

Hosted Exchange | Product Terms

These are the standard terms and conditions of supply of the Brennan IT Pty Ltd Hosted Exchange services ("Services") offered from time to time on Brennan's web site at <http://www.brennanit.com.au/terms-and-conditions.aspx> ("Brennan IT Pty Ltd Web Site").

Please read these terms and conditions carefully. It is a condition of your use of the Services that you ("you") comply with these terms and conditions.

1. Terms and Amendment Procedure

- 1.1. This agreement comprises, in order of priority, highest to lowest:
 - 1.1.1. the Master Services Agreement (MSA);
 - 1.1.2. any additional terms which apply to the products or services you acquire;
 - 1.1.3. our Acceptable Use Policy;
 - 1.1.4. our operational procedures for use of the Service; and
 - 1.1.5. our Privacy Policy.
- 1.2. This agreement commences on the date upon which Brennan IT Pty Ltd confirms to you by email or any other written medium that a Service has been commenced or activated ("Commencement Date").
- 1.3. Brennan IT Pty Ltd may change these terms and conditions either by obtaining your consent or giving you notice. The period of notice given by Brennan IT Pty Ltd depends on the nature of the change. If:
 - 1.3.1. the change will benefit you, we may make the change immediately and are not required to notify you prior to the change;
 - 1.3.2. the change is required by law, a regulatory body or for a technical reason (including for security), we will give you a reasonable period of notice not exceeding 3 days;
 - 1.3.3. we consider that the change has a significant and detrimental impact on our customers generally, we will give you at least 30 days notice prior to the change, and
 - 1.3.4. for all other changes, we will also give you at least 30 days notice prior to the change. Brennan IT Pty Ltd may give notice of a change by posting the new version of the Agreement on its website located at <http://www.brennanit.com.au>
- 1.4. If you use a Service after publication of any change in accordance with clause 1.3, your use will constitute acceptance of the amended terms.
- 1.5. These terms constitute the agreement in its entirety and supersede all prior agreements.
- 1.6. Any reference in this agreement to Brennan IT Pty Ltd's "supplier" is a reference to any third party service provider of Brennan IT Pty Ltd (a "Supplier"), if and to the extent a Supplier is supplying any part of the Services to you on behalf of Brennan IT Pty Ltd. You acknowledge and agree that Brennan IT Pty Ltd may supply the services through any Brennan Group company and this agreement is for the benefit of that company.

2. Services

- 2.1. The Services shall be provided to you from the Commencement Date for the period specified in the Proposal, or, for such extended period agreed from time to time by you and Brennan IT Pty Ltd in writing ("Service Period").
- 2.2. We will assign the Customer a logon name ("logon") and password which will provide you with access to the Control panel (which is used by you to configure various features of your web site/email service). We will provide the Customer with Email Services as per the level or product(s) you have selected in the Brennan Hosted Exchange Order Form.
- 2.3. We must perform scheduled maintenance to servers from time to time. We will attempt to perform all scheduled maintenance at times which will affect the fewest customers. If scheduled maintenance requires the service to be offline for more than 30 minutes we will notify the appropriate customer technical contact.

- 2.4. We may need to perform unscheduled maintenance. If unscheduled maintenance requires the Service to be offline for more than 30 minutes, we will we will notify the appropriate customer technical contact.
- 2.5. We will archive your data onto backup mechanisms on a regular basis for the purposes of disaster recovery. In the event of equipment failure or data corruption, we will restore from the last known good archive. In the event of corruption of all of our archives, or in the event that an old archive is used to restore data, you should be prepared to upload your data yourself for service restoration. You must maintain a recent copy of your data at your premises at all times. We will not be liable for incomplete, out-of-date, corrupt or otherwise deficient Customer data recovered from our backups.
- 2.6. You agree to Brennan IT Pty Ltd's use of spam and virus filters which may require us to use third party equipment or services to monitor and filter email traffic between our equipment and the Internet. You agree that we will not be liable for any loss or damage resulting from the use of spam or virus filters.
- 2.7. The Service is currently provided by Brennan IT Pty Ltd from its group data centres located in Australia. Brennan IT Pty Ltd will determine in its absolute discretion from time to time the data centre location from which your Service is provided. Brennan IT Pty Ltd reserves the right to migrate your Hosted Exchange data to a new operating system platform if our operating system supplier ceases to provide support for the legacy operating system, or if the server from which the service is provided fails or, in Brennan IT Pty Ltd's opinion becomes unreliable. Brennan IT Pty Ltd will use reasonable endeavours to notify you via the contact details in our database but does not take any responsibility for service failure if you have failed to keep your contact details up-to-date or if you have not checked the operation of your service post-migration and notified us of any required changes to that configuration.
- 2.8. In contracting with Brennan IT Pty Ltd for Services, the Customer obtains no rights to the hardware and other infrastructure and facilities used by Brennan IT Pty Ltd to deliver the Service.

