

SERVICE TERMS AND CONDITIONS

1. Definitions

- 1.1. The **Company** refers to WEBCODES Pty Limited A.C.N. 102 317 091 and to guestTRAX®.
- 1.2. The **Client** refers to any individual or recognised entity that has lodged an application for access to services provided by the Company.
- 1.3. The **Service** refers to access to the Company's Internet Website to obtain information provided by the Company.
- 1.4. A **Seller** is a 3rd Party merchant or purveyor of goods and services who is in no way affiliated with the Company.
- 1.5. The Company may modify this agreement at any time and in any manner. Any modification is effective after 7 days from either emailing, posting or faxing the Client a copy of the new Terms and Conditions. If any modification to this agreement is unacceptable to you, you may immediately terminate your access to the service as provided in the termination clause below. Your continued use of the Service following notice of any modification to this agreement shall be conclusively deemed an acceptance of all such modifications.

2. Liability

- 2.1. The Service is provided on an as is, as available basis without warranties of any kind, either express or implied, including, but not limited to, warranties of title or implied warranties of merchantability or fitness for a particular purpose. Oral advice or written information given by the Company, its employees, licensors or the like, shall not create a warranty, nor shall you rely on any such information or advice.
- 2.2. You understand that except for information, products or services clearly identified as being supplied by the Company, neither the Company, nor any of its affiliates, operates or controls any information, products or services accessible through the Service in any way, and that, except for such specifically identified information, services or products, all merchandise, information and services offered or made available or accessible through the Service are offered or made available or accessible by third parties who are not affiliated with the Company or its affiliates.
- 2.3. You expressly agree that use of the Service is at your sole risk and you agree that any information, service or product accessible through the Service is without warranties of any kind by the Company and its affiliates, either express or implied, including, but not limited to, warranties of title or implied warranties of merchantability or fitness for a particular purpose.
- 2.4. Under no circumstances, including negligence, shall the Company, or anyone else involved in creating, producing or distributing the Service be liable for any direct, indirect, incidental, special or consequential damages that result from the use of or inability to use the Service including but not limited to reliance on any information obtained via the Service, or that result from mistakes, omissions, interruptions, deletion of files or e-mail, errors, defects, viruses, delays in operation or transmission or any failure of performance, whether or not limited to acts of god, communications failure, theft, destruction or unauthorised access to the Company's records, programs or services. You hereby acknowledge that this provision shall apply whether or not the Company is given notice of the possibility of such damages and that this provision shall apply to all content, merchandise or services available through the Service.

3. Responsibility

- 3.1. The Client is responsible for all costs associated with the Service as outlined in the Service Plan Requirements section of the application. The Client is responsible for obtaining or providing all telephone access lines, telephone and computer equipment, or other access devices or services necessary to access the Service.
- 3.2. For the purpose of identification, billing and marketing, the Client agrees to provide the Company with accurate, complete and updated information required by the registration to the Service (registration data), including the Client's legal name, address and telephone number(s). The Client agrees to notify the Company within thirty (30) days of any changes in their registration data.
- 3.3. This Agreement applies to all accounts, sub-accounts and alternative account names associated with the Client's principal account. The Client is responsible for the use of their account(s) under any name on that account by any person, and for ensuring full compliance with this Agreement by all users of their account(s). The Service account may not be transferred without prior written approval from the Company and is subject to any limits established by the Company.
- 3.4. The Client is responsible for maintaining the confidentiality of their passwords. The Client is responsible for all activities and charges resulting from use of the Client's principal account with the Service. The Client agrees to pay all fees, connect time charges, surcharges, applicable taxes and any other charges incurred by the Client and their designated users. In the event of a breach of security, the Client will remain liable for any unauthorised use of the Service until the Client notifies the Company by reporting to an official representative of the Company.
- 3.5. Current rates for using the Service may be obtained from our office by calling 1300308747. The Company reserves the right to increase its fees and surcharges or to institute new fees at any time upon thirty (30) days prior notice. The Company may reduce these fees at any time without notice to the Client. In the event that a Client's account is terminated or cancelled, the Client agrees to pay all outstanding charges as determined by the Company.
- 3.6. If the Company does not receive the full amount of the Client's account balance within thirty (30) days of the invoice date or billing date, the lesser on an additional 1.5%, or the highest percentage allowed by law, of the outstanding balance will be added to the Client's bill as a late charge each month and shall be due and payable. The Client shall also be liable for all legal and collection fees arising from the Company's efforts to collect any unpaid balance of the Client's account(s).
- 3.7. Material used by the Client in the Service is the subject of copyright. Except as expressly permitted by the copyright holder of the material, neither the Client nor their designated users may reproduce, redistribute, retransmit, publish or otherwise transfer, or commercially exploit any material via the Service.

