

## 1. DEFINITIONS

In this document, the following words have these meanings:

- "You", "Your", "Customer", "Member(s)", or "User(s)" means a "Subscriber" to the Service, or any person who accesses the Service using the subscriber's access details;
- "Service(s)" means any product(s) or services(s) the Customer has ordered for use.
- "Vaerith", "Vaerith Webhosting", "We", "Us", "Our" means Vaerith (ABN 46 930 389 900).
- "ToS" means Terms of Service.
- "AUP" means Acceptable Use Policy.
- "Agreement(s)" means "ToS", "AUP" and "Privacy Policy".
- "Members Area" or "Client Area" means our online portal to manage all Services and not limited to the members domain name(s), web hosting, dedicated servers, and security certificates, direct access to the Client Area
- "Website" means [www.vaerith.net.au](http://www.vaerith.net.au) and any other applicable page associated and/or linked.

## 2. GENERAL

These terms and conditions of Service (collectively, with Vaerith's "Privacy Policy" and "Acceptable Use Policy") governs your use of the Website and the Services, features, content or applications operated by Vaerith (together with the Website, the "Services"), and provided to the Subscriber.

Please read these Terms of Service carefully before using the Services. If You do not agree to these terms of service, You must not use the Services and You should exit the website and stop use of the services immediately.

These Terms of Service apply to all User's of the Services, including without limitation any sub-users of User's Service. Using the Services in any manner constitutes Your acceptance and agreement to be bound by these Terms of Service, and all other operating rules, policies and procedures that may be published from time to time on the Website by us, each of which is incorporated by reference and each of which may be updated from time to time without notice to You.

In purchasing our Services and entering into this agreement, You warrant that You are no legal impediment from doing so and that this agreement will be legally enforceable against You in accordance with its terms.

Vaerith reserves the right, at any time and from time to time, to amend or to modify these Agreements without prior notice to You, provided that if any such alterations constitute a material change to these Terms of Service, we will notify User's listed Members Area email address. Amendments and modifications shall take effect immediately when posted on the Website. By continuing to access or use the Services after any such amendments or modifications, you agree to be bound by such amended or modified Terms of Service. For this reason, we encourage you to review the Terms of Service whenever you use the Services. If you do not agree to any change to these Terms of Services, then you must immediately stop using the Services.

### **3. SEVERABILITY**

If any provision of this Agreement is prohibited by law or held to be unenforceable, that provision will be severed and the remaining provisions hereof shall not be affected such that this Agreement shall continue in full force and effect as if such unenforceable provision had never constituted a part hereof.

### **4. LIMITATION OF LIABILITY**

IN NO EVENT SHALL WE, NOR OUR DIRECTORS, EMPLOYEES, AGENTS, PARTNERS, SUPPLIERS OR CONTENT PROVIDERS, BE LIABLE UNDER CONTRACT, TORT, STRICT LIABILITY, NEGLIGENCE OR ANY OTHER LEGAL OR EQUITABLE THEORY WITH RESPECT TO THE SERVICES

- (I) FOR ANY LOST PROFITS, DATA LOSS, COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, COMPENSATORY OR CONSEQUENTIAL DAMAGES OF ANY KIND WHATSOEVER, SUBSTITUTE GOODS OR SERVICES (HOWEVER ARISING),
- (II) FOR ANY NON-RENEWAL OF THE SERVICES
- (III) FOR ANY BUGS, VIRUSES, TROJAN HORSES, OR THE LIKE (REGARDLESS OF THE SOURCE OF ORIGINATION),
- (IV) IN CONNECTION WITH OUR ANTI-SPAM OR VIRUS FILTERS, OR
- (V) FOR ANY DIRECT DAMAGES IN EXCESS OF (IN THE AGGREGATE) OF FEES PAID TO US FOR THE PARTICULAR SERVICES DURING THE IMMEDIATELY PREVIOUS ONE

MONTH PERIOD, EVEN IF PANTHUR HAD BEEN ADVISED OF, KNEW, OR SHOULD HAVE KNOWN, OF THE POSSIBILITY THEREOF.