3. Billing and Payment

- 3.1. You must pay for the Services in accordance with the prices and charges published on the Brennan Voice & Data Pty Ltd, Hosted Exchange Order Form. You must give us notice before the end of the term if you wish to cancel or alter your Service. If you elect to pay your fees on a yearly basis, and fail to make payment within 30 days of invoice, you will not be entitled to receive the yearly fee discount.
- 3.2. You must pay all prices and charges for the Services and other amounts incurred by you or any designated users or incurred as a result of any use of the Services (whether authorised or not) in accordance with the billing provisions specified on the Brennan IT Pty Ltd Hosted Exchange Order form.
- 3.3. Prices and charges outlined in Brennan IT Pty Ltd's Hosted Exchange Order Form and are exclusive of any government taxes or charges unless otherwise stated and exclusive of any registration or delegation charges imposed by domain name authorities. You must pay all Service charges, traffic and/or storage charges and other amounts incurred by you or any designated users or incurred as a result of any use of your password (whether authorised or not) in accordance with the billing option selected and in advance. In addition you must provide and pay for:
 - 3.3.1. the installation and use of telephone lines and all other equipment needed to access the Service; and
 - 3.3.2. all government taxes, duties and levies (if any) imposed on either you or us in respect of the Services or any other service or goods supplied.
- 3.4. You consent to Brennan IT Pty Ltd or its Supplier obtaining a credit reporting agency report containing personal information about you (as well as information concerning commercial creditworthiness and activities) for the purpose of assessment by Brennan IT Pty Ltd of an application for credit (whether commercial or personal) or for the purpose of the collection of payments that are overdue.
- 3.5. Where a billing option does not specify otherwise, all Service charges are payable within 14 days of the date of invoice (whether online or paper invoice). Unless otherwise stated, all fees are payable in advance and non-refundable.
- 3.6. If we have invoiced you in arrears for any Services, and you fail to pay the charges in any invoice by the due date specified in any applicable billing provisions (as referred to in clause 3.2 above)

or the invoice ("Unpaid Charges"), in addition to any other rights under this agreement, Brennan IT Pty Ltd may charge you interest and you agree to pay, on demand by Brennan Voice & Data Pty Ltd, interest on the Unpaid Charges at the Applicable Rate from the date the Unpaid Charges became due until those Unpaid Charges are paid to Brennan IT Pty Ltd in full. For the purposes of this clause, "Applicable Rate" means the Reserve Bank's Official Cash Rate (as published in the Australian Financial review at the time the Unpaid Charges become due)

- 3.7. You agree that in the event of any action being taken by Brennan IT Pty Ltd to recover any overdue amount due to it under this agreement or the Proposal, as evidenced for example by, without limitation, your credit card company notifying Brennan IT Pty Ltd of you disputing the payment of, or refusing to pay such charge, or where your credit card payment has been declined or reversed, any costs incurred by Brennan IT Pty Ltd in recovering the debt (including, without limitation, any legal expenses (on a solicitor/client basis), collection agency charges or any other reasonable associated costs incurred by Brennan Voice & Data Pty Ltd) are payable by you to Brennan IT Pty Ltd and shall be recoverable by Brennan IT Pty Ltd as a separate debt.
- 3.8. No credit terms are given to credit card accounts. Upon registration of a credit card account, you give us authorisation to debit your credit card for all charges.

