you authorise AppServe to take any such actions.

Objectionable conduct and content

It is essential that all Content on the AppServe server reflect the provisions of this Agreement. AppServe reserves the right to incarcerate (withhold access to) Content if AppServe becomes aware of any Content in any area which, in AppServe's judgment, does not conform to this Agreement. AppServe may send you a warning about the violation of this Agreement if your account is responsible for putting objectionable Content on-line, but we reserve the right not to do so. At all times, AppServe reserves the right to terminate, with or without notice, the accounts of its users who violate this Agreement. In such a case, you will not be entitled to any refund of your subscription or usage fees you may have paid (subject to applicable law).

Examples of objectionable conduct and Content that violate the AppServe acceptable use policy are:

- Harassing, threatening, or embarrassing another user, including unsolicited commercial communications
- Stalking another AppServe or Internet user ("cyberstalking")
- Transmitting, storing or facilitating distribution of Content that is harmful, abusive, violent, racially or ethnically offensive, lewd, vulgar or (in a reasonable person's view) objectionable
- Posting Content that defames, abuses or threatens physical harm to others or yourself

Please remember that these are only guidelines; there are always "grey areas." Ask yourself if your communication is something that you would say in a room full of people you never met, or in the work place. However, AppServe reserves the right to make the final determination about whether Content is objectionable or not.

If you encounter something you find inappropriate, you may report it by contacting the administrator of AppServe Pty Ltd.

Software licenses

To access the particular softwares hosted by AppServe, a valid License number, Registration Number and/or Serial Number has to be provided with an agreement on the provisions relating to the software license. Nothing in these provisions, however, supersedes any terms of any end-user license for software provided with your computer or any separate software application provided to you as part of AppServe.

AppServe provides you with a limited license to use the server as a host provided you agree to do so in accordance with these rules. You may not sub-license, or charge others to use or access, this software. AppServe will occasionally provide automatic upgrades to improve your online experience.

Authorisation to incarcerate content (deny access to clients)

AppServe reserves the right to disable your access and to incarcerate any Content you may have stored on AppServe's account under the following circumstances:

- Upon cancellation of your subscription
- If your credit card is declined or the card issuer (or its agent or affiliate) seeks return of payments previously made to AppServe

AppServe will notify you via email to your Email address, or an alternative email account, that your access to AppServe account will be deactivated and that any Content residing in your account at the time of deactivation will be Incarcerated and you may be charged a fee for retrieving your data.

Disclaimer of warranties; liability limitations

YOU EXPRESSLY AGREE THAT YOUR USE OF, OR INABILITY TO USE, THE APPSERVE SERVICES IS AT YOUR SOLE RISK. APPSERVE SERVICES ARE PROVIDED "AS IS" AND "AS AVAILABLE" FOR YOUR USE, WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT. BECAUSE SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, THE ABOVE EXCLUSION OF IMPLIED WARRANTIES MAY NOT APPLY TO YOU.

APPSERVE DOES NOT GUARANTEE THAT ANY CONTENT, INFORMATION, SOFTWARE OR OTHER MATERIAL ACCESSIBLE THROUGH APPSERVE WILL BE FREE OF VIRUSES, "WORMS", "TROJAN HORSES", OR OTHER HARMFUL COMPONENTS. APPSERVE'S ENTIRE LIABILITY AND YOUR SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO THE SERVICES PROVIDED BY APPSERVE SHALL BE CANCELLATION OF YOUR ACCOUNT.

IN NO CASE SHALL APPSERVE PTY LTD, ITS DIRECTORS, OFFICERS, EMPLOYEES, AFFILIATES, AGENTS OR CONTRACTORS BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES ARISING FROM YOUR USE OF APPSERVE OR FOR ANY OTHER CLAIM RELATED IN ANY WAY TO YOUR USE OF THE APPSERVE SERVICE. BECAUSE SOME STATES OR JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR THE LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, IN SUCH STATES OR JURISDICTIONS, APPSERVE'S LIABILITY SHALL BE LIMITED TO THE EXTENT PERMITTED BY LAW.

