

Standard Terms and Conditions

LAST UPDATED: 8th June, 2016

1. Introduction

These are standard terms and conditions for the supply of a service from Exigent Australia PTY LTD (referred as “we” “our” or “us” throughout this document). These terms and conditions will apply to the customer (the person or entity who has ordered the service) once a service has been provisioned.

In addition to these terms and conditions, the following documents must also be complied with;

- **Acceptable Usage Policy**
- <http://static.exigent.com.au/policies/acceptable-usage-policy.pdf>
- **Service Level Agreement**
- <http://static.exigent.com.au/policies/service-level-agreement.pdf>
- **Privacy Policy**
- <http://static.exigent.com.au/policies/privacy-policy.pdf>
- **Customer Service Policy**
- <http://static.exigent.com.au/policies/customer-service-policy.pdf>

2. Definitions

We/Our/Us

- This refers to the company Exigent Australia PTY LTD (ACN: 612 205 446 / ABN 93 612 205 446).

You/Your/Customer/Customers

- This refers to the person or entity who has ordered a service from us.

Parties

- This refers to both you (the customer) and us (Exigent Australia PTY LTD).

Service/Services/Service(s)

- This refers to a product that has been advertised and provisioned by us. This may be hosted on any part of our infrastructure (such as our servers or network). Our service(s) are identified by a description on our website and also in the ‘Cloud Portal’ customer portal area.

Supplier

- This refers to our supplier who provides us goods and services which can be used directly or indirectly by us to supply a service to the customer.

Customer Portal

- The customer portal refers to where our billing system is located for customers to access their private information.

Network

- This refers to a connection that we may supply or is supplied to us.

Personal Information

- This refers to information that has been supplied to us (this includes your full name, current and any other address(s), services supplied, date of birth, e-mail address(s), credit card information and your driver’s license number).

Contract Term

- This refers to the period of time (days, weeks, months, years) that a service has been agreed upon between the customer and us and has been outlined on an order application form.

Our Equipment

- This refers to equipment that has been purchased by us and is/will be owned by Exigent Australia.

Your Equipment

- This refers to any equipment that has been purchased by you and is owned by you (the customer).

3. Commencement of this Agreement

This agreement will commence on the date that the account has been created (shown as day/month/year) in our system and your service is provisioned by us and/or our system. The commencement date can be altered based on the date that the service has been provisioned by us and/or our system.

4. Governing Laws

- a) You agree to abide by all local, state and federal laws of the country where the service is being delivered to.
- b) This agreement is governed by the laws of the Commonwealth of Australia and the laws of the state that you and your service reside in.

5. Making an Application

- a) Making an application for a service with us can be done by completing an online form through the 'Cloud Portal' customer portal area.
- b) For services that require a contract, the completion of a paperwork application form will be required. This application form must be signed by the person/entity that is applying for the service. This paperwork must be delivered or mailed to the postal address that is advertised on our website and received by us within 7 working days.

6. Accepting an Application

An application form that is submitted to us either through the 'Cloud Portal' customer portal or a paper application can be accepted by us based on:

- a) That we find you to be eligible for the service;
- b) The service is available and that we have stock available;
- c) Personal information that you have supplied to us during the application process is correct;
- d) Any previous service(s) that you may have held with us was accepted and has no outstanding invoices;
- e) Proof of identification matching the information that has been provided to us upon request.

Should any of this information found not to be correct, we reserve the right to reject your application.

7. Provisioning of a Service

- a) We will commence supplying the requested service to you within 14 working days from the day the online application form has been submitted online.
- b) If a service is advertised with automatic provisioning, this service will be completed within no more than 30 minutes from the time the service has been confirmed as paid by our billing system.
- c) If a field has not been filled in correctly when submitting your application, this can prevent the service from being provisioned.
- d) We will supply all of the information that is necessary for the customer to access the requested service(s) once provisioning of the service has been completed.
- e) A service will remain provisioned unless identification is requested as outlined in section 6 or a cancellation notice has been issued as outlined in section 18 of these terms and conditions.