YOU ACKNOWLEDGE THAT THE FEES PAID BY YOU REFLECT THE ALLOCATION OF RISK SET FORTH IN THIS AGREEMENT AND THAT VAERITH WOULD NOT ENTER INTO THIS AGREEMENT WITHOUT THESE LIMITATIONS. YOU HEREBY WAIVE ANY AND ALL CLAIMS AGAINST US ARISING OUT OF YOUR PURCHASE OR USE OF THE SERVICES, OR ANY CONDUCT OF OUR DIRECTORS, OFFICERS, EMPLOYEES, AGENTS OR REPRESENTATIVES. YOUR SOLE AND EXCLUSIVE RIGHT AND REMEDY IN CASE OF DISSATISFACTION WITH THE SERVICES OR ANY OTHER GRIEVANCE SHALL BE:

- (A) IN THE CASE OF A CONSUMER ABLE TO RELY UPON THE AUSTRALIAN CONSUMER LAW OR;
- (B) IN ALL OTHER CASES, YOUR TERMINATION AND DISCONTINUATION OF ACCESS TO OR USE OF THE SERVICES.

#### **5. WARRANTY DISCLAIMER**

We have no special relationship with or fiduciary duty to you. You acknowledge that we have no duty to take any action regarding:

- (i) which you gain access to the Services;
- (ii) what Content you access via the Services; or
- (iii) how you may interpret or use the Content.

To the maximum extent permitted by law, you release us from all liability for you having acquired or not acquired Content through the Services. We make no representations concerning any Content contained in or accessed through the Services, and we will not be responsible or liable for the accuracy, copyright compliance, or legality of material or Content contained in or accessed through the Services.

THE SERVICES AND CONTENT ARE PROVIDED "AS IS", "AS AVAILABLE" AND WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTIES IMPLIED BY ANY COURSE OF PERFORMANCE OR USAGE OF TRADE, ALL OF WHICH ARE EXPRESSLY DISCLAIMED TO THE MAXIMUM EXTENT PERMITTED BY LAW. WE, AND OUR DIRECTORS, EMPLOYEES, AGENTS, SUPPLIERS, PARTNERS AND CONTENT PROVIDERS DO NOT WARRANT THAT:

- (I) THE SERVICES WILL BE SECURE OR AVAILABLE AT ANY PARTICULAR TIME OR LOCATION;
- (II) ANY DEFECTS OR ERRORS WILL BE CORRECTED;
- (III) ANY CONTENT OR SOFTWARE AVAILABLE AT OR THROUGH THE SERVICES IS FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS; OR
- (IV) THE RESULTS OF USING THE SERVICES WILL MEET YOUR REQUIREMENTS. YOUR USE OF THE SERVICES IS SOLELY AT YOUR OWN RISK.

IF ANY LEGISLATION, SUCH AS THE AUSTRALIAN CONSUMER LAW, IMPLIES IN THIS AGREEMENT OR OTHERWISE PRESCRIBES ANY CONDITION, GUARANTEE (INCLUDING CONSUMER GUARANTEES) OR WARRANTY WHICH CANNOT BE EXCLUDED OR MODIFIED, THEN THAT CONDITION, GUARANTEE OR WARRANTY IS DEEMED TO BE INCLUDED IN THIS AGREEMENT. HOWEVER, TO THE EXTENT PERMITTED BY LAW, OUR LIABILITY FOR BREACH OF SUCH STATUTORY CONDITION, GUARANTEE OR WARRANTY IS LIMITED AT OUR OPTION TO ANY ONE OR MORE OF THE FOLLOWING:

- (A) IN THE CASE OF GOODS – THE REPAIR OF THE GOODS, THE REPLACEMENT OF THE GOODS OR THE SUPPLY OF EQUIVALENT GOODS OR TO THE PAYMENT OF THE COSTS OF REPAIR, REPLACEMENT OR SUPPLY OF EQUIVALENT GOODS; AND
- (B) IN THE CASE OF ADVICE, RECOMMENDATIONS, INFORMATION OR SERVICES, BY SUPPLYING THE ADVICE, RECOMMENDATIONS, INFORMATION OR SERVICES AGAIN, OR BY PAYING THE COST OF SUPPLYING THE ADVICE, RECOMMENDATIONS, INFORMATION OR SERVICES AGAIN.