4. Your Warranties

- 4.1. You warrant that:
- 4.1.1. if you are not the Customer, you have the power and authority to enter into this agreement on behalf of the Customer and will indemnify Brennan IT Pty Ltd for any breach of this agreement by the Customer;
 - 4.1.2. you have not entered into this agreement or obtained any Services on the basis of, or in reliance on, any statement or representation (whether made orally or in writing and regardless of the medium used) made by either Brennan IT Pty Ltd or its Supplier concerning this agreement or any of the Services, other than any statement or representation contained in this agreement;
 - 4.1.3. you are at least 18 years of age;
 - 4.1.4. you will conduct such tests and computer virus scanning as may be necessary to ensure that data uploaded by you onto or downloaded by you from the Server does not contain any computer virus and will not in any way, corrupt the data or systems of any person;
 - 4.1.5. you will keep secure any passwords used with the Service;
 - 4.1.6. you hold and will continue to hold the copyright in the Customer Data or that you are licensed and will continue to be licensed to use the Customer Data; and
 - 4.1.7. Your use of the Services contemplated under this Agreement complies with all relevant policies of third parties, regulations and laws and does not infringe the intellectual property or any other rights of any third party.
- 4.2. You are solely responsible for dealing with persons who access the Customer Data, and must not refer complaints or inquiries in relation to such data to us.
- 4.3. You indemnify us against all costs, expenses, loss or liability that we may suffer (directly or indirectly) resulting from:
- 4.3.1. your breach of these terms;
 - 4.3.2. your use or misuse of the Service;
 - 4.3.3. the use or misuse of the Service by any person using your account; and,
 - 4.3.4. publication of defamatory, offensive or otherwise unlawful material on any web site forming part of your service.

5. Our General Disclaimer of Warranties

- 5.1. To the extent permitted by law, neither Brennan IT Pty Ltd nor its Supplier, nor any employees, affiliates, agents, suppliers, third-party information providers, merchants, licensors nor the like (each a "Relevant Party") of either Brennan IT Pty Ltd or the Supplier, make any warranties of any kind, either expressed or implied, statutory or otherwise, relating in any way to the subject matter of this agreement, including, but not limited to, warranties of merchantability or fitness for a particular purpose, or non-infringement for the Services or any equipment provided, and all such warranties are hereby excluded.

- 5.2. Brennan IT Pty Ltd agrees to use all reasonable efforts to provide the Services to you. However, you acknowledge to, and agree with, Brennan Voice & Data Pty Ltd, that nothing in this agreement shall constitute an express or implied warranty or guarantee by any Relevant Party of either Brennan IT Pty Ltd or its Supplier:
- 5.2.1. that the Services will be uninterrupted or error free;
 - 5.2.2. that the Services will be free from external intruders (hackers), virus or worm attack, denial of service attack, or other persons having unauthorised access to the services or systems of Brennan IT Pty Ltd or its Supplier;
 - 5.2.3. concerning the results or success that may be obtained from the use of the Services;
 - 5.2.4. concerning any increase in revenue, profit or goodwill that may be obtained as a consequence of you using the Services (including, for the avoidance of doubt, any increase in revenue, profit or goodwill in connection with any products and/or services that you may determine to offer for supply, or supply via your web site, the Internet or otherwise ("Your Products and Services"));
 - 5.2.5. as to the accuracy, reliability or content of any information services or merchandise contained in or provided through the Services, or, for the avoidance of doubt, any information provided by Brennan IT Pty Ltd or its Supplier in any advice, report or communication to you or any other party;
 - 5.2.6. concerning any market conditions (whether favourable or not) that may be in existence at the Commencement Date will continue; and/or
 - 5.2.7. that the provision of the Services generally, or any software utilised by Brennan IT Pty Ltd to provide the Services, will not be subject to, or result in, either errors and/or delays.
- 5.3. Without limiting the above, you acknowledge that Brennan IT Pty Ltd's Services may require Brennan IT Pty Ltd to use, interface with or input information into Supplier's systems and you agree that Brennan IT Pty Ltd has no liability to the extent that the Supplier is unable to provide its services to you.

