



SUBSCRIBER AGREEMENT

BETWEEN

Acenet Internet Services Pty Ltd, having its' registered office at Michael Coughlin & Company Level 7/193 North Quay Brisbane Qld 4000 (the "Company")

AND

The person specified in the attached Application as the Subscriber

WHEREAS

A. The Company also makes available the services described in Schedule A (the "Services").

B. The Company provides Subscribers with Data held in certain Databases via the System.

C. The System and Services are made available to the Subscriber wishing to subscribe to them subject to the terms and conditions set out below.

1. **Definitions**

"Agreement" means these terms and conditions and any accepted Application;

"Application" means the form of application to become a Subscriber to the System submitted by the Subscriber to the Company;

"Commencement Date" means the date the Company allows the Subscriber access to the System;

"Company" means Acenet Internet Services P/L and any of its Providers, or associated companies;

"Data" means any material stored in a Database including any publicly available data information, programs and other works;

"Database" means the Databases made available to the Subscriber by the Company which comprise part of the System;

"Dealing" includes the following acts, namely to publish, sell, copy, reproduce, redistribute, adapt, publicly perform, transmit to the subscribers of a diffusion service, corrupt, distort, mutilate, modify or derogate from any part of the Data, whether in human or machine readable form;

"Email" means electronic messages stored by the Company on the Subscriber's behalf;

"Equipment" means the Subscriber's equipment used to access the System and use the Services including Software and Hardware;

"Internet" refers to a logically linked global information system;

"Login Name" means the login name as set out in the Application;

"Provider" means any supplier of Services, Software, Hardware, Data and/or Database to the Company;

"Services" means the access to the system provided by the Company to the Subscriber and each User;

"Subscriber Workspace" means the Database area made available to the Subscriber by the Company;

"Subscription Period" means subject to clause 15, the term the Subscriber is permitted access to the System as set out in the Application;

"System" means the Company's equipment and programs used for subscribers to access the Databases and Services;

"User" means a person who accesses the System or uses the Services using the Subscriber's Login Name and Password;

"User Charges/Subscription Fees" means the charges specified in the Company's Web Site subject to alteration under the Agreement.

2. **Term**

This Agreement and access to the System and Services will commence on the Commencement Date and will continue for the Subscription Period.

3. **Acceptance of Application**

3.1 Upon acceptance by the Company of the Subscriber's Application, the Company shall supply the Subscriber with a:

(a) Copy of documentation to assist in accessing the System, if requested (the "Set Up Instructions");

(b) Login Name which shall be the same as the Login Name specified on the Application, unless the Company chooses to allocate a different Login Name for administrative or other reasons at the time of application or at a later date;

(c) Login Password to be used with its Login Name to access the System. The password received from the Subscriber on the Application will be requested as authorisation to reset or alter the Subscriber's Login Password at any time in the future.

3.2 The Company reserves the right to refuse an application to be a Subscriber. If the Company does refuse an application it shall refund all moneys received by the Company in connection with the application.

3.3 The Subscriber acknowledges that the Company may provide information concerning the Subscriber (including, without limitation, the information provided in the Application to the Company and any information concerning the Subscriber's use of the System, Services, Data or Databases) to third parties for marketing or other purposes.

3.4 The Subscriber acknowledges that by agreeing to the Subscriber Agreement, consent is given for the receiving of Acenet commercial electronic messages including but not limited to the Acenet newsletter.

3.5 The Subscriber acknowledges that by agreeing to the Subscriber Agreement, the Subscriber and any User must comply with any Acceptable Use Policy as published by the Company from time to time.

4. **Special Conditions**

The Company can issue special conditions to apply to access to or use of the System and Services. Any special conditions issued by the Company shall be published on the Company's Web Site. Any special conditions that are inconsistent with these terms and conditions shall override these terms and conditions to the extent of the inconsistency.

4.1 The Company may at its discretion require the Subscriber to use certain configurations and/or software to ensure correct use of the system.