4. Acceptable Use

- 4.1. The Client expressly agrees not to use the Service in a manner that is prohibited by any law or regulation or to facilitate the violation of any law or regulation. The Client further agrees not to use the Service in a manner that will disrupt third parties' use or enjoyment of the Service or other communications services and outlets.
- 4.2. The Company will allocate system resources to provide the best possible service to all members. The Company reserves the right to limit, restrict or prioritise access to system resources, which will include maintenance time.
- 4.3. The Client is provided with a single user access to the system. If the Client is suspected or is proven to be providing access to the service to any other business, whether directly or indirectly related to the Client, without prior permission, the Service will be terminated immediately.
- 4.4. The Client recognises that this Agreement continues only for so long as the parties' mutually agree to continue it. Either the Client or the Company may terminate the Agreement and the Client's Registration at any time for any or no reason. The Company may also restrict, suspend or terminate without notice the Client's access to and use of the Service upon any breach of this Agreement. In the event of any termination for breach of this Agreement, the Client shall not establish a new registration with the Company for one year from the date of termination.
- 4.5. The Client's only right with respect to any dissatisfaction with any terms, policies, guidelines or practices of the Company in operating the Service, any change in the content of the Service, or any change in the amount or type of fees charged in connection with the Service, is to terminate Registration by delivering notice to the Company, effective the day the Company receives notification of termination or any future date specified which is acceptable to the Company. Upon termination of this Agreement, the Client shall have no right (a) to obtain any credit(s) otherwise due to the Client, and such credit(s) will be forfeited, (b) to access through the Company any materials stored in the Network Database.
- 4.6. Upon request of the Company, the Client agrees to defend, indemnify and hold harmless the Company, its officers, directors, employees, agents and licensees from any claims and expenses including reasonable legal fees, arising out of or relating to the Client's use of the Service.
- 4.7. The laws of the States of Australia where the Client normally resides shall govern interpretation and enforcement of this agreement.
- 4.8. The Agreement constitutes the entire agreement between you and the Company with respect to the Service and supersedes all prior agreements between the Client and the Company. The Company's failure to enforce any provision of this Agreement shall not be construed as a waiver of any provision or right. In the event that a portion of this Agreement is held unenforceable, the unenforceable portions shall be construed in accordance with applicable law as nearly as possible to reflect the original intentions of the parties, and the remainder of the provisions shall remain in full force and effect.
- 4.9. Failure to comply fully with any provision of this agreement may result in immediate suspension or termination of your right to use the Service.
- 4.10. In the event that this contract is terminated, the Client will remove all advertising of the guestTRAX® product, in and around the property in question, and shall return any Notices to the Company, forthwith.

5. Privacy Issues

- 5.1 The Company has taken all relevant steps to ensure that the Offender Tracking System complies with the Privacy Amendment (Private Sector) Act 2000, otherwise known as the Federal Privacy Act and the National Privacy Principles (NPP's)
- 5.2 The NPP's are the substance of the legislation and require an organisation to comply with a number of areas.
- 5.3 The Company has addressed all relevant NPP's to the satisfaction of the Privacy Commission.
- 5.4 Matters of note to the Client involve the collection of the information. The Company will provide documentation to the client to ensure compliance, so that the person is aware that their information may be collected, and the purpose of its collection.
- 5.5 The Company will, to the best of its ability, ensure that the information collected is accurate and up to date.
- 5.6 The Company will instruct the Client on its policy of information handling, to ensure that the information held within the system is not subject to misuse, abuse and loss and not able to be accessed by unauthorised persons.
- 5.7 Access to the system will be at the discretion of the account holder and misuse of the system will be the responsibility of the Client.
- 5.8 The Client is not permitted to enter data on the system on behalf of any other party, in particular one who is not a subscriber to the system. Due to the provisions regarding the requirement for the offender to be aware of the existence of the system, and the responsibility of the Client in making that person aware, it is therefore imperative that the Client entering the data on the system, is the Client that has had the offence breach committed against them. (refer 4.3 and 4.9)
- 5.9 Further amendments and additions may be made at any time, and will be notified to the Client at such times as is considered necessary.

6. Spam Act

- 6.1 In accordance with the Spam Act 2003, all Applications are required to have the applicants consent (either express or inferred) before commercial emails can be sent. Due to the nature of this System, notifications of offender activity will be by electronic messaging, as will any information of a relevant nature.
- 6.2 It should be noted that The Company supports the purpose that the Spam Act 2003 was introduced and does not intend to breach the Act.
- 6.3 An Inferred Consent in relation to this service can be described as due to the nature of the relationship between the Client and the Company being that of a subscriber to the service or a registered user of an online service.
- 6.4 To ensure that the issue of consent is clear, there is provision on the application form for consent to be given.