6. Indemnity

- 6.1. You will indemnify and defend Brennan IT Pty Ltd and its Supplier and all directors, officers, employees, and agents of Brennan IT Pty Ltd and its Supplier (each an "Indemnified Party") from and against any and all claims, damages, losses, liabilities, suits, actions, demands, proceedings (whether legal or administrative) and expenses (including but not limited to reasonable legal fees) incurred by any Indemnified Party arising out of, or directly or indirectly relating to:
- 6.1.1. any breach of this agreement by you; and/or
 - 6.1.2. the use of the Services by you. Such claims shall include, but shall not be limited to, claims based upon trademark, service mark, trade name, copyright and patent infringement, trademark dilution, tortious interference with contract or prospective business relations, unfair competition, restrictive trade practices, misleading statement, misleading or deceptive conduct, breach of contract, defamation or injury to reputation, or other injuries or damage to business.

7. Limitation of Liability

- 7.1. You agree that neither Brennan IT Pty Ltd nor its Supplier shall be liable for any indirect, incidental, special or consequential damages, or loss of profits, revenue, data or use, suffered by you or any third party, whether in an action in contract, tort or strict liability or other legal theory, even if Brennan IT Pty Ltd or its Supplier (as the case may be) has been advised of the possibility of such damages.
- 7.2. Subject to clause 7.1, you further agree that the aggregate liability of Brennan IT Pty Ltd and its Supplier for any damages, losses and causes of actions whether in contract or tort (including negligence or otherwise) shall not exceed AU\$10.
- 7.3. You agree that where any statute implies any term into this agreement, and that statute avoids or prohibits provisions in a contract excluding or modifying the application of or liability under such a term, then the term will be taken to be included in this agreement. However, the liability of Brennan IT Pty Ltd and its Supplier for any breach of the term will, if permitted by that statute, be limited, at our option, to the re-supply of the services again; or payment of the cost of having the services supplied again.

- 7.4. We acknowledge that some jurisdictions do not allow the exclusion or limitation of warranties or incidental or consequential damages, so that the above limitations or exclusions may not apply to you. In such jurisdictions, the liability of Brennan IT Pty Ltd and its Supplier (and the liability of any director, officer, employee, agent, affiliate, content provider or service provider of Brennan IT Pty Ltd and its Supplier) shall be limited to the greatest extent permitted by applicable law.

8. Intellectual Property

- 8.1. You acknowledge that all right, title and interest in any and all:
- 8.1.1. technology, including the software;
 - 8.1.2. any documentation and material that is part of or provided with the Services; and
 - 8.1.3. any know-how, trademarks or service marks of Brennan IT Pty Ltd or its Supplier, (collectively, "Our Intellectual Property") is vested in Brennan Voice & Data Pty Ltd, its Supplier and/or the licensors of Brennan IT Pty Ltd or its Supplier (as the context requires).
- 8.2. Unless otherwise specifically provided in this agreement, you agree that you shall have no right, title, claims or interest in or to Our Intellectual Property.
- 8.3. You may not copy, modify or translate any of Our Intellectual Property or related documentation, or decompile, disassemble or reverse engineer any of Our Intellectual Property, to use it other than in connection with the Services, or grant any other person or entity the right to do so.
- 8.4. Unless otherwise specifically permitted by this agreement, you are not authorised to distribute or to authorise others to distribute any of Our Intellectual Property in any manner without the prior written consent of Brennan IT Pty Ltd and/or its Supplier (as the context requires); provided, however, that nothing in this clause 8.4 shall preclude you from using Our Intellectual Property as incorporated in the Services. This clause 8.4 shall not operate to extinguish, restrict, vary, waive or affect in any manner whatsoever any right, title or interest which you may now have or hereafter acquire in, or in relation to, the third-party software that is part of or provided with the Services solely to the extent such third-party licensors publicly provide such rights, title or interest in the third-party software to you.

