

Terms of Service (TOS)

Introduction

SIS Group Pty Ltd (ABN 41 079 466 274) trading as Amaze Communication (hereinafter “we”, “us” or “our”) welcomes you to www.amaze.com.au (the “Website”). These Terms of Service (“TOS”) incorporate our Privacy Policy (published [here](#)) and collectively constitute the terms and conditions which govern your use of the Website and the services, features, content or applications operated by us (together with the Website, the “Services”) and provided to the subscriber accessing the Services (hereinafter “you” or “your”). Please read these TOS carefully before using the Services. If you do not agree to these TOS, you must not use the Services and you should exit the Website and stop use of the Services immediately.

These TOS apply to all users of the Services, including without limitation any sub-users. Using the Services in any manner constitutes your acceptance and agreement to be bound by these TOS, 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.

You may also enter into a specific agreement with us for the provision and/or carrying out of Services (including all documents expressly incorporated therein, “Service Agreement”). These TOS together with any and all Service Agreement/s, and any written amendments to these, constitute the “Agreement” between you and us.

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

We reserve the right, at any time and from time to time, to amend or to modify these TOS without prior notice to you, provided that if any such alterations constitute a material change to these TOS, we will notify you by posting an announcement on the Website. 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 TOS. For this reason, we encourage you to review these TOS whenever you use the Services. If you do not agree to any change to these TOS, then you must immediately stop using the Services.

1. Your eligibility to use our Services

1.1. The Services are not targeted towards, nor intended for use by, anyone under the age of 18. By using the Services, you represent and warrant that you are 18 years of age or older. If you are under the age of 18, you may not, under any circumstances or for any reason, use the Services. We may, in our sole discretion, refuse to offer the Services to any person or entity

and change its eligibility criteria at any time. You are solely responsible for ensuring that these TOS are in compliance with all laws, rules and regulations applicable to you and the right to access the Services is revoked where these TOS or use of the Services is prohibited or to the extent offering, sale or provision of the Services conflicts with any applicable law, rule or regulation. Further, the Services are offered only for your use, and not for the use or benefit of any third party.

- 1.2. To sign up for the Services, you must register for an account on the Services (an “Account”). You must provide accurate and complete information and keep your Account information updated. You shall not:
 - (i) select or use as a username a name of another person with the intent to impersonate that person;
 - (ii) use as a username a name subject to any rights of a person other than you without appropriate authorisation; or
 - (iii) use, as a username, a name that is otherwise offensive, vulgar or obscene.
- 1.3. You are solely responsible for the activity that occurs on your Account, regardless of whether the activities are undertaken by you, your employees or a third party (including your contractors or agents), and for keeping your Account password secure. You may never use or interfere with another person’s user account or registration information for the Services without permission. You must notify us immediately of any change in your eligibility to use the Services, breach of security or unauthorised use of your Account. You should never publish, distribute or post login information for your Account. You shall have the ability to delete your Account, either directly or through a request made to one of our employees or affiliates. You must notify us immediately of any unauthorised use of your Account, the Services we supply to you or any other breach of security.
- 1.4. We will be entitled to suspend or terminate your Account if you breach these TOS. Additionally, we may disclose your Account details to any law enforcement bodies who investigates your use of our Services. We will not be liable for any loss or damage as a result of your failure to provide us with accurate information or to keep your Account secure or with any investigation by law enforcement bodies.

2. Content you upload or download

- 2.1. In this Agreement, “Content” means, without limitation, information, data, text, written posts and comments, software, scripts, graphics, recordings and interactive features generated, provided, or otherwise made accessible on or through the Services, as well as all User Content (as defined below).
- 2.2. All Content added, created, uploaded, submitted, distributed, or posted to the Services by users (collectively “User Content”), whether publicly posted or privately transmitted, is the sole responsibility of the person who originated such User Content. You represent that all

User Content provided by you is accurate, complete, up-to-date, and in compliance with all applicable laws, rules and regulations. You acknowledge that all Content, including User Content, accessed by you using the Services is at your own risk and you will be solely responsible for any damage or loss to you or any other party resulting therefrom. We do not guarantee that any Content you access on or through the Services is or will continue to be accurate.