EXCEPT AS EXPRESSLY SET FORTH IN ANY SEPARATE SOFTWARE LICENSE OR IN THIS AGREEMENT, APPSERVE DOES NOT ENDORSE, WARRANT OR GUARANTEE ANY THIRD-PARTY PRODUCT OR SERVICE OFFERED THROUGH APPSERVE AND WILL NOT BE A PARTY TO OR IN ANY WAY BE RESPONSIBLE FOR MONITORING ANY TRANSACTION BETWEEN YOU AND ANY THIRD PARTIES THROUGH APPSERVE. YOU HEREBY RELEASE APPSERVE PTY LTD FROM ANY AND ALL OBLIGATIONS, LIABILITY AND CLAIMS IN EXCESS OF THESE LIABILITY LIMITATIONS.

General

The Contract will be governed by the law of New South Wales. Both we and you irrevocably and unconditionally submit to the non-exclusive jurisdiction of the courts of that state. The invalidity or unenforceability of any provision of the Contract shall not adversely affect the validity or enforceability of the remaining provisions. Neither our failure nor your failure to enforce any term of the Contract constitutes a waiver of such term. Such failure shall in no way affect the right later to enforce such term. We will not be liable for any loss or damage suffered or incurred by you arising from our delay in fulfilling or failure to fulfil or otherwise discharge any of our obligations under the Contract, to the extent that such delay or failure is caused by any circumstance beyond our reasonable control.

AppServe's Customer Privacy Policy covers the collection, use, and disclosure of personal information and all business data that may be collected by AppServe any time you interact with the AppServe server, such as when you visit your account, our website, and when you purchase our services. Please take a moment to read the following to learn more about our information practices, including what type of information is gathered, how the information is used and for what purposes, to whom we disclose the information, and how we safeguard your personal information. Your privacy is a priority at AppServe, and we go to great lengths to protect it.

Why we collect personal / business information and how we use it.

We collect your personal / business information because it helps us deliver a superior level of customer service. It enables us to give you convenient access to our service and focus on categories of greatest interest to you. In addition, your personal information helps us with the billing and to keep you posted on the latest announcements, software updates, special offers, and events that you might like to hear about. Furthermore, it helps us relate to you in business with greater efficiency and effectiveness.

We shall only look/ access your data files to:

1. Troubleshoot/debug problems reported by you
2. Verify functionality of your applications after system upgrade / routine maintenance

When we disclose your information

AppServe takes your privacy very seriously. AppServe does not sell or rent your contact information to other marketers and all the content is only accessible by the sole IT Administrator of AppServe Pty Ltd. At times we may be required by law or litigation to disclose your personal information. We may also disclose information about you if we determine that for national security, law enforcement, or other issues of public importance, disclosure is necessary.

How we protect your personal information

AppServe takes precautions — including administrative, technical, and physical measures — to safeguard your personal information against loss, theft, and misuse, as well as unauthorised access, disclosure, alteration, and destruction. You can help us by also taking precautions to protect your personal data when you are on the Internet. Change your passwords often using a combination of letters and numbers, and make sure you use a secure web browser like Safari or Internet Explorer. Also after subscribing your business with AppServe, The AppServe IT Administrator will only disclose the ID and the Password to the contract Signee. Disclosing your Id and Password to your employees or partners is entirely your decision.

Integrity of your business and personal information

AppServe has safeguards in place to keep a thirty (30) days back up of your personal information and business data accurate, complete, and up to date for the purposes for which it is used. Naturally, you always have the right to access and correct the personal information and business data you have. Also, you can request a copy of the previous thirty (30) days data, by contacting the IT Administrator of AppServe Pty Ltd at the email address below followed by a phone call.

Our commitment to your privacy

As we said, AppServe takes protecting your privacy very seriously. To make sure your personal information is secure, we communicate these guidelines to AppServe employees and strictly enforce privacy safeguards within the company. Also we only provide the Id and the Password to the signee of this contract. You may share the ID and the Password with any person at your own trust.

Privacy Questions

If you have questions or concerns about AppServe's Customer Privacy Policy or data processing, please use the AppServe Administrator's email addresses (see list below) to contact us. The AppServe Data Controller in your region will respond to your inquiry within 24 hours.

AppServe may update its privacy policy from time to time. When we change the policy in a material way a notice will be posted on our website along with the updated privacy policy.

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