## **6. INDEMNIFICATION**

You shall defend, indemnify, and hold harmless us, our affiliates, parents, subsidiaries, any related companies, licensors and partners, and each of our and their respective employees, officers, directors, agents, contractors, suppliers and representatives from all liabilities, claims, and expenses, including reasonable legal fees, that arise from or relate to your (or any third party using Your Account or identity in the Services) use or misuse of, or access to, the Services, Content, or otherwise from your user content, violation of these Terms of Service or of any law, or infringement of any intellectual property or other right of any person or entity. The indemnity does not apply to the extent that we cause or contribute to our own loss or damage. We reserve the right to assume the exclusive defence and control of any matter otherwise subject to indemnification by you, in which event you will assist and cooperate with us in asserting any available defences. This clause survives the termination or expiry of this Agreement.

## **7. DOMAIN NAME SERVICES**

We are an authorised reseller of the domain name registrars "Synergy Wholesale", "eNom" and "TPP Wholesale Pty Ltd". We do not warrant that any domain name you apply for, can or will be registered. Accordingly, you should not act on a domain name application until you have been notified that your requested domain name has been registered. Both your registration of a domain name, its ongoing use and renewal are subject to the relevant rules the terms of use of the applicable domain name registrar. You are responsible for reading and complying with those rules and terms of use.

We are not liable for and you irrevocably release us from all claims and loss you may have, suffer or incur in connection with a domain name you order and use through us. We have no responsibility to resolve a dispute between you and your domain name provider. We are not obliged to renew your domain name if you have not selected the domain name auto renewal option in our Website or you have not paid the renewal fee in advance using the method specified by us. We are not liable for any loss or damage suffered or incurred by you for the non-renewal of your domain name. If this agreement is terminated, but you do not transfer your domain name registration to another registrar, you agree that we may still contact you in relation to the renewal of your registration. We will not however be liable for failing to do so.

## **8. BILLING**

By the account activation date of each month, Vaerith shall either:

- (i) debit the users credit card (when such information has been provided by the member); or
- (ii) deliver, by e-mail or regular mail.

An invoice in accordance with the applicable Service Fees for Services rendered for the current month.

When an invoice is delivered to the member, payment shall be remitted to Vaerith by no later than the specified payment due date. Vaerith shall be entitled to immediately terminate this agreement for member's failure to make timely payments. You will be provided with an invoice on a monthly basis. All credit cards are billed automatically on a monthly basis. It is the member's responsibility

to ensure that they have sufficient credit to cover this transaction. In the event that there is insufficient credit, we will send an e-mail notification, at which point we will need to be provided with another credit card account number within 24 hours. If we do not receive a response within 24 hours, the account, and all accounts under that account plan, will be suspended.

## **9. SERVICE FEES**

Certain Services may carry a setup fee charged by Vaerith to you, which must be paid in order to have use of said Services. If the customer terminates this agreement, they shall be responsible for any and all outstanding fees owed to Vaerith and agree to pay any and all fees incurred by the customer. Because the Services are provided on a monthly basis, the customer will be responsible for Service fees incurred each month, regardless of when the customer provides notice of termination. Thus, for example, if the member provides notice of termination on the 15th day of a particular month, the customer will be responsible for Service fees for the entire month, and such fees will not be pro-rated or refunded.

- Accounts that are more than seven (7) days past the due date will be automatically suspended in addition to any outstanding fees may apply to have the Service restored.
- Accounts which are not paid in full within fifteen (15) days of the due date will be automatically deleted & purged from our servers.

## **10. REFUNDS & CHARGEBACKS**

We do not refund partial monthly fees to accounts. All Web Hosting and Reseller Web Hosting account cancellations must be submitted 7 days before the next billing cycle. Cancellation requests for dedicated servers must be submitted and confirmed on or prior to the 15th day of the month preceding the required date of closure. Only the authorized account holder or a authorized contact may cancel the account. Authorized contacts are appointed only by the account holder. In the event of cancellation, the customer will automatically be billed for any excess usage during the then-current calendar month.

