

MASTER CONTRACT AGREEMENT

1 DEFINITIONS

“**Accepted**” means the signing of the Agreement, acceptance to by confirmation of password, creation of an Account, or the use of any Service provided by EscapeNet.

“**Acceptance Date**” is the date that this Agreement is Accepted.

“**Account**” refers to the Internet service account created for the Client by EscapeNet.

“**Agreement**” means the Terms and Conditions for services, included on the application form, and as set out by this Agreement and all related documents, as varied from time to time.

“**Anniversary Date**” means the date which a Service will renew and begin a new period.

“**Company**” means EscapeNet and its related entities.

“**Client**” refers to the legal entity applying for the Service, being the person or company who has Accepted this Agreement.

“**End-User**” has the same meaning as Client.

“**Parties**” means both EscapeNet and the Client.

“**Service**” refers to the Internet access service, or other such service provided by EscapeNet to the Client.

“**Spam**” has the same meaning as the Internet Industry Associate Spam Code as referred to in the Spam Act 2003.

“**Such As**” has its original meaning, but is to imply “but not limited to” in each usage.

“**Ticket**” means a job or request lodged with EscapeNet’s job management and tracking software.

“**Ticket Case Number**” means the unique job number allocated from Ticket as returned by email to the clients EscapeNet email address.

2 GENERAL

- 2.1 The Client is bound by the Terms and Conditions as set out in this Agreement as of the Acceptance Date.
- 2.2 These Terms and Conditions are the entire Agreement and supersede any previous Agreement, whether verbal or written, between the Parties.
- 2.3 Any modifications to this Agreement must be in writing and signed by the Managing Director of EscapeNet.

- 2.4 Acceptance of this Agreement and any future amendments, and all their consequences, is implied by the creation of an Account or by the use of any Service.
- 2.5 This Agreement may be extended by more specific Service Supplements, which will be published and made available as specified in Clause 2.6
- 2.6 This Agreement, and supplemental policies and conditions, can be retrieved from our public web server at <http://www.esc.net.au/terms> or by request mailed to you.
- 2.7 Failure to receive or read our Terms and Conditions does not constitute acceptance-to-variation of this Agreement.
- 2.8 Should the Client be a body corporate, the directors jointly and severally accept any liabilities arising from the Agreement.
- 2.9 This Agreement shall be interpreted and enforced according to the laws of South Australia (“SA”), and be subject to the non-exclusive jurisdiction of the Courts of SA and the Courts of appeal for determining any dispute concerning this Agreement.
- 2.10 If any section or sub sections of this Agreement are inconsistent with the provisions of the Trades Practices Act, those terms shall be read down in order to comply with the Trade Practices Act
- 2.11 If any part of this Agreement becomes unenforceable, that part shall be separated from this Agreement so that all other parts remain effective.
- 2.12 EscapeNet may make amendments to this Agreement from time to time and they will become effective immediately. All amendments will be published immediately on our public web site as prescribed in Clause 2.6. It is the responsibility of the Client to review the Terms and conditions periodically to ascertain whether these Terms and Conditions have been altered.

3 RIGHTS OF ESCAPENET

- 3.1 The Client acknowledges that EscapeNet may make and store records of personal information required to establish the Client's identity, and records of the Client's credit worthiness, credit standing, credit history, or credit capacity.
- 3.2 The Client acknowledges that Personal Information Such As that information referred to in Clause 3.1 may be disclosed to a credit reporting agency. The Client acknowledges that this information may be used to notify credit providers of any credit default committed by the Client against EscapeNet.
- 3.3 EscapeNet may assign its rights and the benefit of this Agreement to a third party.
- 3.4 EscapeNet may at any time, schedule periods of planned interruption to the Service, of which it will endeavour to provide at least 24 hours notice to the Client, for the purpose of carrying out maintenance, changes or improvements to the Service.
- 3.5 EscapeNet has the right to redirect and block traffic at its discretion and the Client shall have no recourse against EscapeNet for doing so.
- 3.6 EscapeNet may without notice Scan and or probe any IP address ranges routed through its network for infected systems, mis-configurations, such as open mail or proxy servers and or malicious activity.
- 3.7 EscapeNet may by notice to the Client change the specifications of a Service.
- 3.8 EscapeNet reserves the right to suspend or terminate any or all Services provided to the End-User at any time and without notice.
- 3.9 If the Service is suspended and the grounds upon which it was suspended are not remedied by the Client within seven days, EscapeNet may terminate the Service. In the event the Service is terminated under this Clause, and the Client has exceeded their minimum term, the Client may apply for a pro rata refund of any pre-paid charges for the Service, but EscapeNet will have the right to levy a