8. Our Equipment

In order for us to provide a service to you, equipment may need to be provided on our behalf for the service to be provisioned and/or active.

Where we provide our equipment

- a) The ownership of the equipment will always remain owned by us unless specified in the contract and has been agreed to by both parties in writing;
- b) We will ensure that the equipment is in working condition;
- c) All procedures must be followed in accordance with the manufacturer's specification guidelines that can be obtained from their website or technical support;
- d) We reserve the right to inspect, test, service, repair, modify, remove or replace any part of our equipment when a fault is reported;
- e) You must ensure that any equipment provided by us is not altered, serviced or repaired without authorisation from us;
- f) We reserve the right to recover our equipment after the service has been cancelled by you or us.
- g) Purchasing equipment from us may be exchanged if it has been returned to us undamaged and in the same condition. Any equipment that is returned to us damaged or not in the same condition will be non-refundable. A re-stocking fee may apply if the equipment is accepted.
- h) The sale of any equipment is finalised on the 7th day from the purchase date. Any equipment that has been sold to you cannot be returned after the 7th day.
- i) We will within our efforts to transfer any manufacturer's warranty once the purchase of any equipment has been completed.

9. Your Equipment

Your equipment will belong to you and to be used in connection with the service that we deliver to you.

- a) Your equipment must comply with all local, state and federal laws;
- b) Must comply with all technical standards in guidance with the Regulatory Authority (the Australian Communications and Media Authority, the Australian Competition and Consumer Commission (ACCC), the Telecommunications Industry Ombudsman (TIO) and any other government, body or authority that may fall under Australian Technology & Communication standards & guidance;
- c) Direction may be provided by us at any given time and must be followed at all times to avoid any danger or interference that it may cause to our infrastructure;
- d) Access to your equipment may attract an administration fee. This fee will be disclosed to you prior to the requested access period and must be paid in full prior to accessing your equipment;
- e) Any request to access your equipment in our facilities will require 24 hours' notice by submitting a request to our technical support team or network operations centre (NOC);
- f) Access to your equipment for an emergency may attract an emergency access fee. This fee will be disclosed to you prior to the access being granted and must be paid in full within 5 working days;
- g) We reserve the right to disconnect your equipment from your provisioned service and hold it until all outstanding invoices are paid in full. A reasonable notice period may be given however, immediate disconnection may occur in the instance of an emergency;

10. Standard of Service

- a) We are committed to delivering a service with no interruptions however; we do not guarantee that the service will be free from any faults or interruptions.
- b) Our 'Service Level Agreement' can be found on our website (or through the link provided in section 1 of this document) and will outline our policy regarding delivery of our services and compensation for outages that we are responsible for.

11. Charges and Fees

- a) A monthly charge will be applied on the anniversary date of provisioning for a service that is fully provisioned.
- b) Should your service be provisioned after the registration/signup date, the provisioning date will be altered accordingly.
- c) Should an upgrade request be submitted before or after the billing anniversary date, a pro-rata fee to the closest billing anniversary date will be applied and must be paid in full before the upgrade is completed.
- d) Should an upgrade request to be requested on the anniversary billing date, the full fee will be applied and must be paid in full before the upgrade is provisioned.
- e) Where manual work is required by an administrator, technician or staff member to complete any work, a smart hands fee may be applied before completing the requested work for the provisioned service.
- f) Should we find a billing error, we reserve the right to rectify the error and bill for the service in accordance to recoup any amount back.
- g) A request for a chargeback will attract an administration fee and will be either deducted from the amount being refunded or charged to the account and must be paid in full before a chargeback is completed.
- h) Mail order and cheque payments will attract a \$25 administration processing fee.
- i) Refunds are provided at the discretion of the Exigent Australia Management team. It is at the discretion of the Management team to refund the amount back to a nominated bank account or as credit to the billing account held with us.
- j) Fees, payments and/or cost such as setup/installation fees, domain name registration/transfer cost, SSL certificate cost are non-refundable.
- k) Should a service be found to be in breach of these terms and conditions or our acceptable usage policy, a re-connection fee may be applied before reconnecting the service.
- l) An hourly fee will be applied to an account should remote hands be requested. This fee must be paid in full on the date that the smart hands is requested and before any smart hands work is completed.
- m) Should a request be made to retrieve a copy of any data from our infrastructure to be supplied to you, a smart hands fee will be applied and must be paid in full before any data is provided to the owner of the account.
- n) All prices that are advertised on our website and any advertisements that are produced by Exigent Australia will include any government charges and taxes unless otherwise stated.
- o) Exigent Australia reserves the right to charge any additional fees for the use of its payment gateways such as Credit Card, PayPal and bPay payment facilities.
- p) If payment is not received in accordance with these terms and conditions, you will be held liable for the collection of cost. This cost will include interest on any overdue amount which is calculated at a daily rate of 10% per annum (the set rate under the Queensland Penalty Interest Rate Act) starting from the due date of the invoice.
- q) We reserve the right to charge per gigabyte (GB) for any excessive bandwidth usage that exceeds your monthly allowance that has been described in the product information on our website or promotions.
- r) Where we become liable for any cost incurred from our suppliers that relate to your service, you become liable for the total cost plus interest.

