

# TERMS OF SERVICE

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By purchasing any hosting or additional service or product from Wildeye, you (The Customer) are entering into an agreement with Wildeye that is bound by the Terms of Service (“TOS”) outlined in this document. This Agreement shall be construed in all respects in accordance with the laws of the state of VIC, Australia applicable to contracts enforceable in that state. By completing the ordering process, you agree to have read, understood, and be bound by these Terms of Service.

## 1. Definitions

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- 1.1 Hosting service – Any shared, reseller, virtual, or dedicated service used to store and deliver web based content.
- 1.2 Additional services – Any product or service that is considered an “addon” to a primary hosting service, or which covers one-off charges for additional work carried out by a Wildeye staff member.
- 1.3 Resource usage – Any and all allocated resources provided to the customer to allow for the storage and delivery of the web based content within a hosting service. This includes but is not limited to disk space, Memory, CPU, Bandwidth
- 1.4 Subscription – The term(monthly, quarterly, semi-annually, annually) applicable to the purchased service.
- 1.5 Members Portal – An account management interface for managing the billing aspects of hosting or additional services purchased including invoices, contact information, and domain registrations.
- 1.6 Acceptable Usage Policy (AUP) - is provided to give The Customer and users a clear understanding of what Wildeye expects of them while using any Wildeye(or Wildeye supplied) services.

## 2. Fees

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- 2.1 Payment – Establishment of any hosting or additional service is dependent upon receipt by Wildeye of payment of stated charges as outlined on the Wildeye website or any other documentation or custom quote provided to The Customer. Subsequent payments are due on the anniversary date of the subscription term in advance for the following subscription term’s service. All service fees are disclosed within a product description or will be disclosed to the customer prior to payment being required for any custom quotations or services ordered via phone. Fees are quoted in Australian Dollar and inclusive of GST.
- 2.2 Setup Fee – The Customer agrees to pay in advance and in full any amount of a non-recurring nature required for the initial deployment of the purchased hosting service. Any such fees are listed as setup fees in the service description or will be disclosed in any custom quotations prior to any server provisioning, equipment acquisition or installation by Wildeye.

- 2.3 Recurring fee - All subscriptions for hosting services provided by Wildeye are recurring by nature and the Customer agrees to pay any recurring fees listed in the Service description in advance each anniversary date until such time as The Customer submits a cancellation request in accordance with these Terms of Service.
- 2.4 Non-Refundable Fees - Certain fees paid to Wildeye are considered non-refundable due to the nature of the product or service purchased and this includes but is not limited to the following:
- 2.4.1 Third Party Products - Products supplied by Wildeye where Wildeye acts as a reseller for another provider (e.g. domain registrations, website hosting, SSL certificates, third party product licences) are provided as non-refundable products and refunds cannot be provided once the product has been activated on an account.
- 2.4.2 Advanced Administration Time - Services where additional labour is to be carried out by Wildeye staff are non-refundable once the additional labour has been carried out.
- 2.5 Additional Resource Usage fees - Should Customer exceed the total amount of included hosting resource utilization as described in Service Definitions. Customer agrees that overage fees will apply and be due immediately. Current pricing for additional resource utilization is resource specific and maintained in the Members Portal and the product addons page.
- 2.6 Invoices and Statements - invoices are provided to The Customer by email using the contact email address assigned to the Customer or any additional billing contacts within the Wildeye billing system. Invoices cannot be sent via postal mail or any other courier style service.
- 2.7 Statements - Wildeye does not provide written or printed statements. However, an account's invoice history is always available for viewing by The Customer within the Members Portal.
- 2.8 Failure to Pay - Wildeye may temporarily deny service (10 days past due) or terminate this Agreement upon the failure of The Customer to pay a subscriptions applicable recurring fees where the fees reach 28 days past due. Such termination or denial will not relieve The Customer of responsibility for the payment of all accrued charges, plus reasonable interest and any collection fees. Accounts that are not collectable by Wildeye may be turned over to an outside collection agency for collection which may result in additional fees or fines being payable.