- reasonable termination fee for any costs incurred as a result of the conduct that lead to the termination. In the event that the Service is terminated due to non-payment, a pro rata refund will not be applicable.
- 3.10 Without limiting the above, EscapeNet may remove or disable access to blacklisted sights as determined by the Australia Broadcast Authority, or copyright material which the Client has made accessible on EscapeNet's Service or network, without any recourse against EscapeNet.
- 3.11 If EscapeNet;
- 3.11.1 Becomes aware that the material infringes the copyright of a third party; or
 - 3.11.2 Becomes aware of the facts and circumstances that make it apparent that the material is likely to infringe the copyright of a third party;

4 CONDITIONS OF SERVICE

- 4.1 The Client agrees to comply with All policies published by EscapeNet, including but not limited to the;
- 4.1.1 Acceptable Use Policy
 - 4.1.2 Direct Debit Service Policy
- 4.2 All requests for change, cancellation and or suspension of a Service, by a Client, must be done in accordance with Clause 10.
- 4.3 The Client agrees to be responsible for all carrier charges such as telephone call costs, associated with the use of the Service. EscapeNet will not be held liable for any loss or charges resulting from carrier charges.
- 4.4 The client must bear the cost of any computer service, or repairs that are required in order for the Client to access the Service, whether or not the fault is found to be a fault or found to be within an EscapeNet system.
- 4.5 The Client agrees to indemnify Escapenet for the actions and costs incurred by any third party who , either deliberately or through negligence, gain access to the Internet through the Client's account. Any such occurrences should be immediately notified to *EscapeNet* by the Client.
- 4.6 EscapeNet in its unfettered discretion reserves the right to deny access to any of its services.
- 4.7 EscapeNet reserves the rights to examine, modify, delay, restrict access to and/or delete any or all such data as is stored and/or passes through the Company's network and/or computers.
- 4.8 The Client agrees to indemnify EscapeNet against any damage or loss resulting from;
- 4.8.1 Any advice provided by an employee of EscapeNet. This advice is provided in good faith.
 - 4.8.2 Descriptions, illustrations or specifications contained in any document including but not limited to catalogues or publicly available documents produced by EscapeNet; Any Client acting on the advice of EscapeNet does so at the Client's own risk.
- 4.9 Any software provided by EscapeNet is used, installed, or resold, at the Client's own risk. EscapeNet cannot be held liable for any claim of loss of productivity, damage to hardware or software resulting from the use of software provided by EscapeNet.
- 4.10 *EscapeNet* shall use all reasonable endeavours to ensure that the Service is promptly made available to the Customer.
- 4.11 Escapenet does not warrant or represent that the service will be error free or uninterrupted, that defects will be corrected or that any site or the server that makes it available are free from viruses or other such dangers.

- 4.12 Escapenet does not represent or warrant that virus protection software and or the firewall protecting its services will at all times be operating and efficient against all threats.
- 4.13 Escapenet does not warrant that all emails will be forwarded in a timely manner and cannot be held liable for any delay in forwarding emails. Furthermore Escapenet will not be liable for loss of any emails caused by spam filters or by any other reason whatsoever.

5 UNLAWFUL OR UNAUTHORISED USAGE

- 5.1 EscapeNet's services may only be used for lawful and authorised purposes.
- 5.2 Storage, transmission or distribution of any material in violation of Commonwealth or State legislation is prohibited. This includes copyright material, material legally judged as threatening or obscene, or material protected by trade secret.
- 5.3 Any attempt to access or modify unauthorised computer system information or to interfere with normal system operations, whether on the equipment of EscapeNet or any computer system or network that is accessed by our services, may result in the suspension or termination of access.
- 5.4 Unauthorised activities include, but are not limited to, guessing or using passwords other than your own, accessing information that does not have public permission, and accessing any system on which you are not welcome. Any attempt to disrupt or interfere with users, services or equipment, may result in the termination or suspension of your access.
- 5.5 Disruptions include, but are not limited to, distribution of unsolicited advertising or spamming, monopolisation of services, propagation of, or transmission of information or software which contains, computer worms, "trojan horses", viruses or other harmful components, using the network to make unauthorised entry to any other machine accessible via EscapeNet, sending harassing or threatening e-mail, and forgery or attempted forgery of e-mail messages and Usenet news postings.
- 5.6 The Client will be held liable for, and hereby indemnifies EscapeNet for, all costs and damages, attributable to the Client's unauthorised activities or disruptions.
- 5.7 The Client must not use, or allow any other person to use, the EscapeNet network and systems for any activities of an illegal or fraudulent nature, including any activities prohibited under the Telecommunications Act 1989 (Cth), the Crimes Act 1958 or under other applicable state and/or Commonwealth Laws.
- 5.8 It is your responsibility not to store on an EscapeNet system, transfer or cause to be transferred over the EscapeNet network, reproduce or make available for distribution through the EscapeNet network, any data where the storage, reproduction, transfer, or distribution of, that data is in contravention of the Copyright Act 1968.
- 5.9 EscapeNet does not and cannot monitor or control the content and information accessed via EscapeNet; EscapeNet only provides access.
- 5.10 EscapeNet shall not be held responsible in any way for the content of the information accessed via EscapeNet or offered for public access via EscapeNet.
- 5.11 It is the Clients' responsibility to avoid whatever is found to be offensive or obscene on any system.
- 5.12 The Client must take responsibility for and indemnify Escapenet against any costs, loss or damage that Escapenet may suffer as a result of material placed on EscapeNet's network and systems, and the statements made in mediums including, but not limited to, web pages, e-mail, chat or discussion forums and Usenet news.