- 2.3. The Services may contain Content specifically provided by us, our partners or our users and such Content is protected by copyrights, trademarks, service marks, patents, trade secrets or other proprietary rights and laws. You shall abide by and maintain all copyright notices, information, and restrictions contained in any Content accessed through the Services.
- 2.4. Subject to these TOS, we grant each user of the Services a worldwide, non-exclusive, non-sub licensable and non-transferable license to use (i.e. to download and display locally) Content solely for purposes of using the Services. Use, reproduction, modification, distribution or storage of any Content for other than purposes of using the Services is expressly prohibited without prior written permission from us. You shall not sell, license, rent, or otherwise use or exploit any Content for commercial use or in any way that violates any third party right.
- 2.5. By submitting any User Content to the Website, excluding privately transmitted User Content, you hereby do and shall grant us a worldwide, non-exclusive, perpetual, royalty-free, fully paid, sub licensable and transferable license to use, aggregate, reproduce, distribute, prepare derivative works of, display, perform, and otherwise fully exploit such User Content in connection with the Website, the Services and our (and our successors' and assigns') businesses, including without limitation for promoting and redistributing part or all of the Website or the Services (and derivative works thereof) in any media formats and through any media channels (including, without limitation, third party websites and feeds), and including after your termination of your Account or the Services. You also hereby do and shall grant each user of the Website and/or the Services a non-exclusive, perpetual license to access any of your User Content that is available to such user on the Website, and to use, reproduce, distribute, prepare derivative works of, display and perform such User Content, including after your termination of your Account or the Services. By submitting any User Content to the Services other than on the Website, you hereby do and shall grant us a worldwide, non-exclusive, perpetual, royalty-free, fully paid, sub licensable and transferable license to use, aggregate, reproduce, distribute, prepare derivative works of, display, and perform such User Content solely for the purpose of providing the Services. To be clear, the foregoing licenses granted to us and our users does not affect your other ownership or license rights in your User Content, including the right to grant additional licenses to your User Content, unless otherwise agreed in writing. You represent and warrant that you have all rights to grant such licenses to us without infringement or violation of any third party rights, including without limitation, any privacy rights, publicity rights, copyrights, trademarks, contract rights, or any other intellectual property or proprietary rights.

2.6. Some Content pertaining to the Services will be marked as “Creative Commons Content”. Creative Commons Content will be identified with a Creative Commons icon. We hereby grant each user of the Services a license to Creative Commons Content under the [Creative Commons CC BY-NC-SA 3.0 Australia Licence Deed](#). You agree to abide by the terms of the Creative Commons License when using Creative Commons Content.

3. What constitutes acceptable use of our Service?

3.1. As a condition of use, you promise not to use the Services for any purpose that is prohibited by these TOS. You are responsible for all of your activity in connection with the Services.

3.2. You agree that you will not transmit, distribute, post, store, link, or otherwise traffic in Content, information, software, or materials on or through the Services that:

- (i) is unlawful, threatening, abusive, harassing, defamatory, threatening, inciting of violence or hatred, misleading or deceptive, fraudulent, invasive of another’s privacy, tortious, offensive, profane, contains or depicts pornography, is unlawful, or is otherwise inappropriate as determined by us in our sole discretion;
- (ii) you know is false, misleading, untruthful or inaccurate;
- (iii) constitutes unauthorised or unsolicited advertising;
- (iv) impersonates any person or entity, including any of our employees or representatives;
- (v) violates a person’s privacy;
- (vi) violates classification standards; or
- (vii) which in our opinion is unsatisfactory or inappropriate.

