

## Services Agreement

### Terms and conditions on which Computer Emergency provides services to consumers

Computer Emergency provides services on the following terms and conditions.

#### 1. The meaning of some words used in these terms and conditions

**We, us** or **our** is a reference to Computer Emergency;

**You** or **your** is a reference to the person to whom we are providing our Services and who is required to pay for the Services we provide;

**Materials** means any materials, goods, parts or items we need to buy in order to perform the Services;

**Parties** is a reference to both us and you;

**Premises** means the place where we will provide the Services; and

**Services** means the help we will provide in connection with computer repairs, IT support, graphic design, web design & website hosting. The precise Services we will be providing to you will be stated in the estimate and as we agree from time to time.

#### 2. Entering into a legally binding contract

(a) A contract between you and us will come into being in one of two ways:

- (i) When you sign the estimate we and you will enter into a legally binding contract on the date you sign.
- (ii) Where you and we agree orally that we should provide the Services then there will be a legally binding contract on the date of our oral agreement.

(b) We suggest that before you sign the estimate or orally agree to us providing Services that you read through these terms and conditions. If you have any questions concerning them, please ask us.

(c) You should keep a copy of these terms and conditions for your records.

#### 3. Providing the Services

(a) Once we and you have entered into a legally binding contract we will normally start providing the Services to you straight away or on a date agreed between us without further discussion with you. Occasionally the Services will be provided at some other date or time or be dependent on a number of factors.

(b) Our aim is to always provide you with the Services:

- (i) using reasonable care and skill;
- (ii) in compliance with commonly accepted practices and standards in IT industry; and
- (iii) in compliance with New South Wales laws and regulations in force at the time we are carrying out the Services.

#### 4. Days and times when we normally provide the Services and performance of Services away from the Premises

(a) Unless you and we agree otherwise, we will provide the Services on normal

working days and start work no earlier than 9am unless you are notified that I will be on holidays and finish work no later than 5pm unless you are notified that I will be on holidays. A normal working day for us means Mondays to Fridays, excluding any bank or other national holidays.

- (b) The performance of some of the Services may take place away from the Premises.

## **5. Materials**

At the time we perform the Services we may not have all the Materials we need to perform the Services. This may be for a number of reasons such as:

- (a) we have not provided an estimate and cannot reasonably establish what Materials are necessary until we start performing the Services; or
- (b) where we have provided an estimate, it may not have been reasonably possible to establish the need for particular Materials at the time we provided the estimate. The need for the particular Materials may only be revealed when we start performing the Services; or
- (c) whether or not we have provided an estimate, the condition of an item or the area which is the subject of the Services may only become apparent when we start performing the Services and it was not reasonably possible to establish it until that point.

In such cases we may need to purchase Materials. If the Materials are available from a local supplier, then we normally wish to travel to the supplier and purchase the Materials and return to continue performing the Services. We normally charge for the travel time at our normal charging rate. If the Materials are not available from a local supplier we normally order the Materials and return on another occasion to continue to perform the Services. We will not charge you for any time spent in obtaining Materials if we have brought or ordered the wrong Materials. In such circumstances we will normally charge for the time spent in making telephone calls to suppliers or our office to locate the required Materials.

## **6. Timing**

### **6.1 Our responsibility to perform the Services by particular dates**

We aim to carry out the Services by the dates and times we either agree with you or notify to you. But we cannot guarantee or provide a firm commitment that:

- (a) we will start performing the Services by a specified date or time; or
- (b) we will complete the performance of all the Services by any specified date or time; or
- (c) the performance of any individual part of the Services will be completed by a specified date or time.

### **6.2 What can happen if we cannot start performing the Services or complete performing the Services**

- (a) If we do not start or complete performing the Services within a reasonable period from the date(s) we have agreed or notified, then you may either:
  - (i) choose to continue to wait until we can start performing the Services or complete performing them; or
  - (ii) terminate the contract.
- (b) Where we have started performing the Services and you decide you wish to terminate the contract you will only have to pay for any Services we have

performed up to the date of termination and for any Materials which we have legal obligation to pay for. If you have made payment(s) to us in excess of the amount of Services we have performed or Materials we have purchased, we will return the difference to you within 7 days of the termination.