9. Confidential Information

- 9.1. You acknowledge that, in the course of the performance of this agreement, you may have access to customer information and communications, including proprietary information claimed to be unique, secret, or confidential, and which constitutes the exclusive property and trade secrets of Brennan IT Pty Ltd or its Supplier ("Confidential Information"). You agree to maintain the confidentiality of the Confidential Information and to use the Confidential Information only to the extent necessary for legitimate business uses in connection with this agreement. Upon request of Brennan IT Pty Ltd or on termination or expiration of this agreement, you shall return the Confidential Information of Brennan IT Pty Ltd or its Supplier then in your possession to Brennan IT Pty Ltd or its Supplier. Nothing in this agreement shall prohibit or limit your use of information which
- 9.1.1. is now, or hereafter becomes, publicly known or available through lawful means;
 - 9.1.2. is rightfully in your possession, as evidenced by your records;
 - 9.1.3. is disclosed to you without confidential or proprietary restriction by a third party who rightfully possesses and rightfully discloses the information;
 - 9.1.4. is independently developed by you without any breach of this agreement;
 - 9.1.5. is the subject of a written permission to disclose provided by Brennan IT Pty Ltd and/or its Supplier (as the context requires); or
 - 9.1.6. is required by law to be disclosed.

10. AUP and Privacy Policy

- 10.1. You agree to comply with Brennan IT Pty Ltd's Acceptable Use Policy located at <http://www.brennanit.com.au> as varied from time to time ("AUP"). If we receive notice of, or otherwise become aware that you have failed to comply with any provision of this AUP, in addition to any other rights of Brennan IT Pty Ltd under this agreement, you agree that Brennan IT Pty Ltd or its Supplier may immediately take corrective action, including suspension of any and all Services, or, in the case of Brennan Voice & Data Pty Ltd, terminating this agreement. In the event that any such corrective action due to a violation of the AUP occurs, Brennan IT Pty Ltd shall not refund to you any fees paid to Brennan IT Pty Ltd prior to such corrective action.

- 10.2. You agree that Brennan IT Pty Ltd may disclose your account and other information in accordance with the AUP and Privacy Policy.

11. Force Majeure

- 11.1. Neither Brennan IT Pty Ltd nor its Supplier shall be liable for failure or delay in performing its obligations under this agreement if such failure or delay is due to circumstances beyond its reasonable control, including, without limitation, acts of any governmental body, war, insurrection, sabotage, embargo, fire, flood, strike or other labour disturbance, interruption of or delay in transportation, unavailability of or interruption or delay in telecommunications or third party services, failure of third party software or inability to obtain raw materials, supplies, or power used in or equipment needed for provision of the Services.

12. Suspension or Termination of this agreement

- 12.1. We may from time to time without notice suspend the Service or disconnect or deny your access to the Service:
- 12.1.1. during any technical failure, modification or maintenance involved in the Service provided that we will use reasonable endeavours to procure the resumption of the Services as soon as reasonably practicable; or
 - 12.1.2. if you fail to comply with any provision in this agreement (including failure to pay charges due), or do, or allow to be done, anything which in our opinion may have the effect of jeopardising the operation of the Service, until the breach (if capable of remedy) is remedied.
 - 12.1.3. Notwithstanding any suspension of any Service under this clause you shall remain liable for all charges due throughout the period of suspension.
- 12.2. If your account has been suspended or terminated due to your breach, reactivation of your account will be completely at our discretion. If we agree to reactivate your account, we will require:
- 12.2.1. payment in full of all outstanding amounts; and
 - 12.2.2. payment of a reactivation fee.
- 12.3. Brennan IT Pty Ltd reserves the right to refuse to supply services to a potential customer who has previously had its account with Brennan IT Pty Ltd terminated for breach. In this clause, "potential customer" includes:
- 12.3.1. (if the potential customer is a corporation) its Related Entity or Related Party (as those phrases are defined in the Corporations Law); and
 - 12.3.2. if the potential customer is an individual) any corporation in which the potential customer was at the relevant time an officer or shareholder, or a Related Party of a shareholder.
- 12.4. Brennan IT Pty Ltd may without notice to you remove, amend or alter your data upon being made aware of:
- 12.4.1. any claim or allegation; or
 - 12.4.2. any court order, judgment, determination or other finding of a court or other competent body, that the data is illegal, defamatory, offensive or in breach of a third party's rights.
- 12.5. We may end our agreement with you and cease providing Services for any reason, on 30 days written notice to you. You may close your account with Brennan IT Pty Ltd on 30 days written notice to Brennan IT Pty Ltd.
- 12.6. If your account is closed you must pay all outstanding charges immediately and we may delete all Customer Data from any storage media.
- 12.7. We are under no obligation to provide you with a copy of the Customer Data if we have suspended or terminated your access to the Service for your breach. If we provide you with a copy of Customer Data, we are entitled to charge a fee for service.