12. Invoices and Payments

- a) Payment is accepted by using our payment methods - Credit Card, Direct Bank Transfer, bPay and PayPal.
- b) Payments will not accepted through mail order or a personal and/or bank cheque.
- c) All payments that are accepted will pay for the service in advance.
- d) Upon registering your credit card details within our system, you give Exigent Australia the authority to debit your credit card for all charges that are applied to your provisioned service from the time the invoice has been generated to the due date.
- e) Invoices will be generated 14 days before the service due date and will be emailed to the registered email address in our billing system.
- f) An invoice reminder will be generated and sent to the registered email address 2 days prior to the invoice due date.
- g) An overdue invoice reminder will be sent on the first day after the invoice due date to the registered email address.
- h) A second overdue invoice reminder will be sent on the second day after the invoice due date to the registered email address.
- i) A third overdue invoice reminder will be sent on the third day after the invoice due date to the registered email address.
- j) PayPal subscriptions are the responsibility of the client and must be cancelled by client when cancelling a service. To process any refunds for on-going auto-payments will attract an administration fee.

13. Late and Dishonoured Payments

- a) An outstanding invoice will be classed as a late invoice on the first day after the invoice due date.
- b) The customer must pay any expenses incurred by Exigent Australia as a result of an invoice not being paid. These costs include declined or reversed payment fees, debt collection fees and legal cost on an indemnity basis.
- c) If a billing dispute is raised and after a late fee has been applied to an invoice, the late fee will not be waived.
- d) All late and dishonoured payment disputes must be raised with us by raising a ticket with our Accounts & Billing team through our Cloud Portal website.

14. Special Offers

- a) We may run a special offer (or also known as a promotion) from time to time on our website and on other social media websites. These special offers may include terms and conditions and will be classed as additional terms and conditions to this document.
- b) Pricing for any special offer will cease as described in the additional terms and conditions.
- c) Should a special offer state that the offer is "For the life of the account"; we can offer you the option to upgrade you to a new plan that may have different pricing. The offer cannot force you to change to the new plan.
- d) Once the special offer period expires, the pricing of the service will be changed to the advertised price on our website.
- e) Should a contract period be offered with a special offer and the contract is broken, the remainder of the contract must be paid in full within 5 days of a day the cancellation request is submitted.
- f) Special offers are subject to new clients only unless otherwise specified in the terms and conditions of the special offer.
- g) Existing customers can take up a special offer if upgrading to a higher plan.
- h) Special offers cannot be used multiple times during the sign up process.
- i) Special offers are not subject to downgrading a service.

