

MANAGED SERVICE AGREEMENT

SCHEDULE 1 – Customer Details

The Customer	Name:			
	ABN:			
	Address:			
	Contact Name:		Tel:	Fax:
Bulletproof Contact	Name:		Tel:	Fax:

Bulletproof Networks will supply the Services specified in Schedule 2 to the Customer for the Fees specified in Schedule 2 on the terms and conditions attached from the later of the execution dates below.

Accepted and Agreed:

Bulletproof Networks Pty Ltd

ABN 84 094 558 808
 Suite 502, 1 Rosebery Ave., Rosebery NSW 2018

Signature _____
 Name _____
 Title _____
 Date _____

The Customer:

I agree to the Terms and Conditions set out on the following initialled pages.

Signature _____
 Name _____
 Title _____
 Date _____

SCHEDULE 2 – Service Details

Service	<input type="checkbox"/> Managed Shared Hosting	Set up Fees	Monthly Fees
	<input type="checkbox"/> Managed Dedicated Hosting	\$	\$
Details	Total \$		
Coverage Window	<input type="checkbox"/> 24x7		
Term	<input type="checkbox"/> 12 months <input type="checkbox"/> 24 months		

Description and Limitations of Service - General

1. The Service is monitored by our monitoring systems 24x7. The monitoring of the Service includes notifications by email and optionally by SMS, pager or fax. Notifications can be sent to you 24x7, Business Hours, or not at all as you choose. The monitoring of the Service includes up to 15 SMS, pager or fax messages per month per service. After this a 55c/message fee including GST applies.
2. Non-intrusive methods are used for monitoring the standard functions of your Service including standard Internet services such as SMTP, and SNMP-based process checks. The frequency of the checks is approximately every 5 minutes. This can be tuned to be less often as you wish. Custom testing can be engineered on request at extra cost.
3. Incident response to monitoring incidents is included for Managed Services during the Coverage Window defined above. Acknowledgment, response and repair times are defined in Schedule 3. Work performed outside these times at your request incurs consulting rates described in Schedule 4.
4. Configuration requests will be handled during 08:30 – 18:30 Business Days and commenced within 1 business day of your lodgement of a request for change in writing via email or fax to the Bulletproof Networks support area. Contact details are detailed in your Welcome Pack that is included with this service, or at the Bulletproof Networks customer area web site <http://customer.bulletproof.net.au/>.
5. Management tasks are performed remotely using secure access methods such as SSH, Terminal Services and PC Anywhere from specific IP Address Ranges.
6. Bulletproof Networks' maintenance window is 00:00 – 03:00 EST Thursdays each week. During this time Bulletproof Networks' monitoring, reporting and customer access systems may be unavailable for short periods. Managed Shared Hosting services may also be unavailable during this time. At least 24 hours' notice will be given for such downtime events.
7. Emergency scheduled downtime may occur for security reasons. Due to their nature minimal notice may be given for such events. We endeavour to minimise such occurrences

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Description and Limitations of Service - Managed Hosting

1. The Hosting Service is maintained, managed, monitored and secured 24x7.
2. Bulletproof Networks endeavours to provide a reliable service of no more than 0.5% downtime for non-redundant components of the service that are in our exclusive control and no more than 0.05% downtime for redundant components of the service that are in our exclusive control. Redundant means a live, activated, running spare for a live activated production item.
3. Bulletproof Networks endeavours to provide a service with no more than 1% Performance Degradation for components that are in our exclusive control. Performance Degradation means that the Hosting Environment is unable to provide timely response in providing the Hosting Service.
4. In the event of a failure of the Co-location Facility that prevents us from providing the Hosting Service, we will make reasonable commercial efforts to work with the providers of the Co-location Facility to find the cause, to notify you of the nature and cause of the failure, and to have the supplier(s) of the Co-location facility rectify the failure in a timely manner.
5. We will make reasonable commercial efforts to prevent security breaches in the Hosting environment that provides the Hosting Service in terms of local network, operating system, and hardware that is in our exclusive control. You will be responsible for any and all security for your particular application, data or services that are hosted with or transmitted from the Hosting Service.
6. The Hosting Service may not be used for issuing any unsolicited publicity or advertising material.
7. Information hosted using the Managed Hosting Service must be in accordance with the Broadcasting Services Act as amended January 2000, with respect to Internet Censorship and proof-of-age requirements. Bulletproof Networks may ask you to remove information from or cease transmitting information using the Hosting Service if instructed to do so by the Australian Broadcasting Association, in accordance with the Commonwealth Broadcasting Services Act, 1992 (Cth), as amended January 2000. This action is known as a "TakeDown Notice".
8. Bulletproof Networks reserves the right to request the removal of content from, the cessation of transmittal of information using the Hosting Service if that content or information is illegal or may threaten the continued operation of the Hosting Service.
9. Bulletproof Networks will retain log files on shared hosting platforms for 1 month after they are created. Fees may apply to retrieve older log files on request.