- 4.2 The use of the Company's proxy server is required for all Users of internet access, unless expressly permitted by the Company.
5. **Availability of the System**
- 5.1 Subject to 5.2, the Company shall use all reasonable endeavours to ensure that the System and Services will, (subject to other terms of this Agreement) be available at all times during the Term of this Agreement.
- 5.2 The Parties acknowledge that the hours of operation of the System may be altered from time to time and that there may be downtime of the System (whether for maintenance or otherwise).
- 5.3 Without limiting any other parts of clause 5, the Subscriber acknowledges that:
- (a) the System or Services might not be available for access during any equipment or services malfunction or breakdown, electrical storm, electrical short circuit, power failure, telecommunication failure or fault, industrial dispute or other cause beyond the control of the Company, or during any period of shutdown, Database unavailability or inability of the System to provide access, whether or not as a result of a cause within the control of the Company; and
 - (b) the Databases, the System and/or the Services may be discontinued at any time by the Company without notice to the Subscriber if the Company's license or authority to use a Database or provide the Service is withdrawn, restricted or altered in such a way that the Company considers it undesirable to continue to provide the Database or Services to Subscribers or any claim is made that the inclusion of information, data, program, code or material in a Database infringes the rights of a third party, or exposes the Company to liability to any third party or to liability for prosecution for an offence or liability to a statutory penalty or the Company is otherwise obliged to discontinue provision of the information.
- 5.4 No compensation or other amount of any kind shall be payable by the Company in respect of any loss of access or functionality referred to this clause 5.
6. **Data and Services**
- 6.1 The Company may:
- (a) from time to time add to or vary the Data and Services on the System without the consent of the Subscriber. The Company however will publish any such changes on the Company's Web Site where appropriate.
 - (b) amend the terms and conditions of use, amend programs, information and facilities from time to time at its sole discretion even if that amendment results in a loss of functionality of the System, a reduction in the Services or a reduction in the availability of Data or Services in the System.
- The Subscriber must not do, nor permit, any User to do any act or thing in relation to Data which would infringe any party's copyright or moral rights, nor modify, delete or corrupt the Data (except for deletion of any Email messages) or otherwise tamper with any Data, the System, Services or a Database.
7. **Compliance with Laws and other Conditions of Use**
- 7.1 The Subscriber acknowledges that use of the Data, Databases, System and Services may from time to time be subject to certain legal regulations, conditions (including any license conditions) and restrictions ("legal requirements"). The Subscriber shall ascertain and comply with these legal requirements including but not limited to those prescribed in the Crimes Act 1914 (Cth); the Copyright Act 1968 (Cth) and the Spam Act 2003 (Cth).
- 7.2 Without limiting clause 7.1, the Subscriber and each User shall not send, transmit, access or download any Data which is offensive, defamatory, abusive, obscene, menacing, threatening, harassing or illegal under any law at any place where transmissions are sent from, viewed or received.
- 7.3 Without limiting clause 7.1, the Subscriber and each User shall not send, access or download any Data which to the Subscriber's or User's knowledge contains any computer virus or has not been classified or approved in accordance with any applicable censorship or other laws.
- 7.4 Without limiting clause 7.1, the Subscriber and each User shall not, without proper authorisation, use the System or Services to gain access to information in a restricted access computer system or to use a restricted access computer system, or use the System or Services to contribute to or aid the commission of a crime or to infringe the rights of a third party.
- 7.5 Without limiting clause 7.1, the Subscriber and each User shall not send or transmit commercial electronic messages without the appropriate characteristics or infrastructure deemed approved as per the Spam Acts Bill 2003, including but not limited to the sending or transmitting of commercial electronic messages without prior consent from the receiver.
8. **Conditions of Use of Subscriber's Equipment for Access to the System**
- 8.1 The Company may at any time require the Subscriber to disconnect its Equipment or any part or parts of its Equipment from accessing and using the System or Services if, in the opinion of the Company, that Equipment is or has been the cause or is likely to be the cause of failures, interruptions, errors or defects in the System or Services.
- 8.2 The Subscriber must not without the Company's consent:
- (a) make any additions, deletions, modifications, adjustments or alterations to any Data (excluding Email messages and or Subscriber Workspace), the System or a Database;
 - (b) attempt to rectify or permit any persons other than the Company or its agent to rectify any fault or inaccuracy in any Data (excluding Email messages and or Subscriber Workspace), the System or a Database;
 - (c) otherwise tamper with any Data (excluding Email messages and or Subscriber Workspace), the System or a Database; or
 - (d) use the Equipment (when dealing in any way with any Data or the System or Services) in a manner which is inconsistent with this Agreement.
- 8.3 The Subscriber shall be responsible for all supply and maintenance of their Equipment including Software.
9. **Subscription Charges**
- 9.1 The Subscriber shall pay to the Company the User Charges and Subscription Fees as specified on the Company's Web Site. The Company may vary these charges from time to time by giving notice on the Company's Web Site.