3.3. You shall not:

- (i) take any action that imposes or may impose (as determined by us in our sole discretion) an unreasonable or disproportionately large load on our (or our third party providers’) infrastructure;
- (ii) interfere or attempt to interfere with the proper working of the Services or any activities conducted on the Services;
- (iii) bypass, circumvent or attempt to bypass or circumvent any measures we may use to prevent or restrict access to the Services (or other accounts, computer systems or networks connected to the Services);
- (iv) run any form of auto-responder or “spam” on the Services whether or not in breach of the *Spam Act 2003* (Cth) (“Spam Act”);
- (v) run any Internet Relay Chat (IRC) services;

- (vi) use manual or automated software, devices, or other processes to “crawl” or “spider” any page of the Website;
- (vii) harvest or scrape any Content from the Services;
- (viii) use the Services for high-risk activities including but not limited to the operation of nuclear facilities, air traffic control, life support systems, or any other use where the failure of service could lead to death, personal injury, or environmental damage; or
- (ix) otherwise take any action in violation of our guidelines and policies.

3.4. You shall not (directly or indirectly):

- (i) decipher, decompile, disassemble, reverse engineer or otherwise attempt to derive any source code or underlying ideas or algorithms of any part of the Services (including without limitation any application), except to the limited extent applicable laws specifically prohibit such restriction;
- (ii) modify, translate, or otherwise create derivative works of any part of the Services; or
- (iii) copy, rent, lease, distribute, or otherwise transfer any of the rights that you receive hereunder.

3.5. You shall abide by all applicable local, state, national and international laws and regulations.

3.6. When you use our Services you must comply with all applicable laws. For example, but not limited to, you must not use our Services for:

- (i) any criminal activities such as distributing child pornography;
- (ii) forgery, identity theft, misdirection or interference with electronic communications,
- (iii) invasion of privacy;
- (iv) improper data collection activities;
- (v) securities violations, money laundering, or terrorist activities; or
- (vi) false advertising, propagating or profiting from frauds and unfair schemes.

3.7. You must also comply with all positive obligations that you have under any laws governing your use of the Services, including but not limited to:

- (i) all disclosure requirements;
- (ii) records maintenance for regulated industries; and
- (iii) financial institution safeguards.

3.8. You must not use any method to circumvent the provisions of these TOS, or to obtain Services in excess of those for which you have contracted with us. You must only use those IP addresses that we have assigned to you, and must not use any IP addresses other than

what we have assigned you. You must not use any mechanism to exceed the amount of resources assigned to you through the Services, or to conceal your activities.

- 3.9. You must not use the Services to distribute, receive communications or data gleaned from, or execute any action directed by any type of injurious code, including but not limited to:
- (i) trojans;
 - (ii) key loggers;
 - (iii) viruses;
 - (iv) malware;
 - (v) botnets;
 - (vi) denial of service attacks;
 - (vii) flood or mail bombs;
 - (viii) logic bombs; or
 - (ix) other actions which we reserve the sole right to determine to be malicious in intent.
- 3.10. You must not use the Services in a manner that would violate the lawful privacy rights of any person, or to publish or republish defamatory statements, or to harass or embarrass, which we shall be determined in our sole and absolute discretion.
- 3.11. In addition to being forbidden from performing any acts made illegal by the Spam Act or any other anti-spam laws, you must not send bulk electronic mail ("e-mail") utilising their resources on the Services unless they comply with the requirements of those anti-spam laws. You are forbidden from taking any action that would result in your IP addresses, or any IP address associated with us or other subscribers, being placed on any anti-spam list or the [ZEN Spamhaus blocklist](#). We reserve the right to determine whether an e-mail violation has occurred.
- 3.12. You must not use the Services in violation of the copyrights, trademarks, patents or trade secrets of third parties, nor shall they utilise the Services to publish such materials in a manner that would expose them to public view in violation of the law. We will terminate the Account of repeat violators if we consider it is appropriate to do so. If a third party believes that a subscriber of us is violating its intellectual property rights, it should notify us by e-mail at abuse@amaze.com.au. A notification should include the IP address where the violation is believed to have occurred in addition to any other requirements of the relevant law.
- 3.13. You are responsible for the acts of others utilising their access to the Services, and will be held responsible for violations of the Services by their sub-users or persons who gain access to the Services using your access codes. Any activity that a you are prohibited from performing by these TOS is equally prohibited by anyone with, or who obtains, access to your Services.