- 5.13 Content providers must clearly identify material unsuitable for minors and refrain from contributing prohibited material, including, but not limited to, material deemed obscene under the Classifications (Publications, Films and Computer Games) Act 1995. Failure to comply with relevant legislation by you or your users and customers may lead to suspension or termination of your access.
- 5.14 EscapeNet reserves the right to act in any appropriate manner, where there are reasonable grounds for suspecting that illegal or unacceptable usage of the EscapeNet network and systems is occurring.
- 5.15 EscapeNet co-operates fully with Commonwealth and State Police and other bodies investigating unlawful behaviour on or via its network or systems.
- 5.16 To report a violation of EscapeNet's Acceptable Use Policy, please send details, including any documentation, article or email to abuse@esc.net.au.

6 LIMITED LIABILITY & INDEMNITY

- 6.1 Neither party is liable for any failure to perform or delay in performing its obligations under this Agreement, if failure or delay is due to anything beyond that party's reasonable control, such as acts of God, acts of war, riot, power outages, terrorism, fire, earthquakes and other disasters. If this failure or delay exceeds 60 days the other party may immediately terminate this Agreement, by giving notice. This Clause does not apply to a party's obligation to pay money.
- 6.2 We exclude;
 - 6.2.1 All liability to you for damages whether direct or indirect arising out of or in connection with this Agreement, even if we had knowledge of such liabilities, including without limitation, lost profits and damages suffered as a result of claims by any third person or one of your customers.
 - 6.2.2 All liability to you in negligence for acts or omissions of us or our employees, agents or contractors arising out of and in connection with this Agreement.
 - 6.2.3 Our liability to you for breach of any provision of this agreement, or Non excludable conditions as implied by section 69 of the Trade Practices Act 1947, is limited at EscapeNet's decision to resupplying the product or Service or repairing the goods. The Client may apply for a refund which may be considered by EscapeNet as a remedy to our liability.
- 6.3 EscapeNet will take great care in ensuring data is routed correctly through its network, however we cannot and do not guarantee that all such data will reach its intended destination either within or out of our network.
- 6.4 EscapeNet's liability for any breach of this Agreement is, if capable of limitation, limited to:
 - i.** The supply of Services again; or
 - ii.** Payment of costs of having the Services supplied again; at the discretion of the Company.
- 6.5 EscapeNet disclaims all liability for, and does not accept any responsibility for, anything that may happen to the Client or the Client's equipment, or any loss incurred by the Client through use of EscapeNet, the use of any of the services provided by EscapeNet, or the suspension or termination of the Client's service by EscapeNet.
- 6.6 This disclaimer of liability does not supersede or replace any other obligation expressly provided in any EscapeNet Service Agreement.

7 CLIENT

- 7.1 The End-User has an obligation to notify EscapeNet of any changes to;
 - 7.1.1 The ownership of the Client's corporate entity.
 - 7.1.2 Its contact details including phone numbers, mobile, work and fax, Postal Address, Site Address.

8 PRIVACY POLICY

- 8.1 All communication, including phone calls with EscapeNet may be recorded for training, contractual or other purposes and the Client agrees to this.
- 8.2 EscapeNet collects and stores Caller ID information for each call that customers make into its network or office, in order to enhance the services that it can provide to the Client.
- 8.3 EscapeNet may receive Caller ID information regardless of whether it has been blocked on that number. It is EscapeNet's policy not to disclose Clients' information to any third party unless required to do so by the Telecommunications Act of 1997.
- 8.4 The Client acknowledges that Personal Information may be disclosed to a credit reporting agency. The Client acknowledges that this information may be used to notify credit providers of any credit default committed by the Client against the Company.