SCHEDULE 3 – Response Times

In order to prioritise issues and define standard response types and windows, Bulletproof works on a severity system. Below is table of severities/response times that Bulletproof Networks will endeavour to provide:

Severity	Definition	Acknowledge/Response/Repair/Analysis	
		08:30 – 18:30 Business Days	Other Times (consulting rates may apply)
Severity 1*	Means the Service is unusable and work practices are severely impacted. This may be due to the production system being down, unreachable, or unusable including the failure of non-redundant hardware.	15 Minutes/1 Hour/ 4 Hours/24 hours	15 Minutes/1 Hour/ 4 Hours/24 hours*
Severity 2	Means the Service displays major faults or crashes although work can progress. The business is considerably affected. Failure of redundant hardware is considered to be a Severity 2 issue.	1 Hour/2 Hours/ same day/72 hours	1 Hour/2 hours/ next business day/72 hours
Severity 3	Means the Service has bugs or errors that do not significantly impact on the function or business process. The business is unaffected.	Same day/next business day/2 business days/NA	Next business day (acknowledge)
Severity 4	Means minor errors, bugs or misspellings in the Service that do not impact on the business or the program function.	Same day/next business day/2 business days/NA	Next business day (acknowledge)
Change Request	Change required to the configuration of the Service.	Same day/next business day/NA/ NA	Next business day (acknowledge)
Administrative	Non-system related query regards billing, sales or administration	Next business day/5 business days/NA/ NA	Next business day (acknowledge)

Please note that responses in other times are subject to your coverage window. In the event that response is required outside your coverage window, consulting rates (below) will apply.

* Severity 1 incidents not in the control of Bulletproof Networks (3rd party incidents) are subject to that providers' response/repair window; example: Hardware.

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SCHEDULE 4 – Consulting Rates

Onsite Business Hours (8:30am – 6:30pm Business Days) – Network and Systems engineers onsite to deploy or repair Internet Infrastructure	\$ 143.00 per hour
Offsite Business Hours as above, but performed remotely	\$ 110.00 per hour
After Hours (onsite or offsite to perform tasks 6:30pm - 12am Mon-Fri, Sat 10am – 6pm)	\$ 220.00 per hour
Graveyard Hours (onsite or offsite to perform tasks 12am – 8:30am Mon-Fri, 12am-10am, 6pm-12am Sat, Sun all hours)	\$ 275.00 per hour

Terms and Conditions

1. Definitions

In this Agreement, unless the context otherwise requires:

"Fees" means the charges payable under this Agreement as specified in Schedule 2 and any additional charges associated with providing the Service such as travel costs, or additional Professional Services that you request;

"Service" means the service(s) referred to in Schedule 2 that we have agreed to supply to you;

"Hosting Environment" means the platform that we will use to provide the Hosting Service, if any, and includes, but is not limited to Hardware, Operating Systems, Middleware, Database Software, Networking and procedures that are in our exclusive control;

"Co-location facility" means the physical site providing physical access and security, electrical power, fire prevention and retardation, air-conditioning to within specified hardware requirements of the Hosting Environment for the Service (if a Hosting Service), and rack space sufficient to house the Hosting Environment, as supplied to us by third-party suppliers;

"Professional Service" means any non-standard professional or consulting service provided by us to you from time to time as required;

"we" and **"us"** means Bulletproof Networks Pty Limited; and

"our" or **"ours"** means pertaining or belonging to **"us"**;

"you" means the Customer identified in Schedule 1;

"your" or **"yours"** means pertaining or belonging to **"you"**;

"Initial Term" means the minimum term for which we will provide the Service to you as indicated in Schedule 1;

"Renewal Term" means any service term following the Initial Term, as specified below.