- 3.14. You must notify all persons who you allow to receive access to your Services of the provisions of these TOS. In particular, you must notify them that these TOS are binding upon them.
- 3.15. You must utilise proper security protocols, such as setting strong passwords and access control mechanisms, safeguarding access to all logins and passwords, and verifying the trustworthiness of all persons with your Account access information.
- 3.16. You must tell us if and when you learn of any security breaches regarding your Services. You must also help us or any government authority investigate, prosecute and fix those breaches. If we ask you to help us with any legal action in relation to those breaches, then we will pay your reasonable costs for assisting us in that action.

4. Using third party services and domain name registrars

- 4.1. The Services may permit you to link to other websites, services or resources on the Internet, and other websites, services or resources may contain links to the Services. When you access third party resources on the Internet, you do so at your own risk. These other resources are not under our control, and you acknowledge that we are not responsible or liable for the content, functions, accuracy, legality, appropriateness or any other aspect of such websites or resources. The inclusion of any such link does not imply our endorsement or any association between us and their operators. You further acknowledge and agree that we shall not be responsible or liable, directly or indirectly, for any damage or loss caused or alleged to be caused by or in connection with the use of or reliance on any such content, goods or services available on or through any such website or resource.
- 4.2. We are an authorised reseller of the domain name registrar OpenSRS. 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 auDA Policy Rules (available at www.auda.org.au) and 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, any and 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.

5. Invoicing and Payments

Our prices and billing practices, as well as Account cancellations

- 5.1. In this Agreement, “Charges” means our charges for the Services (or a Service) calculated under our schedule of rates or other agreed rates and the charges and any cost of any extra service under any contract or agreement with you, and includes any tax, including a goods and services tax (“GST”), levied directly on a transaction or supply under the Agreement. For specific pricing policies relating to the Charges, please refer to www.amaze.com.au. All prices are exclusive of GST and all other taxes unless otherwise specified.
- 5.2. The term of this Agreement commences on the earlier of the date that you electronically sign-up for the Services by creating an Account with an e-mail address or otherwise commences use of the Services, and ends upon the later of the termination of all Service Agreements and/or Services and all Data (as defined) being removed from our systems, and payment of all invoices, Charges and any other money which may be owed to us by you.
- 5.3. All invoices for the Charges are denominated, and you must pay, in Australian dollars. The Charges for our prepaid Services are usually billed monthly in advance. The Charges for all other Services are usually billed monthly in arrears with payment due no later than 5 days past the invoice date. You are entirely responsible for the payment of all taxes including GST. You are also responsible for ensuring our acceptance e-mail is not caught up in your spam filters. We reserve the right to accept or reject orders for Services placed by you. If you do not receive an acceptance e-mail within 14 days of receipt of the order, then your order shall be deemed to be rejected.
- 5.4. We reserve the right to change the prices for any of our Services at any time. All price changes will become effective at the beginning of the next billing cycle after the date of publication and/or notification to you of the price change, and your payment or continued use of the Services constitutes acceptance of any price change by us.
- 5.5. The relevant services we supply under these TOS will be selected by you as part of our online order process or otherwise confirmed in our e-mail acceptance to supply Services. You may also ask us to manually upgrade the Services that you buy over the phone, provided that you can verify your identity and that you are authorised to act on the relevant customer Account. We reserve the right to require you to upgrade the Services via our online processes.
- 5.6. Some of the paid Services may consist of an initial period, for which there is a one-time non-refundable charge, followed by recurring period charges as agreed to by you (the “Prepaid Services”). By choosing Prepaid Services, you acknowledge that such Services have an initial and recurring payment feature and you accept responsibility for all recurring charges prior to cancellation. We may submit periodic charges (e.g. monthly) without further authorisation from you, until you provide prior notice (receipt of which is confirmed by us) that you have terminated this authorisation through our website or wish to change your payment method or you are in breach of this Agreement. Such notice will not affect

charges submitted before we reasonably could act in accordance with *clause 5.7*. To terminate your authorisation or change your payment method, you must follow the procedure set out in *clause 5.7* below and go to control.amaze.com.au.