15. Reward Points Program

- a) Our Rewards Program is applicable to customers who may hold one of the following active services with us;
 - i. Shared Web Hosting Service (Economy, Business or Reseller Hosting)
 - ii. Virtual Server (Virtual Private Server and/or Virtual Dedicated Server and/or Managed Virtual Server)
 - iii. Dedicated Servers (Standard Dedicated Server and/or Enterprise Dedicated Server)
 - iv. Domain Name Address(s)
- b) Reward Program points cannot be redeemed for cash/money.
- c) Reward Program points can only be redeemed as credit towards an active account with us.
- d) All points can only be redeemed as a credit once the total amount of 5,000 points has been accumulated.
- e) 100x Reward Program Points is worth \$0.200.
- f) Points from any other billing account cannot be merged with another billing account. Points are assigned on a per billing account only.
- g) Points will expire approximately 2 years (730 days) from the date that the point(s) have been accumulated in our system.
- h) Reward Points can be earned by
 - i. Completing all payments for invoice(s) that are generated in our system, before the invoice due date
 - ii. Completing all payments for invoice(s) that are generated in our system, after the invoice due date
 - iii. Purchasing a product from our website (classed as Bonus Points)
 - iv. Purchasing, transferring or renewing a domain name address
 - v. Upgrading your service to a higher plan
 - vi. If a new service is automatically enabled/provisioned by our system
 - vii. If points are advertised during a promotion
- i) Reward Points can be deducted
 - i. If a service is suspended
 - ii. If a notice is generated for First, Second & Third overdue invoices
 - iii. When a late fee is applied to an overdue invoice
 - iv. If an order is found to be a fraudulent order
- j) Exigent Australia reserves the right to change, modify or end the Reward Points Program at any time.
- k) Our Reward Points Program is not connected or in any way linked to our Affiliate program.

Reward Points Table

How to earn reward points	Points Earned
Pay customer invoice in full before the invoice due date	300 Points
Pay customer invoice in full after the invoice due date	100 Points
Upgrade your service to the next available plan	250 Points
Purchase an add-on for your service	200 Points
Purchase a new domain name address	300 Points
Successfully transfer a domain name address	200 Points
Renew a domain name address	250 Points

16. Billing Disputes

- l) A billing dispute may be raised with our Management team by either email (*email: management@exigent.com.au*) or VIA our ticketing system and all billing disputes must be raised within 3 months from the date the invoice has been generated.
- m) If a billing dispute is raised, we will within a reasonable timeframe conduct an investigation into the dispute.
- n) When raising a dispute with our Management team, all of the information that you have must be presented to us. The information presented to us will be used to investigate the dispute on our behalf.
- o) Should Management find that there is an error in the bill, we reserve the right to modify the invoice and re-issue the invoice to the email address registered in our system.
- p) Should an invoice be overpaid, a credit will be applied to your account.
- q) Should an invoice be overpaid but the account has been cancelled, the overpaid amount will be refunded back to the nominated bank account within 7 working days.
- r) Should an invoice be found to have no errors, the invoice must be paid in full within 5 working days.
- s) Once Management have provided a final statement and resolution to a billing dispute, this outcome is final.
- t) If a billing dispute is raised after 3 months from the date the invoice was generated, the dispute becomes invalid.

17. Availability of a Service

- a) We will guarantee to deliver 100% uptime availability for all of our services as described in our Service Level Agreement - <http://static.exigent.com.au/policies/service-level-agreement.pdf>
- b) We will endeavour to schedule any maintenance work that may need to be carried out on our infrastructure if downtime insists of 15 minutes or more.
- c) We will ensure to provide a minimum of 24 hours' notice for any scheduled maintenance work.
- u) A notice for any scheduled maintenance work will be provided either VIA our service status website, an email notification or a SMS alerts.
- <http://status.exigent.com.au/>

18. Backing up your Data

- a) It is the sole responsibility of the customer to back up their data. This may be data that is saved on any web hosting server, email hosting server, virtual server, dedicated server or collocated server.
- b) Exigent Australia offers a backup service using a local backup application. This backup solution can be purchased as an add-on if it is not included in the product as described on our company website.
- c) Our backup service can be configured to run hourly, daily, weekly, fortnight and/or monthly.
- d) Data can be backed up to a local backup server within the same data centre or remotely to a backup server that is located in any one of our other data centres.
- e) The customer will have the appropriate access to a web control panel where they will be able to access their backed up data. This access will only be available while a service is provisioned with us.
- f) It is the sole responsibility of the customer to configure their backup notifications within the web control panel.
- g) Exigent Australia reserves the right to apply any smart hands administration fee to recover data for the customer from backups. Customers have the facilities to restore their data through the web control panel at no cost.
- h) In the event of equipment failure or data corruption, we will restore the data from the last known successful backup. Data will only be restored if the customer has this service configured with their product.

