Internet Association of Australia

MEMBERSHIP AGREEMENT

RECITALS

A. Internet Association of Australia Inc. (IAA) is a not-for-profit association registered in Western Australia.

B. Under clause 6 of IAA's Constitution, membership of IAA is decided by the Executive of IAA.

C. Membership with IAA is subject to the terms and conditions of this Agreement.

TERMS AND CONDITIONS:

1. Definitions and Interpretation

1.1. Definitions

In this Agreement:

Australian Consumer Law means schedule 2 to the *Competition and Consumer Act* 2010 (Cth).

Business Day means Monday – Friday excluding public holidays in Western Australia.

Business Hours means 9:00am – 5:00pm on Business Days.

Fees means the fees payable for Membership referred to on either of Our Websites.

GST has the meaning given by the *A New Tax System (Goods and Services Tax) Act* 1999 (Cth)).

Insolvency Event means, in respect of a party (a) the party ceases to carry on business, is unable to pay its debts as and when they fall due, or is deemed to be insolvent or bankrupt; (b) a receiver or a liquidator or provisional liquidator or an administrator is appointed to the party, or an application (including voluntary application filed by that party) is lodged or an order is made or a resolution is passed for the winding up (whether voluntary or compulsory) or reduction of capital of that party; (c) the party enters into an arrangement with its creditors; (d) where the party is a partnership, the partnership is dissolved or an application is made for its dissolution; (e) the party suspends payment of its debts to the other party or a third party, or the party takes the benefit of any law for the relief of insolvent debtors; or (f) anything analogous or having a substantially similar effect to any of the events described in (a) through (e) above, occurs under the law of any applicable jurisdiction.

Members means Our Corporate Class Members, Professional Class Members and Affiliate Class Members.

Membership means registration with Us as a Member of IAA.

Member Services means the services available for Members to order from IAA, including Data Centre Colocation Services, Remote Hands Services, Cross Connect Services, Peering Services, Transit Services and Point to Point Link Services.

Non-Excludable Guarantee means a non-excludable guarantee implied by the Australian Consumer Law.

Representative means officers, employees, agents, suppliers and other persons within a party's control.

"IAA", "We", "Our" and "Us" means Internet Association of Australia Inc. Registration Number A1004987S of PO Box 8700, Perth Business Centre WA 6849.

"Website" means the websites at internet.asn.au and ix.asn.au.

"You" means you if You become a Member or apply to IAA to become a Member, and also includes the entity on behalf of which You apply for Membership.

1.2. Interpretation

In the terms and conditions of this Agreement:

(a) Headings and underlinings are for convenience only and do not affect the construction of this Agreement.
(b) A provision of this Agreement will not be interpreted against a party because the party prepared or was responsible for the preparation of the provision, or because the party's legal representative prepared the provision.
(c) Currency refers to Australian dollars.
(d) A reference to a statute or regulation includes amendments thereto.
(e) A reference to a clause, subclause or paragraph is a reference to a clause, subclause or paragraph of the terms and conditions of this Agreement.
(f) A reference to a subclause or paragraph is a reference to the subclause or paragraph in the clause in which the reference is made.
(g) A reference to time is to time in Western Australia.
(h) A reference to a person includes a reference to an individual, a partnership, a company, a joint venture, government body, government department, and any other legal entity.
(i) The words "includes", "including" and similar expressions are not words of limitation.
(j) A reference to the singular incudes the plural and vice versa.

2. Application for Membership

2.1. If You apply for Membership:
(a) You warrant that during the application process You will provide truthful and accurate information only;
(b) on behalf of any business entity which you specify in Your application for Membership:
(ii) You warrant that You are applying for Membership with IAA on behalf of and with the authority and consent of that business entity;
(iii) You agree to be jointly and severally liable for any breach of this Agreement by that business entity.

2.2. You must ensure, without limiting clause 2.1, that You provide a valid email address at the time You make Your application for Membership.

2.3. We reserve the right to send an email to You with a hyperlink which requires You to verify that You are the owner or operator of the email address entered by You at the time You make the application for Membership and to cancel/not approve Your application for Membership if Your rights to the email address are not so verified.

2.4. Any person applying for Membership must pay the membership fees set out on either of the Websites (or as otherwise agreed between You and Us in writing) in consideration for that person's Membership ("**Membership Fee**") at the time and in the manner set out during application for Membership on the Websites, plus any GST that is applicable in respect of the application of that person for Membership.

2.5. If any of Your contact details or other information which You provide during the process of applying for Membership changes, You must promptly provide Us with Your up-to-date details and information.