- 5.7. All Account cancellations must be submitted at least 14 days before the next billing cycle. Failure to do so will result in Services being billed for an additional cycle. Cancellations must be submitted via a cancellation request in the “My Account” section of our website, failure to submit the cancellation via the “My Account” will result in the cancellation not being processed. Cancellation requests must also include the domain name associated with that Service if it is a shared or reseller account, and server IP address if it is a dedicated server. You may be contacted shortly after the submission of your cancellation request; you must respond to complete the cancellation process.

Products and Services with arrears billing which also have usage-based billing such as but not limited to ‘per gigabyte’ (GB) data usage excess, cloud utility per hour billing, operating system software and feature licenses will receive a final invoice on the first of the month for the previous usage month. We will not consider the Agreement terminated until payment of the arrears amounts is received in full.

- 5.8. You must provide current, complete and accurate information for your Billing Account. You must promptly update all information to keep your Billing Account current, complete and accurate (such as a change in billing address, credit card number, or credit card expiration date), and you must promptly notify us or our payment processors if your payment method is cancelled (e.g. for loss or theft) or if you become aware of a potential breach of security, such as the unauthorised disclosure or use of your user name or password. Changes to such information are best to be made at control.amaze.com.au. If you fail to provide any of the foregoing information, then you agree that we may continue charging you for any use of paid Services under your Billing Account unless you have terminated your paid Services as set forth above.
- 5.9. Refunds are provided at our sole discretion. All setup fees, domain registration and SSL are not refundable. If a cancellation request is received for a Service which has been pre-paid, then a credit will be issued to your Account once the Service has been cancelled.
- 5.10. Upgrades and downgrades to existing Services can be completed in the current period only. Data usage once billed is irrevocable. You can keep track of your data usage from control.amaze.com.au. If you require more bandwidth for the current period, please contact us no later than 48 hours prior to the end of the billing period.
- 5.11. We may offer discounts, coupons and special programs from time to time. The terms of those offers will be posted on our Website and will be deemed to be incorporated into this Agreement.

Acceptable payment methods

- 5.12. We accept payment using major credit cards and PayPal payments. We currently do not accept any cryptocurrency, direct debit or cheque payments. Please note that any payment

terms presented to you in the process of using or signing you up for paid Services are deemed part of this Agreement.

We may, at our sole discretion, accept payment via direct deposit into our nominated bank account. Direct deposit will only be permissible for approved customers that have met our credit worthiness checks. A credit application must be completed and authorised by us prior to the acceptance of payment via direct deposit.

- 5.13. Upon providing us with your credit card details, you irrevocably authorise us to debit your credit card for all moneys payable pursuant to this Agreement and for any Products and Services purchase via the Website.

Your initial payment will include a pro-rata amount to the 1st of the following month. You will receive a monthly invoice 14 days prior to the 1st of the month for the following period in advance. The due date of the invoice will be the 1st day of the month for the period the invoice is for.

- 5.14. We use third-party payment processors (“**Payment Processors**”) to bill you through a payment account linked to your Account on the Services (your “**Billing Account**”) for use of the paid Services. The processing of payments will be subject to the terms, conditions and privacy policies of the Payment Processors in addition to this Agreement. We are not responsible for error by the Payment Processors. By choosing to use our paid Services, you agree to pay us, through the Payment Processors, all charges at the prices then in effect for any use of such paid Services in accordance with the applicable payment terms and you authorise us, through the Payment Processors, to charge your chosen payment provider (your “**Payment Method**”). You agree to make payment using that selected Payment Method. We reserve the right to correct any errors or mistakes that it makes even if it has already requested or received payment.

What happens if you don’t pay us on time?