### 3. Refunds, Disputes and Cancellations

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- 3.1 Money Back Guarantee - Wildeye provides a 14-day Money Back guarantee for shared or reseller hosting services and a 10-Day Money Back Guarantee for Dedicated, VPS, or Cloud hosting service ordered under a subscription period of annual.
- 3.2 Refunds - All payments to Wildeye are non-refundable, except where the money back period is applicable and the refund request is made within 14 days of the service signup date. One time setup and additional fees are non-refundable except where an ordered hosting or additional

service cannot be provided by Wildeye. Where an ordered service cannot be provided but an alternative service is provided in its place, all applicable one-time setup fees will remain payable. Refunds are not provided automatically and must be requested by the customer within 14 days of requesting cancellation.

- 3.3 Disputes - All overcharges or billing disputes must be reported within 60 days of the time the dispute occurred. If you dispute a charge to your credit card issuer that, in Wildeye's sole discretion is a valid charge under the provisions of these Terms of Service, you agree to pay Wildeye an "Administrative Fee" of not less than \$50 and not more than \$150
- 3.4 Service Cancellation by The Customer - Wildeye provides an ongoing recurring service which will remain active until such time as The Customer submits a cancellation request by completing the online cancellation form available within their Members Portal. Requests for cancelling accounts must be submitted at within 2 business days prior to the next due date to ensure no further fees are payable. Instructions for a cancellation request can be submitted via the Members Portal, a Support Ticket request, the General Contact form or verified email.
- 3.4.1 No Cancellation Fee - Wildeye does not charge a cancellation fee and does not refund prepaid fees except where the Money Back Guarantee is applicable.
- 3.4.2 No Access to Account - If The Customer wishes to cancel a service and is unable to access the Members Portal for any reason, The Customer must make contact with Wildeye via phone, the General Contact form or support ticket to obtain necessary login information or instructions to proceed with the cancellation request.
- 3.4.3 Customer Data - Upon successful cancellation of a hosting service, all data stored within the cancelled service will be removed. Wildeye does not provide any guarantees that The Customer's data will be retrievable once the cancellation process has been completed.
- 3.5 Service Cancellation by Wildeye - Wildeye may cancel The Customer's hosting service for any breach of these Terms of Service or the AUP without prior notification. Wildeye does not provide any guarantees that The Customer's data will be retrievable once the cancellation process has been completed.

## 4. Account Ownership

- 4.1 Account Owner - The highest authority of a single Members Portal Account is considered the Account Owner. Individual hosting or additional services that are associated with an account, are controlled by the Account Owner and modifications and updates to an account's information can only be actioned by the Account Owner or their Authorised Additional Contact. The Account Owner is established at the time the account is created. The details of an Account Owner must be that of a real person. It is not permitted to use fictitious or "fake" names for the details of an Account Owner. Accounts containing fictitious or

“fake” names, and contact details that do not reflect the details of a real person may be suspended or terminated without notice.

- 4.2 Account Information - The Customer warrants that all information provided to Wildeye is truthful and correct and accurate and up to date and that the person designated as the Account Owner is of or above 18 years of age and is legally empowered to act and enter into this contract as The Customer or on behalf of The Customer as indicated on the relevant application form.
  - 4.2.1 Maintaining Account Information - The Customer is responsible for maintaining the contact information stored within their account and failure to maintain up to date contact information does not warrant the waiving of any fees, overdue fees, or warnings issued by Wildeye.
- 4.3 Authorised Additional Contact - The Account Owner may add and authorise an additional contact person or persons to act on their behalf. The Account Owner is limited to adding one additional billing contact and a maximum of three additional technical contacts and account's found to have more than the allowed maximum additional contacts will be requested to remove the excess to ensure adherence to the limits.
- 4.4 Account Transfer - The Account Owner role can be transferred to another Authorised Additional Contact or Wildeye Customer by contacting our billing support team to obtain the appropriate steps.
- 4.5 Account Closure - An account will be automatically deactivated when no active hosting or additional services are being operated under the account.