2. Supply of Services

By signing this Agreement with attached Schedules, you agree to take and pay for, and by signing this Agreement with Schedules, we agree to provide the Service during the Initial Term and for any Renewal Term

3. Term

3.1. This Agreement will commence on the date we execute it and, unless terminated pursuant to clause 10, continue for the term specified in Schedule 2 (the "Initial Term")

3.2. This Agreement will continue automatically for additional terms equal to the Initial Term ("Renewal Term") and for the relevant fees applicable to the Renewal Term, which may be different from the Fees during the Initial Term, unless you notify us in writing at least thirty (30) days prior to the end of the Initial Term or a Renewal Term, that you have elected to terminate the Service, in which case the Service will terminate at the end of the Term.

3.3. Additions to the Service, including hardware upgrades, co-location or bandwidth upgrades, or increased management services, will initiate a new Term and Service Fees applicable to the modified Service.

4. Payment

4.1. You must pay us the Fees within thirty (30) days of our invoice, except where specified to the contrary in Schedule 2. Each payment is non-refundable. We may charge interest on overdue payments at 2% points above the prevailing bank overdraft rate nominated by us, the highest rate allowed by applicable law, whichever is lower.

4.2. If you dispute any part of an invoice you must notify us within 7 days of its receipt and pay that part which is not in dispute.

4.3. We reserve the right to charge additional Fees where your supply of information, access or contribution necessary to provide the Service is delayed by you.

5. Taxes

5.1. You must pay and indemnify us against all taxes and duties payable in respect of this Agreement, any supply

made under this Agreement and the Fees (excluding any income tax payable by us).

5.2. In this clause, "GST" means the tax imposed by The New Tax System (Goods and Services Tax) Act 1999 (Cth) and related imposition Acts of the Commonwealth.

5.3. If GST is imposed on any supply made by us under this Agreement, you must pay, in addition to any Fees (unless those fees already include GST), an additional amount equivalent to the GST payable.

5.4. We will provide you with a valid tax invoice for the amount of GST which we require you to pay to us.

6. Your Obligations

6.1. You acknowledge any limitations of the Service as defined in Schedule 2.

6.2. You must comply with all reasonable directions issued by us in relation to the use of the Service.

6.3. You must not use the Service for any illegal or fraudulent activities including activities which breach the Telecommunications Act 1997 (Cth), the Copyright Act 1968 (Cth), the Australian Broadcasting Services Act 1992 (Cth) as amended 2000 (Cth), or other applicable laws, whether relating to crime, intellectual property, censorship, defamation or otherwise.

6.4. You must not use the Service in a way which interferes with or disrupts other Internet users, service providers, their computers, software or hardware including without limitation:

6.4.1. propagating computer worms, trojans or viruses;

6.4.2. using the Hosting Service to gain unauthorised access to another computer or network;

6.4.3. sending harassing, obscene, indecent, offensive or threatening electronic mail;

6.4.4. forgery (or attempted forgery) of electronic mail messages; and

6.4.5. placing, transmitting or storing any defamatory material.

6.5. You must keep all identification and log-in information that is used as part of the Hosting Services, secret and secure. You agree not to disclose to any other person any identification or log-in information, whether in use or not, nor any other confidential information relating to us which you obtain through the use of the Hosting Service.

6.6. You must ensure that remote access to your managed systems by Bulletproof Networks engineers, as required from time to time is not prevented by your actions.

7. Our Obligations

7.1. Our **"Service Warranty"** means we will make reasonable commercial efforts to provide the Service indicated in Schedule 2.

7.2. Except for the express warranties set out in Section 7, the Service is provided on an "AS IS" basis and your use of the service is at your own risk. We do not make, and hereby disclaim any and all other express and/or implied warranties, including but not limited to, warranties of merchantability, fitness for a particular purpose, non-infringement and title. We do not warrant that the Hosting Service will be Uninterrupted, Error-free or completely secure.

8. Confidentiality, Security and Workplace Policies

8.1. Each of us agrees to keep the other's information confidential and use it only for the purposes of this Agreement. This obligation will not apply to any information that a recipient already knew before disclosure or information that comes into the public domain (except by breach of confidentiality). If required by law a party may disclose the confidential information of the other party. Any previous Confidentiality Agreement between us which applies to information disclosed under this Agreement will prevail over this clause to the extent of any inconsistency.