3. Term of Membership

3.1. Your Membership of IAA will commence upon Our acceptance of Your application for Membership.

3.2. Membership is effective for 12 months.

3.3. If You wish to renew Your Membership, You must pay the applicable renewal fee to Us by the due date. The renewal fee is the same price as the Membership Fee.

3.4. If You fail to renew Your Membership by the due date, You will automatically cease to be a Member of IAA.

3.5. Each time You renew Your Membership You will be deemed to have accepted the terms and conditions of this Agreement (as amended by Us from time to time).

3.6. Membership Fees are subject to change from time to time by IAA.

4. Payment Gateway

4.1. We utilise a third party payment gateway provided by Westpac Banking Corporation and SR Global Solutions Pty Ltd Trading As "Merchant Warrior" ("**Payment Gateway**") to process payments made to Us via the Websites.

4.2. If You are a Member, when You make credit card payments on the Websites You acknowledge and understand:

(a) the Payment Gateway may be affected by delays, defects, faults and/or other matters which render the Payment Gateway unusable. These matters may be caused by factors including technical difficulties with the performance or operation of Our or the Payment Gateway's software or hardware or due to problems or malfunctions with the Internet or other telecommunications networks;

(b) except in respect of any Non-Excludable Guarantees, We do not warrant, guarantee or represent that unauthorised access to information and data cannot occur;

(c) You have relied on Your own independent assessment and judgment in determining whether the Payment Gateway We use on the Websites meets Your requirements; and

(d) You have read, understand and agree to comply with the applicable terms and conditions of, and have read, understood and agree with the privacy policy of, the Payment Gateway provider (collectively, the "**Payment Gateway Agreement**"), copies of which are available from Us on request.

4.3. You indemnify Us in respect of all and any loss or damage We incur as a result of any breach by You of the Payment Gateway Agreement.

5. Member obligations

5.1. As a Member, You must:

(a) not do anything to damage the good name and reputation of IAA;

(b) act in good faith at all times in Your dealings with Us and Our Members;

(c) comply with the provisions of this Agreement and any other agreement between You and IAA; and

(d) comply with any policies and codes of conduct that are distributed by IAA or published by IAA on either of the Websites from time to time (to the extent they are applicable to You). It is Your responsibility as a Member of IAA to check the Websites regularly to ensure that You are familiar with the policies and codes of conduct published on either of them.

5.2. Membership does not grant You any right to represent IAA. You may not bind IAA to any obligation, or represent to any person that You are a representative of IAA without Our prior written consent.

6. Member benefits

6.1. If You are a Member:

(a) IAA grants You a non-exclusive, non-transferable licence to reproduce the IAA logo on Your literature and websites, adjacent to a conspicuous message stating that as a member of IAA, You support the Internet and are actively involved in its promotion and protection. You must not use the IAA logo in any other manner;

(b) You irrevocably consent to IAA listing You as a Member on the Websites and to otherwise referring to You as a Member in any other manner;

(c) You will be entitled to free entry to Our Public Meetings, which normally attract a fee;

(d) IAA may provide You with discounts to IAA events which normally attract a fee, such as conferences.

6.2. If You are a Corporate Class Member You may also apply for Member Services on the terms and conditions of Our Master Services Agreement:

7. Liability and indemnity

7.1. Except in respect of any Non-Excludable Guarantees, We are not liable to You for any indirect, special or consequential loss or damage incurred by You, including liability for loss of profits, loss of business opportunity, loss of savings, or loss of data.

7.2. Except in respect of any Non-Excludable Guarantees, to the maximum extent permitted by law (and if permitted by law), We will not have any liability to You for any loss or damage howsoever incurred in relation to Your Membership.

7.3. If any services supplied by Us to You are supplied to You in Your capacity as a 'consumer' of services within the meaning of that term in the Australian Consumer Law, as amended, You may have the benefit of certain non-excludable guarantees in respect of the services and nothing in these terms and conditions excludes or restricts or modifies any guarantee which pursuant to the *Competition and Consumer Act* 2010 (Cth) is so conferred. However, if those services are subject to a Non-Excludable Guarantee and those services are not ordinarily acquired for personal, domestic or household use or consumption, then pursuant to s 64A of the Australian Consumer Law, We limit Our liability for breach of any such Non-Excludable Guarantee (other than a guarantee implied by sections 51, 52 or 53 of the Australian Consumer Law) or expressly given by Us to You, in respect of each of the services, where it is fair and reasonable to do so, at Our option, to one or more of the following:

(i) the supplying of the services again; or

(ii) the payment of the cost of having the services supplied again.

7.4. Where You are not a 'consumer' for the purposes of the Australian Consumer Law, all conditions, warranties and guarantees implied in the terms and conditions of this Agreement are excluded, to the extent possible by law.