19. Suspension of a Service

- a) We reserve the right to suspend a service if it is found to be in breach of these standard terms and conditions or our acceptable usage policy.
- b) We reserve the right to suspend a service if
 - a) The service has been reported to us or found to be carrying out illegal activities, such as;
 - 1. Downloading, uploading or storing copyright material (e.g. – software, music, movies, torrent files);
 - 2. Hosting (adult and/or child) pornographic content (audio and/or video files, still and/or animated images);
 - 3. Scripts that can be found to be attacking another network(s) and/or server(s);
 - 4. Storing content/data such as credit card and/or bank account information that is not related to your business;
 - 5. Websites that are classed as “malware” and/or “fishing”;
 - 6. Found to be used to violate local, state and/or federal laws;
 - 7. Found to be used to commit fraudulent activities;
 - 8. Running an IRC Server and/or any type of Proxy Server.
 - 9. Running a game server/service on any of our “Budget” and “Elastic” services/products.
 - b) We believe that your service to be a threat or a risk to our infrastructure
 - c) There is an emergency that your service is required to be shut down and suspended
 - d) If we find that you have held a service with us previously under the same or a different name and it has been suspended or terminated due to violating our terms and conditions.
 - e) If you hold a provisioned service with us that is under the same and/or different name and is suspended due to an overdue invoice.
 - f) If we request identification for verification purposes as described in section 21 of this document.
 - g) If you have become insolvent or been declared bankrupt.
 - h) If we find that you are not of the age of 18 years or older.
- c) Should a provisioned service be suspended for breach of these terms and conditions or our acceptable usage policy, a notice of suspension will be issued within 2 hours from the time the provisioned service has been suspended.
- d) If a provisioned service is suspended by us, any due invoices will not be required to be paid until a final outcome has been provided.
- e) We may suspend a provisioned service at your request for up to and no more than a period of 2 months.
- f) Should a provisioned service be requested to be suspended for up to a period of 2 months, 50% of the suspended period must be paid instead of 100%.
- g) Should a request for a service to be suspended for up to a period of 2 months, a suspension request form must be completed, signed by the authorised account holder and faxed or posted to us.
- h) If a service has been suspended, we are under no obligation to provide a copy of any existing data from our infrastructure.
- i) If a request for a copy of any data is approved by Management, a fee for retrieval will be applied and must be paid in full before any data is provided.
- j) While a service is suspended, we take no liability in any loss of cost to your business.

20. Cancellation of a Service

- a) A cancellation request for a provisioned service must be submitted through the 'Cloud Portal' customer portal website by filling in the cancellation request form.
- b) A cancellation request can only be completed by submitting a cancellation request form through the 'Cloud Portal' customer portal website.
- c) We will not accept a cancellation request by ticket, email or telephone request. This is due to security reasons.
- d) If a service has been suspended due to violating these terms and conditions, a cancellation request cannot be submitted.
- e) If a cancellation request is submitted during a contract period, the remainder of the contract must be paid in full.
- f) We may suspend a service if abuse is found in any form of communication towards us as described in section 22 of this document.
- g) If a cancellation form has not been submitted for a provisioned service, the service will not be cancelled.
- h) You may be contacted shortly after the cancellation request form has been submitted for verification purposes.
- i) A cancellation request must be submitted 30 days or more for any service that is labelled as a Dedicated Server, Colocation service, IP Transit services and/or Hardware Infrastructure.
- j) A cancellation request that is submitted with less than 30 days' notice before the end of the billing cycle will incur cost to have the service paid for, to the end of the 30 day cancellation period.