8.2. When on your premises we will comply with those work place policies and security regulations which you notify to us in writing.

9. Liability

9.1. The only terms implied into this Agreement are those which cannot be lawfully excluded. Where this Agreement involves the supply of goods or services which are not of a kind ordinarily acquired for personal, domestic or household use or consumption, our liability for breach of those terms (other than section 69 of the Trade Practices Act) will be limited, at our option as the case may be, to any one or more of: the replacement, repair or payment of the cost of replacement or repair of the goods; and supplying the services again or payment of the cost of the services being supplied again.

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9.2. Subject to clause 9.1 and otherwise to the maximum extent permitted by law, our liability to you for all loss or damage suffered or incurred by you in connection with this Agreement, or the Services (including all loss arising from any breach by us of this Agreement, our negligence or any breach of statute) is limited as follows:

- 9.2.1. we will not be liable to you for any indirect or consequential loss (including loss or corruption of data or loss of profit); and
- 9.2.2. we will be liable to you for other types of loss or damage but our entire liability to you for each claim will be limited to the Fees paid to us by you under this Agreement in the 12 months prior to the date the cause of the loss or damage occurred, less:
 - 9.2.2.1. all GST paid in relation to those Fees; and
 - 9.2.2.2. all amounts already paid or payable to you by us during that period for any other claims made by you relating to this Agreement.

- 9.3. You have not relied on any representations made by us which are not set out in this Agreement.
- 9.4. You indemnify us and our related bodies corporate and their officers and employees from and against all losses, damages, claims, actions, expenses and other liability arising from your performance, non-performance or breach of this Agreement or your use of the Service.

10. Termination

- 10.1. Either of us may terminate this Agreement:
 - 10.1.1. on 30 days notice. If you terminate under this sub-clause you must pay us in full for those parts of the Fees that have not been paid for the Term.
 - 10.1.2. immediately if the other is in material breach and does not remedy or commence to remedy the breach within 14 days written notice or if the other becomes or is in jeopardy of becoming subject to any form of insolvency administration (including receivership, administration or liquidation). Without prejudice to our other rights, you will immediately pay us all amounts due on termination.
- 10.2. On any termination you must return to us or destroy all our confidential information and certify in writing to that effect.
- 10.3. If the agreement is terminated for any of the above clauses, the fees outstanding for the remainder of the Initial Term or the Renewal Term of the Agreement must be paid to us in full without delay.
- 10.4. We will assign any rental agreements we maintain to provide the Service to you or your nominee, pursuant to our financier's approval of such an assignment. You will bear any costs incurred in obtaining such consent and facilitating the assignment.

11. Force Majeure

- 11.1. Notwithstanding any other provision of this agreement, neither party will be liable for any failure to fulfil any term of this Agreement if such fulfilment is delayed, prevented, restricted or interfered with for any reason outside that party's control, including without limitation any act of god, inclement weather, failure or shortage of power supplies, floods, drought, lightening or fire strike, lock-out, trade dispute or labour disturbance, any act or omission of any governmental agency, highways or authorities.
- 11.2. The party unable to perform its obligations must:
 - 11.2.1. notify the other party promptly of any delay; and
 - 11.2.2. use its best efforts to resume performance in accordance with this Agreement as soon as possible.
- 11.3. If any event referred to in this clause 11 continues for more than 1 month, then this Agreement may be terminated forthwith by either party giving notice to the other party.

12. GENERAL

- 12.1. Neither party may solicit for employment the employees of the other until 12 months have expired after the completion of the Services.

- 12.2. A party will not be liable for any non performance of its obligations (except payment) where that non performance results from matters beyond its reasonable control.
- 12.3. Time is not of the essence in this Agreement.
- 12.4. You will not unreasonably withhold your approval to us using or referring to you in promotional material in a manner that does not compromise the confidentiality of your affairs.
- 12.5. We may assign or novate this Agreement to a related body corporate without consent. You will not unreasonably withhold your consent to any other assignment or novation.
- 12.6. We may subcontract all or any part of the Service.
- 12.7. This Agreement may only be amended by agreement in writing signed by the parties. This Agreement is governed by, and must be construed in accordance with the laws of the State of New South Wales. Notices may be served on the parties at the addresses specified in this Agreement.