7.5. You release and indemnify Us and Our Representatives (those indemnified) from and against all actions, claims and demands which may be made against those indemnified, and all loss (including reasonable legal costs) for liability incurred or suffered by any of those indemnified, where such action, claim, demand, loss or liability was caused by or arises out of:

(a) a breach of the terms and conditions of this Agreement by You or by any other person for whose acts or omissions You are liable;

(b) any act or omission (including negligent act or omission) of Yours or Your Representatives.

7.6. You agree that the limitations and exclusions of liability and indemnities in this clause 7 are reasonably necessary for the protection of IAA.

8. Termination and suspension

8.1. A party may terminate this Agreement if the other party (the "**Defaulting Party**") is in material breach of this Agreement and the breach is not capable of remedy, or where the breach is capable of remedy and the Defaulting Party fails to remedy the breach within 7 days of notice.

8.2. If You are a Member, We may terminate this Agreement by notice to You if:

(a) You suffer an Insolvency Event; or

(b) if We decide to cease operating Our business.

8.3. If this Agreement is terminated Your Membership will automatically terminate.

8.4. You may terminate Your Membership at any time by written notice to Us.

8.5. You acknowledge and agree that in the case of termination by either party, any fees and charges paid by You to Us in advance will not be refunded.

8.6. On termination or expiration of Your Membership and/or this Agreement:

(a) You shall promptly pay to Us all moneys due and owing as at the date of termination under the terms and conditions of this Agreement;

(b) remove any reference to IAA from Your websites and other materials; and

(c) cease to represent that You are a Member.

8.7. We are not liable for any loss, damage or expense, including loss of profits or economic loss sustained by You, in any way arising out of the termination of this Agreement and/or Your Membership.

8.8. Termination of Your Membership and/or this Agreement does not affect any accrued rights of either party.

9. Notices

9.1. A notice or other communication under the terms and conditions of this Agreement shall be in writing, sent by hand delivery, post or email.

9.2. Any notice issued by hand shall be deemed delivered upon delivery.

9.3. Any notice issued by post shall be deemed delivered 3 Business Days after posting if posted domestically, or 10 Business Days after posting if posted internationally.

9.4. Any notice issued via email shall be deemed to be delivered upon the email being sent, provided that if an email is sent out of Business Hours, it shall be deemed to be delivered at 9am on the next Business Day.

10. General

10.1. Other rights: All rights not expressly granted to Us in this Agreement are expressly reserved by Us.

10.2. Amendment: We may amend this Agreement by uploading a new version of this Agreement to the Websites provided that if You are already a Member at that time the amendments will only become applicable to You when You renew Your Membership. You may not amend this Agreement without Our prior written consent.

10.3. Assignment/Sub-contracting: You may not assign, transfer, license or novate Your rights or obligations under the terms and conditions of this Agreement without Our prior written consent. We may assign, transfer, license or novate Our rights or obligations under the terms and conditions of this Agreement at any time. We may sub-contract the performance of any of Our obligations under the terms and conditions of this Agreement as We see fit.

10.4. Severability: If any part of the terms and conditions of this Agreement is deemed invalid by a court of competent jurisdiction, the remainder of the terms and conditions of this Agreement shall remain enforceable.

10.5. Relationship: You and Us are independent contractors and the terms and conditions of this Agreement do not create any relationship of partnership, joint venture, or employer and employee or otherwise.

10.6. Australian Consumer Law: The exclusions and limitations of liability set out in this Agreement shall apply to the fullest extent permissible at law, but We do not exclude or limit liability which may not be excluded or limited

by law. Without limiting the foregoing provisions, We do not exclude liability under the Australian Consumer Law which is prohibited from being excluded.

10.7. Entire Agreement: The terms and conditions of this Agreement constitute the entire agreement between You and Us and to the extent possible by law, supersede all prior understandings, representations, arrangements and agreements between You and Us regarding its subject matter.

10.8. Jurisdiction: This Agreement will be interpreted in accordance with the laws in force in Western Australia. You and We irrevocably submit to the non-exclusive jurisdiction of the courts situated in Western Australia.

10.9. Waiver: Waiver of any right arising from a breach of the terms and conditions of this Agreement must be in writing and signed by the party granting the waiver. A failure or delay in exercise, or partial exercise, of a right arising from a breach of the terms and conditions of this Agreement does not result in a waiver of that right. A party is not entitled to rely on a delay in the exercise or non-exercise of a right arising from a breach of this Agreement or from a default under this Agreement as constituting a waiver of that right. This clause may not itself be waived except by writing.