- 5.15. We will not provide you with a Prepaid Service if you do not pay the monthly fee in full by the due date.
- 5.16. In the case of all Services that are payable monthly in arrears, we must receive your payment in full within 14 days of the invoice date, otherwise you will be considered to be in arrears. For accounts in arrears, if any amount is more than 7 days overdue, then we may suspend provision of Services to such account and bring legal action to collect the full amount due, including any lawyers’ fees and costs. Each outstanding amount shall bear interest of the rate of 10% per annum calculated on a daily basis from the day it falls due until the day it is paid.
- 5.17. If you are past due on your balance, we may send you a further e-mail before suspending your Services. Servers will be temporarily powered off during the suspension period. We reserve the right to delete your suspended machines without notice to you if your Account is more than 45 days overdue.

What if you go bankrupt or your company goes under?

5.18. If you default in any payment, or you suffer an act of insolvency or bankruptcy (the “**Event of Default**”), then we may immediately suspend the Services we provide you with and:

- (i) accelerate the due date for payment of all monies owing and outstanding to us and those amounts will become immediately due and payable;
- (ii) we may invoice you for any unbilled Charges and other out of pocket expenses incurred (including any bank charges, late payment fees and dishonour fees due to any payment default) which amounts will become immediately due and payable;
- (iii) we will charge you a one-time, late payment fee of 10% of the amount of any overdue invoices (i.e. amounts that you have not paid on time); and
- (iv) we may cancel any rebate, discount or allowance due or payable to you, or which you would otherwise be entitled to receive, as at the date of the Event of Default.

5.19. This Agreement, much like an electricity or gas account, is legally binding. We trust that you will pay for your Services as stipulated in this Agreement. If, however, you fail to do so without informing us of a change in situation and without responding to our attempts to contact and resolve with you, we may have to proceed with collections activity. If an account has been written off, we may refer the account to a debt collection agency (“**Collections Agency**”) for further collection activity. This will only take place once all appropriate credit management action has been exhausted by us. Once referred to a Collections Agency, if no payment is then received within 60 days, the account may be referred to a second or third Collections Agency. Any costs of commission for amounts recovered will be charged to you. A Collections Agency may, at their own discretion, seek to commence legal action in order to retrieve funds. Should all activities with a Collections Agency be exhausted, debts may be sold to a debt buyer that is a current member of an external dispute resolution scheme approved by the Australian Securities and Investments Commission (ASIC). Customers will be notified within 14 days of the debt being sold.

6. Liens and PPSA

6.1. Any terms used in this *section 6* that have a defined meaning under the *Personal Property Securities Act 2009 (Cth)* as amended (“**PPSA**”), and which are not already defined in the Agreement, have the same meaning as in the PPSA.

6.2. You acknowledge that we have a ‘security interest’ in any property of yours whether real or personal which includes any Data (as defined) and/or User Content (“**Collateral**”). You also acknowledge that our rights and interest in proceeds derived from the Collateral constitute a ‘security interest’ in such proceeds.

6.3. We may register any security interest on the register at any time in any manner we choose (including by registering one or more financing statements in relation to our interest in the Collateral, with such expiry dates as we determine in our absolute discretion). You must

provide us with any information we require for the purposes of giving effect to such registration.

- 6.4. For the purposes of section 157(3) of the PPSA, you irrevocably and unconditionally waive your right to receive any notice from us in connection with the registration of a financing statement or a financing change statement in respect of the Collateral.
- 6.5. If Chapter 4 of the PPSA would otherwise apply to the enforcement of any security interests then the provisions of Chapter 4 are excluded, to the maximum extent possible.
- 6.6. You give such permission as is necessary under the PPSA for us to take and maintain a security interest over the Collateral pursuant to the Agreement and further warrant that you shall do all such things and sign all such documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) as are necessary and reasonably required to enable us to acquire a perfected security interest in the Collateral and ensure the enforceability and priority of the security interest.
- 6.7. Neither Party shall disclose information of the kind described in PPSA section 275(1), unless section 275(7) of the PPSA applies.
- 6.8. We have a lien on the Collateral for any unpaid invoice, or Charges or other money owed by you to us.
- 6.9. Acting reasonably, we shall have the right to charge for storage and/or may remove to a warehouse or bond store any part of the Collateral at your risk and expense.
- 6.10. Pursuant to the PPSA, we may sell the Collateral by public auction or private treaty and retain the sums due to us, in addition to the Charges incurred in their detention and sale, from their proceeds and shall pay any surplus to the entitled person on demand.
- 6.11. Nothing in the Agreement shall be deemed to restrict any rights conferred on us by any laws in any jurisdiction relating to any liens, which rights are deemed to apply to the Agreement in addition to the provisions of this *section 6*.