13. Customer license

- 13.1. The Customer grants to Brennan IT Pty Ltd and its Supplier a license to use and reproduce all Customer Data in order to fulfill its obligations under this agreement. In this agreement "Customer Data" means all information, data, text, logos, images, audio, movie clips and/or content in any form that forms part of the Customer's web sites or emails.

14. Miscellaneous

- 14.1. You may not resell Services or assign your rights and obligations under this agreement without our prior written consent.
- 14.2. If you subscribe to the Brennan Hosted Exchange service and do not activate your mailboxes within 30 days of your subscription to that service, Brennan IT Pty Ltd may terminate your account upon 14 days notice. If Brennan IT Pty Ltd so terminates your Hosted Exchange account, any POP email accounts created by you will also be terminated and you will lose any data stored therein.
- 14.3. The law in force in Victoria, Australia governs this agreement and the transactions contemplated by this agreement.
- 14.4. In the event it is necessary for Brennan IT Pty Ltd to enforce its rights under this agreement, you agree to pay all fees incurred by Brennan IT Pty Ltd (including, but not limited to, legal fees and collection agency fees)
- 14.5. This agreement shall be binding upon and inure to the benefit of you, your respective successors and assigns. You may not resell any Services or assign your rights and obligations under this agreement without the prior written consent of Brennan IT Pty Ltd.
- 14.6. A provision of, or a right created under this agreement, may not be waived except in writing signed by the party granting the waiver, or varied except in writing signed by the parties.
- 14.7. If any provision of this agreement is held by a court of competent jurisdiction to be invalid, unenforceable, or void, the remainder of this agreement shall remain in full force and effect.

15. Specific Additional Terms

- 15.1. The following specific additional terms apply to the products indicated below.
 - 15.1.1. Domain Name Registration
Registration of domain names as part of the Services is subject to the relevant Brennan Voice and Data Pty Ltd Standard Form of Agreement terms and conditions located on <http://www.brennanit.com.au/terms-and-conditions.aspx>
 - 15.1.2. Additional Terms
 - 15.1.2.1. To utilise Brennan's Hosted Exchange Service your email does not have to be currently hosted by Brennan Voice & Data Pty Ltd. Migration of your existing mail can also be arranged and migrated under separate arrangement.
 - 15.1.2.2. The full monthly charge for each Hosted Exchange mailbox created will be incurred for the whole or part of your billing month in which the product is enabled.
 - 15.1.2.3. Excess storage is calculated at company level, based on the combined total of the average daily storage usage of each Hosted Exchange mailbox and the Public Folder (if applicable) under the account across the given month. Excess storage is charged at \$0.1 per MB per month.
 - 15.1.2.4. Devices and GPRS plan costs are not included with this product. You are responsible for the selection, maintenance and support for your mobile device and GPRS plan to which you connect to this service. Synchronisation via your mobile device with the version of Microsoft Outlook installed on your PC is only available to customers with MAPI access (ie. those customers that subscribe to the Blackberry Synchronisation module).



Brennan IT Pty Limited ABN 29 082 699 367
Brisbane | Melbourne | Newcastle | Sydney
Phone: 1300 500 000
Web: www.brennanit.com.au