Credit card or PayPal chargebacks will incur a fee of \$100 to be reinstated. Services that incur chargebacks will be permanently deleted and purged from our servers, and domain name ownership transferred to Vaerith.

Customer's may only cancel a Service via a ticket within the Client Area.

## **11. FAILURE TO PAY**

We may temporarily deny Service or terminate this Agreement upon the failure of Subscriber to pay charges when due. Such termination or denial will not relieve Subscriber of responsibility for the payment of all accrued charges, plus reasonable interest and any collection fees.

## **12. SECURITY & SOFTWARE**

You acknowledge that the use of software such as Joomla, WordPress and other similar types of third party open source software can represent potential risk, and as such requires you to play a part in maintaining your chosen software. Therefore, you agree to take steps to ensure you keep your or their chosen software updated to the latest release and security patched where applicable.

You agree to utilise and implement security measures as per advice from the developers/publishers of the third party software installed onto your Service. You agree that under no circumstances shall Vaerith be liable for any damages, loss or costs arising from or associated with the result of any third party or otherwise software You have chosen to install into a hosting account becoming compromised (hacked) that may result in the destruction of data on the server whether this is the result of Your chosen software becoming compromised or for any other reason whatsoever. You explicitly agree not to hold Vaerith responsible or liable in any manner whatsoever for any damages, loss or costs arising from or associated with any type of data becoming deleted and/or unrecoverable due to any type of compromise or hack irrespective of how the compromise or hack occurred.

Account compromise by a third party or otherwise, including but not limited to: stolen passwords, phishing, redirections, meta-refresh scripts or defacement of an individual website is not the responsibility of Vaerith. Vaerith has the responsibility to notify the customer utilising the information provided on the Account in the Client Area and suspend the account at the earliest convenience,

at the sole discretion of Vaerith repeat offenders which have openly had an account compromised several times may be charged a service administration fee.

### **13. TERMINATION & SUSPENSION**

Vaerith reserves the right, in our sole discretion, to terminate or suspend your access to all or any part of the Services at any time, with or without notice, effective immediately, including but not limited to as a result of your violation of any of these Agreements or any law, if you suffer an Insolvency Event, we are required to do so by law, or if you misuse system resources, such as, by employing programs that consume excessive network capacity, CPU cycles, or disk IO. Any such termination or suspension may result in the forfeiture and destruction of information associated with your Account. We may provide prior notice of the intent to terminate or suspend Services to you if such notice will not, in our discretion, run counter to the intents and purposes of these Agreements.

Any fees paid hereunder are non-refundable and any fees owed to us before such termination or suspension shall be immediately due and payable, including any liabilities that may have been incurred prior to termination or suspension such as our costs for collection (including its legal fees) of any such charges or other liabilities. Upon termination, any and all rights granted to you by this Agreement will immediately be terminated, and you must promptly discontinue all use of the Services. Upon reactivation of your Account following a suspension, we may require you to pay us in full for all outstanding amounts and pay a reactivation fee at our discretion. If you wish to terminate your Account, you may do so by following the instructions on the Website or through the Services.

We are under no obligation to provide you with a copy of your Data or User Content if we terminate or suspend all or part of your Services. Nor are we under any obligation to refund you amounts automatically debited from your PayPal account after your Service has been terminated. It is your responsibility to terminate any PayPal subscriptions. If we are required to refund you any payments received, then we may charge you an administration fee for doing so by deducting that amount from the amount to be refunded to you. All provisions of these Agreements which by their nature should survive termination shall survive termination or suspension, including, without limitation, licenses of User Content, ownership provisions, warranty disclaimers, indemnity and limitations of liability.

We reserve the right at our sole discretion to cancel your service. If we choose to cancel your service you will receive a prorated refund for unused service and will be provided 30 days to move your service to an alternate provider.



All data and files relative to your Service from terminated and cancelled accounts are immediately deleted and purged from our servers. This includes any and all backups. Please make sure to back up all your files and data before cancelling your Service.