7. Warranty Disclaimer

- 7.1. 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.
- 7.2. 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.

7.3. 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, assigns 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 or produce particular results required by you.

Your use of the Services is solely at your own risk.

7.4. 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:

- (i) 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
- (ii) 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.

8. Limitation of Liability

8.1. In no event shall we, nor our directors, employees, agents, partners, suppliers, assigns 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 we had been advised of, knew, or should have known, of the possibility thereof.

8.2. You acknowledge that the fees paid by you reflect the allocation of risk set forth in this Agreement and that we 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, the remedy set out in *clause 7.4* above; or
- (b) in all other cases, your termination and discontinuation of access to or use of the Services.

9. Confidentiality

You must keep confidential any confidential information to which it is given access, and shall cooperate with our efforts to maintain the confidentiality thereof. You must not publish to third parties or distribute information or documentation that we provide you with for purposes of operating and maintaining its systems, including material contained in estimates, invoices, work orders, or other such materials.

10. Data backup

You are solely responsible for backing up any data which you save onto our virtual servers or your Account with us (the “Data”). Even if you buy a Data back-up plan from us, we do not have any responsibility to preserve that Data after you cease purchasing that Service from us. Nor do we have any liability for any Data that might be lost, corrupted or is unrecoverable whether or not you buy a Data back-up plan from us or by reason of your failure to back up your Data. If your Data is important to you or your business, then we suggest that you also take out an insurance policy against any loss or damage suffered or incurred by you for any Data loss or corruption.

11. Publicity

11.1. You are permitted to publicly state that you are a subscriber or user of our Services.

11.2. You hereby grant to us a non-exclusive, royalty-free, worldwide license to use and display your name, logos, trademarks and other identifying marks (“Customer Marks”) in our

promotional, marketing and advertising materials, presentations and activities (“Promotional Materials”).

- 11.3. We may, in connection with our business operations and for the purpose of promoting our services, reference to third parties, including but not limited to potential customers, the fact that you are or have been our customer.
- 11.4. We agree to use the Customer Marks in a manner that is consistent with your brand guidelines, if any are provided, and to refrain from using the Customer Marks in a disparaging or misleading manner. You retain all rights, title, and interest in and to the Customer Marks and no right, other than the license granted herein, is transferred or assigned to us under this clause.
- 11.5. You may provide us with written notice to cease, or modify the use of, any of your Customer Marks in our Promotional Materials. Upon receipt of such notice, the Company agrees to promptly comply with your request.

12. 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, assigns and representatives (hereinafter “Associates”) 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 TOS 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 *section 12* survives the termination or expiry of this Agreement.

13. Termination or suspension of your Service

- 13.1. We reserve 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 TOS 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 I/O. Any such termination or suspension may result in the forfeiture and destruction of information or Data 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 TOS.

- 13.2. 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.
- 13.3. 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.
- 13.4. In the event of 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.
- 13.5. 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 Services have 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.
- 13.6. We reserve the right at our sole discretion to cancel your Services. If we choose to cancel your Services, you will receive a prorated refund for unused Services and will be provided 30 days to move your Services to an alternate provider.
- 13.7. All provisions of these TOS 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.

14. Governing law and jurisdiction

- 14.1. 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.
- 14.2. You agree that any dispute arising from or relating to the subject matter of these TOS shall be governed by the exclusive jurisdiction and venue of the courts of New South Wales and the Commonwealth of Australia.
- 14.3. You consent to service of process via e-mail at the e-mail address(es) provided by you, and waive any requirement under any judicial treaty requiring that legal process be translated into any language other than English.