- (c) What is a reasonable period of time depends on the type of Services we will be performing and the length of time they will take to perform. For example, if you and we believe that the Services will take only a few hours to perform, then if we fail to start performing the Services within eg half a day then you may have the right to terminate the contract. But if the Services are due to take several weeks to perform, then if we fail to start to perform the Services after a couple of weeks when we are due to or we do not perform the Services during a couple of weeks when we were due to, then in such circumstances you may be entitled to terminate the contract.

### 6.3 Situations or events outside our reasonable control

- (a) In addition, there are certain situations or events which occur which are not within our reasonable control (some examples are given in paragraph (b), directly below). Where one of these occurs we will normally attempt to recommence performing the Services as soon as the situation which has stopped us performing the Services has been resolved. In such circumstances there may be a delay (sometimes a substantial delay) before we can start or continue performing the Services.
- (b) The following are examples of events or situations which are not within our reasonable control:
  - (i) if the Materials are not delivered on the date or at the time agreed with the supplier of the Materials (and it is not possible to obtain a replacement from an alternative supplier at all or within a reasonable amount of time, or the price charged by the alternative supplier is excessively higher than by the original supplier if ordered at short notice);
  - (ii) where you make a change in the Services you wish us to perform (and this results in, for example, us having to do further work or wait for new or different Materials);
  - (iii) where we have to wait for other providers of services (who have been engaged by you) to complete their work before we are able to perform the Services (or the relevant part of the Services dependent on the other provider if ordered at short notice);
  - (iv) where we are unable to gain access to the Premises to carry out the Services at the times and dates we have agreed with you;
  - (v) where the areas in the Premises have not be readied by you as we and you have agreed in order for us to perform the Services;
  - (vi) for other some unforeseen or unavoidable event or situation which is beyond our control.
- (c) The following are examples of events or situations which are not within our reasonable control:
  - (i) continuing to wait until we are able to recommence performing the Services. If you are required to make any payments during this period (for example if we and you have agreed that you will pay us in staged amounts) then we will not require you to make any of the payments required until we are able to recommence performing the Services; or

- (ii) allowing you to terminate the contract. If you choose this option, then you will only have to pay for any Services we have performed up to the date of termination and for any Materials for which we have a legal obligation to pay. If you have made payment(s) to us in excess of the amount of Services we have performed or Materials we have purchased, we will return the difference to you within 7 days of cancellation.

## **7. Price, estimates and payment**

### **7.1 Our charges based on time spent**

We normally charge for our Services on a time basis. We charge for each 1 hour block we spend in providing our Services. Our rates, excluding GST, for performing the Services are set out on our website.

The following is an example of how our charging structure works: If we complete performing the Services within 50 minutes where the charging period is 30 minutes we will charge for 2 x 30 minute periods. If we go over into another 30-minute period by a few minutes, at our discretion, we may charge up to the last period completed.

### **7.2 Our charges based on an estimate**

- (a) If we provide an estimate, then we will charge you the amount stated in the estimate rather than a charge based on the time taken in performing the Services. Note: we only provide estimates and not quotations or binding indications of how much we will charge. Estimates are normally valid for a period of 7 days from the date they are given.
- (b) As we provide an estimate we may need to charge you a higher amount than stated in the estimate. This can occur for a number of reasons, in particular where:
  - (i) what you require us to do changes, or the amount of work or Services you require us to provide increases or is different to what we and you agreed before we started performing the Services; or
  - (ii) when we start performing the Services it becomes apparent that the amount of Services we will need to perform or the type of work that is involved is different to what we agreed before we started performing the Services and we could not reasonably foresee this before we started performing the Services.
- (c) Where the amount of work involved is greater than that stated in an estimate (as set out in paragraph (b)) then following will happen:
  - (i) if the amount of extra time we need to spend to finish performing the Services will mean that the extra amount payable by you will not exceed 10% of the amount stated in the estimate, then we will carry on providing and completing the Services without contacting you and obtaining your agreement;
  - (ii) otherwise we will not continue performing the Services and we will seek your approval to the extra amount that you will need to pay, unless:
    - (A) it is not possible to contact you within a reasonable time; or
    - (B) it is not safe not to carry out and finish performing the Services (for example, your goods or premises may be left in a dangerous condition or unprotected from theft if the Services are not completed).

