

# WEB HOSTING AGREEMENT

Effective June 22 2011

In this document unless the context requires otherwise:

FTW, We Our or Us refers to Free the Wine (ABN 58 475 322 374) care of PO Box 1447, Margaret River WA 6285;

Customer, Client, Your or Your refers to the person or legal entity using the service provided by Free The Wine

In consideration of the mutual covenants herein, the parties agree: "Services" means website hosting, DNS and email hosting, email marketing services, digital certificates and any other service or facility provided by Free The Wine to the Customer.

"Server" means the computer server equipment operated by any provider as nominated by the customer or Free The Wine, of which Free The Wine provides a reseller service only. Free The Wine does not provide the physical provision of the Services.

"Website" means the area on the Server allocated by Free The Wine to the Customer for use by the Customer as a site on the World Wide Web (WWW).

## 1. Indemnity

**1.1** The Customer agrees to indemnify and hold harmless Free The Wine and its employees, contractors, agents and directors in full against any and all liabilities, claims, losses, damages, penalties, actions, judgments, suits, costs or expenses of any kind arising under this agreement, including from the use by the Customer of any intellectual property rights of any third party and the registration or use of domain names or hosting accounts by the Customer.

## 2. Content Ownership

**2.1** The Customer assumes sole responsibility for obtaining any and all necessary licenses, consents, authorisations and approvals to enable it to lawfully use any and all intellectual property rights through the Services, including without limitation, clearance and/or consents in respect of any proposed domain name or other intellectual property rights being used by the Customer.

**2.2** Unless otherwise stated, all information and data stored on any server by the Customer or its agents is the property of the Customer. Free The Wine claims no ownership and assumes no responsibility whatsoever over, in or in respect of, any Customer information or data.

**2.3** Free The Wine will use its best endeavours to ensure that Customer information remains confidential in accordance with the Free The Wine privacy policy.

**2.4** The Customer agrees that Free The Wine may access Customer information and data at any time and for any reason.

## 3. Limitation of Liability

**3.1** The Customer will not, under any circumstances, seek to hold Free The Wine responsible or liable for any loss or damage whatsoever either under this agreement or in relation to the provision of the Services, including but not limited to: (a) loss of profits arising out of, or in connection with, this agreement; (b) use, misuse, suspension and or loss of any Customer domain registrations; (c) interruption to the business and operations of the Customer; (d) access delays or interruptions to any website accessed by registered domain name of the Customer; (e) non-delivery, corruption, modification, or destruction of data and or information; (f) events beyond the control of Free The Wine.

**3.2** Free The Wine shall not, under any circumstances, be liable or responsible for any acts, omissions or errors, whether negligent or otherwise by a Registry administrator, Hosting Wholesaler, or any other third party arising out of or related to, any domain name application, including the receipt of, or failure to receive, a domain name registration or renewal by the Customer or any third party, and hosting service, including the receipt of, or failure to receive, a hosting service renewal by the Customer or any third party.

#### **4. Cancellations**

**4.1** The Customer may cancel hosting services without reason at any time by giving 30 days notice in writing, to be delivered by email or post. There will be no refunds for lost portions of hosting plans.

**4.2** Upon receipt of a cancellation notice or otherwise upon the expiry or termination of this agreement Free The Wine will be entitled to delete and not retain any records, data, programs or other content of the Customer.

#### **5. Termination**

**5.1** Free The Wine may suspend or terminate access to the Services without notice to the Customer if the Customer account becomes overdue. Free The Wine will not be responsible for any loss or damage to the Customer or any other party as a result of such suspension or termination.

**5.2** Free The Wine may request the Customer to rectify any breach of this agreement. If the Customer fails to rectify any such breach within 30 days from the issuing of such a request by Free The Wine, Free The Wine is entitled to treat the Customer as having committed a material breach and repudiated their obligations under this agreement and to terminate the agreement without further notice. Upon such a termination of this Agreement, all monies owing by the Customer to Free The Wine will immediately become due and payable.

**5.3** In the event of a suspension and/or a termination of the Services by Free The Wine the Customer agrees that Free The Wine shall be entitled to: (a) block the Customer website; and (b) remove all data and or information located on it.

**5.4** Free The Wine shall retain the sole discretion as to whether any data and/or information removed is: (a) immediately deleted from existence in its entirety; or (b) held for such period to enable the Customer, at its expense and subject to payment of all monies owing to Free The Wine, to collect the data and or information.

**5.5** In the event of a termination or suspension, Free The Wine may post such notice in respect of the non-availability of the Customer website as it deems fit.

#### **6. Law**

This agreement shall be governed by and construed in accordance with Western Australian law, and the parties hereto hereby submit to the non-exclusive jurisdiction of Western Australian courts.

#### **7. Agreement**

**7.1** The Customer has not relied on any representation by Free The Wine other than those expressly stated in this agreement.

**7.2** Prior to entering into this agreement, the Customer represents and warrants to Free The Wine that the Customer has read, understood and agrees to be bound in full by the Free The Wine Privacy Policy.