15. Dispute Resolution

Mindful of the high cost of litigation, you and we agree to the following dispute resolution procedure:

- (a) 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 us (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 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.

- (b) Notice shall be sent to:
 - (i) if to us:
 - (A) by first class or registered mail to P.O. Box 7292, Alexandria NSW 1435, Australia; and
 - (B) by e-mail to legal@amaze.com.au; or
 - (ii) if to you: by first class or registered mail to your last-used billing address or the billing and/or shipping address in your Account information.
- (c) Both you and we agree that this dispute resolution procedure is a condition precedent that must be satisfied prior to initiating any legal proceedings against the other party.

16. Miscellaneous Provisions

16.1. Neither party shall be liable to the other for non-performance of the terms herein to the extent that either party is prevented from performing as a result of any act or event which occurs and is beyond its reasonable control, including, without limitation, acts of God, war, unrest or riot, strikes, any action of a governmental entity, weather, quarantine, fire, flood, earthquake, explosion, utility or telecommunications outages, Internet disturbance, or any unforeseen change in circumstances, or any other causes beyond either party’s reasonable control. The party experiencing the force majeure shall provide the other party with prompt written notice thereof and shall use reasonable efforts to remedy effects of such force majeure. A force majeure event does not include your obligation to pay us any money.

16.2. This Agreement, including all related agreements and policies incorporated by reference herein, constitutes the entire agreement between the parties related to the subject matter hereof and supersedes any prior or contemporaneous agreement between the parties relating to the Services.

- 16.3. In the event of any inconsistency in any part of the Agreement, the Service Agreement shall take precedence over these TOS.
- 16.4. All right, title and interest in any technology, techniques, software and other intellectual property that is used in, or supplied by us, in connection with the Services is owned by us or will vest in us on creation, or is licensed to us. You may use the technologies, techniques, software and other intellectual property only as permitted by these TOS. We otherwise reserve all rights in relation to those things. Unless otherwise agreed, you obtain no proprietary rights to the hardware, software and other infrastructure and facilities used by us to supply our Services.
- 16.5. A valid waiver hereunder shall not be interpreted to be a waiver of that obligation in the future or any other obligation under this Agreement. The delay or failure of either party to exercise in any respect any right provided for herein shall not be deemed a waiver of any further rights hereunder. In order for any waiver of compliance with these TOS to be binding, we must provide you with written notice of such waiver through one of our authorised representatives.
- 16.6. 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.
- 16.7. These TOS are personal to you, and are not assignable, transferable or sub licensable by you except with our prior written consent. We may assign, transfer or delegate any of our rights and obligations, including any Service Agreement or information provided to us by you for the purpose of receiving the Services, hereunder immediately upon providing you with written notice thereof. However, notice shall not be required where such assignment, transfer or delegation is from us to a related company.
- 16.8. Any variation or amendment to any part of the Agreement must be agreed in writing by an authorised representative of each party.
- 16.9. No agency, partnership, joint venture, or employment relationship is created as a result of these TOS and neither party has any authority of any kind to bind the other in any respect.
- 16.10. During the term of the Agreement and for 6 months after termination, you must not (or attempt to) directly or indirectly canvass, solicit, interfere with or endeavour to entice away from us or our Associates any person who or which at any time during that period was or is our or our Associates' employee, customer, contractor or supplier, or in the habit of dealing with us.
- 16.11. The clause and paragraph headings in these TOS are for convenience only and shall not affect their interpretation.

16.12. Unless otherwise specified in these TOS, all notices under these TOS will be in writing and will be deemed to have been duly given:

- (i) when received, if personally delivered or sent by certified or registered mail, return receipt requested;
- (ii) when receipt is electronically confirmed, if transmitted by facsimile or e-mail; or
- (iii) the day after it is sent, if sent for next day delivery by recognised overnight delivery service.