- 9.2 The Subscriber shall pay all charges incurred by the use of its Login Name, Equipment or Software irrespective of whether that use is authorised or not.
- 9.3 The Subscriber shall pay interest to the Company on any late payments calculated on a daily basis until payment at a rate of 12% per annum.
- 9.4 There shall be no reduction or refund of the amount payable under clause 9.1 or any part thereof if this Agreement terminates under clause 16.
- 9.5 The Company reserves the right to adjust accounts by an appropriate amount for re-imburement of excess or additional charges incurred by the User in the use of the Subscribers account.
- 9.6 Subscribers are responsible for any Federal or State taxes including Goods and Services Tax.
10. **Intellectual Property Rights**
The Subscriber and each User shall rely upon its own enquiries concerning the existence and scope of any intellectual property rights relating to the Internet, the System, the Services, any Data or a Database and shall be responsible for obtaining any consent, approval or license from the holders of any intellectual property rights required to enable the Subscriber and/or each User to deal with any relevant Data or to do any act or thing in relation to those intellectual property rights.
11. **Subscriber Duties**
- 11.1 The Subscriber shall notify the Company immediately it becomes aware of any:
- (a) infringement of any third party's intellectual property rights as a result of information being made available on a Database or by use of the System or Services;
 - (b) the existence of any Data, code, program or other material of the kind referred to in clause 7.2; or any use of the System or Software by the Subscriber or any User which may infringe clause 7.3; or 7.4; or 7.5.
12. **Suspension of services**
- 12.1 Should the Subscriber not use the Services within any 30 day period, the Company reserves the right to suspend, discontinue or withdraw services in accordance with the Company policies stated on the Companies Web Site.
- 12.2 Should the Subscribers account expire or fall into arrears, the Company reserves the right to suspend, discontinue or withdraw services in accordance with the Company policies stated on the Companies Web Site or at the Companies discretion.
13. **Disclaimer of Accuracy**
- 13.1 The Subscriber and each User acknowledges that all of the information, Data, programs and material accessed from a Database other than a Company Database and much of the information, Data, programs and material accessed from a Company Database is not generated or checked by the Company and that the Company therefore makes no representation concerning the completeness, truth or accuracy thereof or its suitability for any purpose contemplated by the Subscriber.
- 13.2 The Subscriber and each User acknowledge that information entered by the Subscriber through the System may be accessed by other Subscribers to the System and Services and third parties. Neither the Subscriber nor any User shall enter on the System or any Database any information which is confidential to a person other than the Subscriber or that User except with the prior consent of the person to whom the information is confidential.
14. **Liability**
- 14.1 Subject to clause 13.2, the Company shall not be liable in contract, tort (including negligence) or otherwise for any liability, direct, indirect or consequential loss or damage or lost profits, revenues or expectations sustained by the Subscriber or User directly or indirectly making use of any Data, a Database, the System or the Services including but not limited to:
- (a) any loss or damage resulting as a consequence of any defects, delays, interruptions or failures in the System or Services;
 - (b) the existence, transmission or execution of any computer virus via the System, any Data, a Database or the Services;
 - (c) any loss of data or software or damage to Hardware or Software resulting from such virus or use of the System or Services;
 - (d) any act or omission of the Company, or
 - (e) inaccuracies or errors in or omissions from any Data or a Database.
- 14.2 Any liability of the Company of the kind referred to in clause 13.1 which, by law, is unable to be excluded is limited to the minimum sum permitted by law. Where the Company's liability is in respect of a breach of a condition or warranty to which section 68A(1) of the Trade Practices Act 1975 (Cth) applies, the Company's liability shall be limited to the amounts described in that section.
- 14.3 The Subscriber and each User fully releases and discharges the Company from all liability which may arise in respect to any material on a Database or Data which is accessed through the System which is in any way defamatory. This release and discharge shall apply in respect to each jurisdiction in which the defamatory material is published.
- 14.4 The Subscriber and each User fully releases the Company from all liability which may arise in respect of any dealing (by any person including the Company) with Data in which the Subscriber or that User holds any copyright or other intellectual property right.
The Subscriber and each User represent to the Company that the Subscriber is not relying on the System or Services having any particular performance characteristics, response times or availability.
15. **Indemnity**
The Subscriber undertakes to keep the Company indemnified at all times against all actions, proceedings, costs, claims, demands, liabilities and expenses whatsoever including legal costs and expenses on a full indemnity basis and other fees and disbursements sustained, incurred or paid by the Company directly or indirectly (whether or not as a result of the Company's negligence in whole or in part) in respect of:
- (a) the access to and/or use by the Subscriber or a User of any Data, a Database, the System or the Services;
 - (b) any information, Data, or material obtained, accessed or published by the Subscriber of any User in whole or in part from, or by use of any Data, a Database, the System or any Service;
 - (c) any breach by the Subscriber or a User of any provision of this Agreement or any schedule; or