## 5. Domain Registrations, Transfers and Renewals

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- 5.1 Domain Registrations - successful domain registrations that have completed the registration process and are considered active by the Domain Registrar are final and cannot be cancelled or refunded. Some domain extensions may require additional information to complete the registration and Wildeye provides no guarantees that an ordered domain registration will be successful. It is The Customer's sole responsibility to ascertain what information is required to register a particular domain prior to placing any domain registration orders.
- 5.2 Domain Transfers - Domain transfers typically take 5-7 days to complete once final authorisation has been received by the Domain Registrar, with the exception of .au domains which typically take 48 hours once final authorisation has been actioned. Wildeye has no authority to speed up a domain transfer and cannot place any guarantees on how long a transfer will take to complete. The Customer must ensure all contact information is updated with current Domain Registrar and the appropriated transfer codes have been obtained prior to placing a domain transfer order with Wildeye.
- 5.3 Domain Renewal - Domains must be renewed prior to their expiration date to avoid the domain becoming inactive. Multiple notifications are sent to The Customer advising them of upcoming domain renewals starting from 60 days prior to the listed expiry date. Wildeye has no control over keeping the domain active once it has reached its expiry

and does not take responsibility for a website becoming inaccessible due to The Customer not renewing their domain.

## 6. General Terms and Support Boundaries

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- 6.1 Support Boundaries - Wildeye provides technical support to its direct customers only and does so in accordance with its defined support boundaries. Wildeye's support is designed to assist customers with the use of and connections to the hosting service and does not extend to diagnosing or fixing issues that relate to the coding of a website or web application hosted within The Customer hosting service. Where The Customer requires support with their website coding or content, The Customer will, in Wildeye's sole discretion, be liable for 'Advance Support'.
- 6.1.1 Support to Customers of The Customer - Wildeye does not provide direct technical support to customers of The Customer. Resellers, Affiliates, Dedicated and VPS customers, and customers who have multiple individual hosting accounts under a single Members Portal account must not advise their customers to contact Wildeye directly and should instead contact Wildeye on their customer's behalf. Wildeye is happy to assist with all support issues that fall within the scope of our support boundaries when contacted by The Customer.
- 6.2 Advanced Support - Where Wildeye can and agrees to provide advanced support to The Customer, additional service fees are required for the provision of the advanced support. Fees for advanced support are payable in advance based on the time estimated by Wildeye for the additional task to be carried out. Wildeye provides no guarantees that an issue or task will be resolved within the estimated time, and if further time is required, additional advanced support time will need to be paid for prior to any further labour being carried out.
- 6.3 Responsibility for Content and Account Activity - The Customer is solely responsible for the content stored on and served by the hosting service purchased and the activity of any scripts or email services created under the hosting service. The Customer must maintain the security of all account passwords and applications or scripts and ensure all scripts under the hosting service are free from malicious content that may harm any part of the Wildeye infrastructure, other client accounts hosted by Wildeye, or the external systems of visitors viewing the hosted content.
- 6.3.1 Acceptable Usage - The Customer must ensure at all times they comply with Wildeye's Acceptable Usage Policy(AUP) and must not host any content or allow any account activity that breaches the AUP. Breaches to the AUP are governed by the following conditions:
- 6.3.1.1 First violation - When Wildeye determines a hosting service has violated any element of the AUP, The Customer shall receive an email warning advising of the violation. The hosting service may at Wildeye's discretion be subject to a temporary suspension pending The Customer's agreement in writing to refrain from any further violations.