21. Termination of a Service

- a) We may terminate a provisioned service within 24 hours if we have found you to be in violation of this document.
- b) We may terminate a provisioned service if we find that the customer has provided false or misleading information to us.
- c) A notice of termination will be sent to the registered email address giving you notice of the termination.
- d) If a service has been suspended for an overdue invoice and the invoice has not been paid on the 14th day since the invoice due date, we reserve the right to terminate the service.
- e) Should a service be terminated, any unused portion of the monthly/quarterly/half-yearly/annually payment will not be refunded.
- f) We may terminate a service if abuse is found in any form of communication towards us as described in section 22 of this document.
- g) If a service has been terminated, we are under no obligation to provide a copy of any existing data from our infrastructure.
- h) If a request for a copy of any data is approved by Management, a fee for retrieval will be applied and must be paid in full before any data is provided.

22. Interception of a Service

You agree that we may intercept any form of communication of a provisioned service with us and may monitor your usage of the provisioned service to ensure that you are complying with this document and in compliance with local, state and federal laws.

The interception of a service will ensure that our privacy policy is enforced and adhered to at all time.

23. Personal Information

- a) Information about you is collected when requesting for a service with us. This information will be in accordance with our Privacy Policy.
- <http://static.exigent.com.au/policies/privacy-policy.pdf>
- b) Information can be collected from sources such as application forms that are submitted to us, telephone, emails, tickets, public available sources, telecommunication and other services providers.
- c) Any information you provide to us is kept confidential however, we may release your information to
 - 1. Our employees and contractors;
 - 2. A related entity that is linked to Exigent Australia;
 - 3. Suppliers who may need access to your information to provide us a service on your behalf;
 - 4. Our professional advisors such as accountants, debt collection, lawyers and/or auditors.
- d) We reserve the right to request for any form of identification to use to verify the details that have been submitted to us.
- e) If we find that you provide part of or not all of the information correctly that we request, we may not be able to provide a provisioned service to you or we may refuse to provide a provisioned service to you until the correct information has been supplied and verified.
- f) By providing any information to us, you agree to the collection of information to us and that we may disclose this information as mentioned in section 21 of this document. A copy of our privacy policy can be found on our website
- <http://static.exigent.com.au/policies/privacy-policy.pdf>

24. Customer Support

- a) We agree that we will provide a technical support service VIA the 'Cloud Portal' customer portal website. Request can be sent to us either by our advertised email address on our company website or by submitting a ticket through the 'Cloud Portal' customer portal website.
- b) Customers who have purchased our telephone support add-on product will receive telephone support during our business hours as advertised on our company website.
- c) After hours support is provided for emergencies only. An emergency can be classed as not being able to access a service
- d) After hours support is provided to customers who have this add-on included within their product or as an optional add-on to their product.
- e) After hours support can be provided in addition to customers who do not have this optional add-on for \$15.00 per 5 minutes.
- f) Abuse of any kind through any form of communication to you and us will not be tolerated and we therefore reserve the right to suspend and/or terminate a provisioned service.

25. Communications & Notifications

- a) All forms of communication will be sent to your registered email address in the 'Cloud Portal' website. By completing a request for a service to be provisioned with us, you agree that you will keep your contact details up to date at all times.
- b) You agree that you will receive promotional material and marketing information from us from time to time while you hold an active service with us.
- c) Should your service be cancelled and/or terminated, you can opt out of any promotional material and marketing information that we send.
- d) You will not be able to opt out of any critical notifications, invoices, renewal notices, billing & account notifications and scheduled outage notifications while you hold a provisioned service with us.
- e) Opting out of any notifications or promotions can be done so when all services are cancelled and/or terminated and by emailing billing@exigent.com.au and requesting to close your account.

26. Changes to these Standard Terms and Conditions

- a) We reserve the right to modify/update/change these terms and conditions at any time.
- b) It will be the sole responsibility of the client to review these Terms and Conditions at anytime by accessing this document through our company website – <https://www.exigent.com.au/legal>
- c)