- (d) any omission of failure to perform by the Subscriber or a User under the terms of this Agreement.
16. **Termination**
- 16.1 Notwithstanding any other provisions of this Agreement, the Company in addition to any rights it may have under law or statute, may forthwith terminate this Agreement by written notice to the Subscriber if any of the following events occur:
- (a) if the Subscriber or a User is more than 24 hours in default of payment of any sum due to the company under this agreement;
 - (b) if the Subscriber or a User commits any other breach of the terms or conditions of this Agreement including the terms, conditions and provisions of any schedule and the Subscriber fails to remedy such breach within one (1) day after receiving written notice from the Company requiring it so to do;
 - (c) if the Company in its sole discretion determines the Subscriber or any user has used the Database, System or Services in an unacceptable manner; or
 - (d) if the Company in its sole discretion determines the Subscriber or any user has been offensive to any of the Company's staff or behaved in an unacceptable manner; or
 - (e) if the Subscriber becomes, threatens or resolves to become subject to any form of insolvency administration, ceases or threatens to cease conducting business in the normal manner, being a partnership, is dissolved or being a natural person dies.
- 16.2 Subscription plans invoiced on a monthly, quarterly or yearly basis are for a minimum twelve (12) month contract period, except Unlimited Dialup Accounts which are for a minimum six (6) month contract period, unless specified elsewhere. After the initial minimum contract period, termination of these subscriptions by the Subscriber must be given in writing with at least 30 days notice. Early termination of such plans can be effected providing the Subscriber pays the full balance of the contracted period.
- 16.3 Termination of this Agreement shall be without prejudice to any accrued rights of either party and shall not affect obligations which are expressed not to be affected by expiry or termination hereof.
17. **Force Majeure**
If the Company is unable wholly or in part to perform any obligation under this agreement as a result of a Force Majeure event, that obligation is suspended so far as the Company's ability to perform it is affected by that Force Majeure event.
18. **Waiver**
The failure of any party to this Agreement at any time to insist on performance of any provision of this Agreement is not a waiver of its right at any later time to insist on performance of that or any other provision of this Agreement
19. **Severability**
Part or all of any clause of this Agreement that is illegal or unenforceable and does not go to the essence of this Agreement will be severed from this Agreement and will not affect the continued operation of the remaining provisions of this Agreement.
20. **Miscellaneous**
- 20.1 Any notice or other communication in connection with this Agreement is taken to have been duly given when made in writing, signed by a party or a representative of either party and delivered or sent by post, electronic mail or facsimile to the party to which such notice or communication is intended to be given, at the addresses set out on the Form or to such other address or facsimile number as may from time to time be notified in writing by one party to the others for the purposes of this clause. A notice sent to a Subscriber by electronic mail or facsimile or published on the Company's Web Site shall be deemed to be in writing.
- 20.2 The Subscriber shall not, without the prior written consent of the Company, assign or transfer this Agreement or any of its rights under this Agreement to any other party. The Company may assign all or any of its rights to any other party but shall notify the Subscriber of the assignment.
- 20.3 The Subscriber must be a legal person. Any minor seeking access must do so as a User of a Subscriber's account. Supervision of such a User shall be the responsibility of a Parent or Guardian of the minor.
- 20.4 Failure or neglect by the Company to enforce at any time any of the provisions of this Agreement shall not be construed nor shall be deemed to be a waiver of the Company's rights hereunder nor in any way affect the validity of any part of this Agreement nor prejudice the Company's rights to take subsequent action.
- 20.5 This Agreement shall be governed and construed in all respects in accordance with the law of Queensland. The parties submit to the non-exclusive jurisdiction of the courts of Queensland and the Federal Courts of Australia.

SCHEDULE A

Internet Access Subscribers

Provision of access to the Internet includes the following: electronic mail, access to information databases, downloading files, World Wide Web as detailed on the Company's web site at <http://www.acenet.net.au/policy/companypolicy.asp>

Email Account Subscribers

Provision of email access includes electronic mail only as detailed on the Company's web site at <http://www.acenet.net.au/policy/companypolicy.asp>

Web hosting Subscribers

Provision of Web Hosting services includes the following: web publishing, access to web site databases, electronic mail, statistical information as detailed on the Company's web site at <http://www.acenet.net.au/policy/companypolicy.asp>