9 ACCOUNTS & PAYMENTS

- 9.1 All accounts which are not paid within the specified terms will be referred for debt collection and any additional costs incurred will be borne by the Client on a full indemnity basis
- 9.2 Pursuant to Clause 3.2 failure to pay an account will result in appropriate action taken to affect the Clients credit rating. *Please note that this may affect your ability to receive future finance.*
- 9.3 Unless otherwise agreed in writing with EscapeNet, Accounts must be paid by one of the following approved methods:
 - 9.3.1 Credit card;
 - 9.3.2 Direct debit;
 - 9.3.3 BPAY;
 - 9.3.4 EFTPOS;
 - 9.3.5 Cheque; or
 - 9.3.6 Cash.
- 9.4 The Client agrees that all monies are non-refundable, and that periodic Services are payable in advance, unless otherwise agreed in writing.
- 9.5 Not using the Account does not relieve the Client of any obligation to pay for the Service, except as specifically provided in this Agreement.
- 9.6 EscapeNet reserves the right to suspend Services provided to the client for non-payment or rejection/dishonour of any payment.
- 9.7 Charges will continue to accumulate whilst any Service is suspended or disconnected where such disconnection or suspension is the result of non-payment or late payment of monies due.
- 9.8 EscapeNet may terminate a Service or an Account on 7 days Notice. Cancellation and reconnection fees may be applicable in some circumstances.
- 9.9 At EscapeNet's discretion an account keeping fee of \$4.95 may be applied to any account which is not on direct debit or paid quarterly.

- 9.10 The Client agrees that all periodic accounts are renewed automatically until formal notice is given to indicate otherwise. Such notification must be received 7 days prior to the account Anniversary Date.
- 9.11 The Client acknowledges and agrees that any Service that is provided with a minimum term contract will automatically be renewed on an ongoing monthly or quarterly basis at the expiry of the minimum term unless otherwise notified in writing, 7 days prior to the contract expiring.
- 9.12 The Client takes responsibility for all recurring fixed and variable charges for the account. If the Client is a minor, the parent or guardian signing this Agreement shall be responsible for all charges related to the Account.
- 9.13 Any payments which have been dishonoured, such as cheque and or direct debit will be subject to an Account Dishonour fee of \$11. This fee will be automatically added to the Clients' Account.
- 9.14 At any time during the term of this Agreement *EscapeNet* may review and modify its Fees for Services provided. The revised Fee will become the amount payable by the Customer to *EscapeNet* for the provision of Services from their next anniversary, or the date specified by *EscapeNet*.
- 9.15 The Fee for any particular service that is increased may not be further increased pursuant to clause 9.14 for a period of thirty (30) days.
- 9.16 If the revised Fee is greater than those currently payable and is not acceptable to the Customer, then the Customer may by written notice to *EscapeNet* given within seven (7) days of receipt of notice of the fee revision elect not to continue receiving the Services in which event this agreement shall be terminated forthwith.
- 9.17 Only services which have been increased may be terminated.
- 9.18 Bundled packages may have a component increased, and another decreased in which case 9.16 will only apply if the total of the bundle is greater.

10 NOTIFICATION

- 10.1 All notices, or formal communications, to *EscapeNet* must be done by the following approved methods;
 - 10.1.1 By Fax to either 08 82925299 or 1300 136 236.
 - 10.1.2 By Email to accounts@esc.net.au
 - 10.1.3 By Mail to Managing Director, *EscapeNet*, 465 South Road, KESWICK SA 5035
- 10.2 All formal communications to the Client will be done by the following approved methods;
 - 10.2.1 The *EscapeNet* email address, and or the redirected email address as updated by the Client.
 - 10.2.2 By Fax, Telephone and or Mail to the postal and or site address as stored in our accounting system.
- 10.3 A notice is deemed received by the Client;
 - 10.3.1 By Email the first business day after it has been sent from an *EscapeNet* staff member.
 - 10.3.2 By Facsimile the first business day after the successful sending of a fax to the specified fax number.
 - 10.3.3 By Mail 3 business days after sending the letter with standard postal mail to the specified address.
- 10.4 A notice is deemed received by *EscapeNet*;
 - 10.4.1 By Email the first business day after a Ticket Case Number has been received from Ticket.
 - 10.4.2 By Facsimile the first business day after the successful sending of a fax to our registered fax number.

10.4.3 By Mail 3 business days after sending the letter with standard postal mail to our registered address as shown in Clause 9.1.3.