### **7.3 When payment is required**

Payment for our Services and the Materials is normally made in two ways, either:

- (a) at the time we finish performing the Services; or
- (b) in a number of staged payments, often involving:
  - (i) the payment of a deposit of 50% before we commence performing the Services; and
  - (ii) the payment of the remaining amount we will be charging you either on completion of the Services or in a number of fixed payments paid at regular periods.

Which option we will use will be indicated on the estimate.

#### **7.4 GST**

All amounts stated (whether orally or in writing) are exclusive of GST.

#### **7.5 If you do not pay when required to**

If you fail to make payment by the date or time we and you agree, we may:

- (a) charge you interest (at an interest rate of 10%) on any outstanding amounts if those outstanding amounts remain unpaid for more than 7 days from the date of our invoice or when we asked you first to pay them; and/or
- (b) if the amounts not paid represent more than 50% of the total value of the Services we are to perform for you, and there remain some Services which we have not yet performed, then we may suspend performing the remaining Services until you make payment.

#### **7.6 Where you seek to not pay amounts due to us**

You will not refuse to pay any amount owing to us where there is only a minor or inconsequential defect or error in the performance of the Services. You will be entitled only to refuse to pay no more than a proportionate amount of any amount due.

### **8. Exclusion and limitation of liability**

- (a) We do not exclude or limit liability for our negligence or negligent omission which causes you personal injury or death.
- (b) We shall only be liable for any loss or damage suffered by you which is a reasonably foreseeable consequence of a breach by us of this contract. In the event that any loss or damage suffered by you relates to your business activities then we exclude all liability for any business loss and in particular we exclude all liability for loss of profits or other economic loss arising out of a breach of this contract.

### **9. Communicating with us**

- (a) You can always telephone (our contact numbers are 0414899254).
- (b) However, for important matters we suggest that you use writing and send any communications by post to 83 Algoori Street, Morningside QLD 4170, Australia (although we do accept e-mails).

### **10. Termination of contract by you**

- (a) Once we and you enter into a binding contract you will normally not be able to terminate the contract, except where we agree or as otherwise provided for in this contract.
- (b) If we agree to terminate the contract, then you will be responsible for the cost of:
  - (i) any of our time in performing the Services up to the date we stop providing the Services; and

- (ii) any Materials we are contractually committed to buying up to the date of termination (whether or not we need to pay for them before or after the date the contract between us and you is terminated). Any Materials we have purchased (but not used in performing the Services) will be delivered to you.
- (c) In the circumstances stated in paragraph (b) we will first deduct the amounts for which you are responsible from any deposit you have paid. Any remaining deposit will be returned to you. If the amount owing is greater than the deposit, we will return invoice you for the amount in excess of the deposit.
- (d) If you:
  - (i) purport to terminate the contract; or
  - (ii) give notice purporting to terminate the contract; or
  - (iii) otherwise do not fulfil your obligations (such as by not paying any sums due to be paid to us) in a way which amounts to you terminating the contract,we do not have to accept your termination of the contract except as provided in paragraph (b) or as otherwise provided for in this contract. However, we may choose to accept termination of the contract, and if we choose to do so you will be required to pay to us a reasonable amount for the losses and costs (including loss of profit) we have suffered. If you have paid a deposit, this will be retained and if our reasonable losses and costs (including loss of profit) are greater than the deposit we have retained we will require you to pay for our losses and costs in excess of the deposit retained.

## **11. Amendments to the contract terms and conditions**

We will have the right to amend the terms and conditions of this contract where:

- (a) we need to do so in order to comply with changes in the law or for regulatory reasons; or
- (b) we are changing the rates we charge for the provision of Services as provided for in clause 7; or
- (c) we need to correct any errors or omissions (and this right includes the right to change any of the documentation which forms part of the contract), as long such correction is minor and does not materially affect the contract; or
- (d) we need to correct any errors or omissions (and this right includes the right to change any of the documentation which forms part of the contract), as long such correction is minor and does not materially affect the contract.

Where we are making any amendment we will give you 30 days' prior notice (unless the contract is terminated before that period).

## **12. Contacting each other**

If you wish to send us any notice or letter then it needs to be sent to 83 Algoori Street, Morningside QLD 4170, Australia. If we wish to send you a letter or notice, we will use the address you have provided.

## **13. Law and jurisdiction**

This Agreement takes effect, is governed by, and shall be construed in accordance with the laws from time to time in force in Queensland, Australia. The Parties submit to the non-exclusive jurisdiction of the courts of Queensland.