#### **14. FILE HOSTING**

File hosting and file storage of any type is strictly prohibited on any and all servers within our network. You MAY NOT use your account as a download or file storage repository. Our Services are strictly offered for website hosting only. This does NOT mean that you cannot have downloads on your site. This means you cannot operate a site that specializes in downloads like download.com or for the use of storing data that is not being served on your website. You may not use your Account as storage repository for MP3, games, video, audio or music files.

#### **15. BACKUPS & DATA LOSS**

Use of the Service is at Your sole risk. Vaerith is not responsible for any and all files and data residing on your account on our servers. Vaerith cannot guarantee that the contents of a web site will never be corrupted, or that a backup of a web site will always be available. You agree to take full and sole responsibility for any and all files and data transferred to our servers and to maintain all appropriate backups of any and all files and data stored on any server to which you have an account on.

#### **16. CONTENT**

You, as our customer, are solely responsible for the content stored on and served by our servers. Customers acknowledge that web site construction and management is member's responsibility. Vaerith is not responsible for web site management or files lost or damaged by member.

#### **17. RESELLERS**

Resellers are responsible for supporting their clients. Vaerith does not provide support to our Resellers clients. If a Resellers client contacts us, we reserve the

right to place the client account on hold until the reseller can assume their responsibility for their client. All support requests must be made by the reseller on their clients' behalf for security purposes. Resellers are also responsible for all content stored or transmitted under their reseller account and the actions of their clients'. Vaerith will hold any reseller responsible for any of their client's actions that violate the law or the Agreements.

## **18. GOVERNING LAW & JURISDICTION**

Any claim arising hereunder shall be construed in accordance with the substantive and procedural laws of the State of New South Wales and the Commonwealth of Australia, without regard to principles of conflict of laws. You agree that any dispute arising from or relating to the subject matter of these Terms of Service shall be governed by the exclusive jurisdiction and venue of the courts of New South Wales and the Commonwealth of Australia. You consent to service of process via email at the email address(es) provided by you, and waives any requirement under any judicial treaty requiring that legal process be translated into any language other than English.

## **19. DEALINGS**

- (a) Unless the context requires otherwise, a reference to a party to this Agreement includes a reference to the party's successors and permitted assigns.
- (b) You may not assign, transfer or otherwise deal in any way with your rights, benefits and obligations under this Agreement.
- (c) Vaerith may by notice to you, transfer its rights, benefits and obligations under this Agreement.
- (d) If Vaerith exercises its rights under clause 19(c) above, it is agreed that:
  - (i) Vaerith will issue a notice to you identifying the assignee ("Assignee") and the effective time for the transfer ("Effective Time");
  - (ii) You and Vaerith will release each other from any further obligations owed under this Agreement, except to the extent such obligations relate to the period prior to the Effective Time; and
  - (iii) You and the Assignee will acquire the same rights and assume the same obligations against each other as would have been acquired and assumed had the Assignee been an original party to this Agreement as Vaerith, provided that the Assignee is not responsible for any obligations relating to the period prior to the Effective Time.

(e) In addition to and without limiting any of the foregoing, You expressly acknowledge that:

- (i) Your continued use of the Services; and/or
- (ii) Your payment of any Service Fees, after the Effective Time, constitutes Your affirmation and consent to any transfer effected pursuant to this clause 19.

## **20. DISPUTE RESOLUTION**

Mindful of the high cost of litigation, you and Vaerith agree to the following dispute resolution procedure: in the event of any controversy, claim, action or dispute arising out of or related to:

- (i) the Website;
- (ii) this Agreement;
- (iii) the Services;
- (iv) the breach, enforcement, interpretation, or validity of this Agreement; or
- (v) any other dispute between you and Vaerith (a “Dispute”)

The party asserting the Dispute shall first try in good faith to settle such Dispute by providing written notice to the other party (by first class or registered mail) describing the facts and circumstances (including any relevant documentation) of the Dispute and allowing the receiving party 30 days in which to respond to or settle the Dispute. Notice shall be sent

- (1) if to us at: 388-392 Fairlight Road, Mulgoa NSW Australia 2745 or
- (2) if to you at: your last-used billing address or the billing and/or shipping address in your Account information.

Both you and Vaerith agree that this dispute resolution procedure is a condition precedent that must be satisfied prior to initiating any legal proceedings against the other party.