- 6.3.1.2 Second Violation – When Wildeye determines a hosting service has committed a second violation of any element of the AUP, the hosting service shall be subject to immediate suspension or termination without further notice.
- 6.3.1.3 Suspension of Service or Cancellation – Wildeye reserves the right to suspend access to The Customer’s hosting service if in the judgment of Wildeye The Customer’s service is the source or target of the violation of any of the terms of the AUP or these terms of service. If inappropriate activity is detected, all accounts of The Customer in question will be deactivated until an investigation is complete. Prior notification to the Customer is not assured and in extreme cases, law enforcement will be contacted regarding the activity. The Customer will not be credited for the time the hosting service is suspended.
- 6.3.2 Web applications – The Customer must ensure all web applications utilised on the hosting service are kept secure, patched and up to date. Open source applications are vulnerable to attacks via exploits in the software, and the developer’s of the software generally provide updates when vulnerabilities have been detected. It is The Customer’s responsibility to install any and all updates/patches to maintain the application’s security. If The Customer does not have the required skill to perform the updates, The Customer will need to request Advance Support from Wildeye or employ the services of a Web Developer who is able to assist.
- 6.3.3 Maintaining Compatibility – The nature of shared hosting environments and server applications such as Apache, PHP and MySQL is that they are constantly being updated to maintain stability, performance and security. Keeping web based applications patched and up to date ensures both a secure website and data, and is also essential to maintain compatibility with changes in server applications. Wildeye incrementally updates all server applications on a regular basis and it is the responsibility of The Customer to maintain installed web applications to ensure compatibility with the latest stable and supported releases of all server applications.
- 6.4 Resource Usage – All hosting services purchased have a variety of resource limitations applied in accordance to the applicable plan associated with the service. It is The Customer’s responsibility to ensure their hosting service does not exceed the resources allocated and to upgrade their service if it is determined more resources are required to continue the smooth operation of a hosting service.
- 6.4.1 Resource Usage Abuse (excludes Dedicated Server Customers) – Wildeye implements per account resource restrictions on all Shared, Reseller and VPS hosting services which will vary from plan to plan. In addition to these, customers must not:
1. Use 50% or more of the allocated CPU resources for more than 60 seconds.
  2. Run stand-alone, unattended server-side processes at any point in time on the server. This includes any and all daemons, such as IRCD.
  3. Run an account on any shared or reseller server as a file store for content not related to the operation and delivery of their web

applications or that may breach the Wildeye AUP.

4. Run any type of indexing software on any shared or reseller server.

5. Run any software that interfaces with an IRC (Internet Relay Chat) network.

6. Run any type of bit torrent application or tracker or participate in any illegal file-sharing activities.

7. Run cron tasks on a shared or reseller server with intervals of less than 5 minutes.

8. Run excessively large MySQL databases on shared or reseller servers. Databases with an excessive number of MySQL tables (in excess of 1000) or of a size greater than 1GB can negatively affect the performance of the server and are strictly forbidden.

9. Run any MySQL queries longer than 15 seconds on shared or reseller servers. MySQL tables should be indexed appropriately and regularly maintained to ensure individual tables do not contain an excessive number of rows.

10. Store multiple backups of a hosting service on any shared hosting server. Backup archives created by a server's backup tools are designed to be downloaded off the server for maintaining offsite backups. Making backups that contain other backup archives can cause heavy load on the storage arrays and is strictly forbidden. Any hosting services found to have multiple backups on the server may have them removed without prior notification.

11. Generate backups on Shared or Reseller Hosting for accounts consuming greater than 15GB of disk space. You must first contact Technical Support and then a backup will be generated for you.

12. Store emails in the trash folder for longer than 30 days. Emails that have been in the Trash folder for more than 30 days will be automatically deleted.

13. Use excessive VPS Resources due to misconfiguration. Where a customer has a self-managed or managed VPS we may make minor configuration changes without notice if that server's configuration is negatively affecting other VPS Servers on the same host node.

14. Store files in the cPanel trash folder. When files are deleted using the File Manager in cPanel they are temporarily stored in the cPanel Trash Folder. This folder containing deleted files will be automatically cleared every 30 days.

6.4.2 Inodes - Every file and directory hosted on Wildeye servers uses 1 inode and accounts considered to be using an excessive number of inodes on shared or reseller servers will be required to upgrade their hosting service or remove some of the files from their hosting service. For shared and reseller hosting services an inode count of 200,000 or more is considered excessive and is generally the result of issues within a web application or a web application configuration that is not appropriate for a shared hosting environment. We recommend maintaining less than 100,000 inodes per account for optimal performance. For VPS hosting an inode count of 4,000,000 or more is considered excessive.

6.4.3 Bandwidth / Data Transfer Monitoring - Bandwidth / Data Transfer is monitored in a variety of ways across our range of services as outlined below:



1. Shared Business and Reseller hosting plans that include “Unlimited” bandwidth are only monitored for high usage. This is done to ensure services using large amounts of bandwidth are doing so in accordance with our Terms of Service.
2. All bandwidth is monitored on a calendar month cycle and may not correspond to the exact billing cycle of the service.
3. Customer alerts are sent to the registered contact email address on file prior to any fixed bandwidth quota being reached. It is the customer’s responsibility to contact Wildeye to apply a suitable upgrade or addon for the affected service to cover any extra usage beyond the fixed plan quota.
4. For Personal and Business hosting plans with fixed bandwidth quotas, exceeding the assigned quota will result in overage charges being applied. To avoid the higher overage charges, the service needs to be upgraded to the next plan that provides sufficient bandwidth to meet the customer’s requirements.
5. For Reseller hosting plans with fixed bandwidth quotas, exceeding the assigned quota will result in the Reseller service and all sub accounts being suspended until the plan is upgraded with additional bandwidth. To purchase additional bandwidth, the service needs to be upgraded to the next plan that provides sufficient bandwidth to meet the Reseller’s requirements.
6. For VPS plans with fixed bandwidth quotas, exceeding the assigned quota will result in overage charges. To avoid the higher overage charges, the service needs to be upgraded to the next plan that provides sufficient bandwidth to meet the service’s requirements.
7. For Dedicated and Virtual Dedicated Server plans with fixed bandwidth quotas, exceeding the assigned quota will result in overage charges. To avoid the higher overage charges and purchase additional bandwidth at a significantly cheaper rate, additional fixed blocks of bandwidth can be purchased on a one off or ongoing monthly basis. A number of unmetered bandwidth options are also available for all Dedicated and Virtual Dedicated services.

6.4.4 Bandwidth Abuse – Wildeye reserves the right to shape, suspend, or terminate the service of any customer that is causing issues or performance problems for other customers on the Wildeye network. Wildeye reserves the right in a situation where a customer’s traffic is causing unviable costs to its business to either charge the customer at a rate that is viable (change plan/rate) or suspend/terminate the service.

6.5 Gaming Servers – Wildeye does not allow gaming servers on any part of our network. Services that are found to be in breach of this clause face immediate suspension without prior notification.

6.6 Media Streaming – Wildeye does not allow media streaming on Personal Hosting, Business Hosting, Reseller Hosting or VPS plans. Customers wishing to deliver media-streaming services should use our Dedicated Server Plans. Services that are found to be in breach of this clause face immediate suspension without prior notification.



## 7. Third Party Tools, Applications and Licenses

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- 7.1 Third Party Applications and Licenses - Wildeye may provide access to additional third party software and/or services (“Third Party Products”) through reseller or other commercial agreements Wildeye has established with certain vendors (“Third Party Vendors”). Unless otherwise stated, The Customer understands that product support for Third Party Products is provided by Wildeye and not by the Third Party Vendor. Neither Wildeye nor any Third Party Vendor makes any representations or warranties, express or implied, regarding any Third Party Products. The Customer expressly acknowledges and agrees that use of Third Party Products is at The Customer’s sole risk and such third party products are provided “as is” and without representation or warranty of any kind from Wildeye or any Third Party Vendor, including without limitation, any implied warranty of merchantability, fitness for a particular purpose, accuracy or completeness of responses or results, correspondence to description, or non-infringement of third party rights. To the maximum extent permitted by applicable law, neither Wildeye nor any third party vendor will be legally responsible for any damages, whether direct, indirect, or consequential, arising from the use or inability to use any third party product. The Customer agrees to observe the terms of any license and/or applicable end user subscriber agreement for Third Party Products and The Customer shall be fully liable to Third Party Vendors and/or Wildeye with respect to any improper use of such Third Party Products or violation of license agreements with them and/or applicable end user subscriber agreements.
- 7.2 Microsoft Licensing - Where licensing for Microsoft software has been purchased through Wildeye, the customer agrees to abide by the Microsoft Licensing terms, and where user licenses are being purchased, it is the customer’s responsibility to ensure they accurately report and obtain the appropriate level of user licenses for their uses as outline in Microsoft’s licensing terms.
- 7.3 Feature Availability - Wildeye provides no guarantees that any or all of the features available within a Third Party Product will be supported or made available to The Customer. It is at the sole discretion of Wildeye to determine which features are enabled and whether Wildeye will provide support for the use of enabled features.

## 8. Additional Legal Information

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- 8.1 Disclosure to Law Enforcement - Wildeye’s AUP specifically prohibits the use of our service for illegal activities and The Customer agrees that Wildeye may disclose any and all customer information including assigned IP numbers, account history, account use, etc. to any law enforcement agent who makes a written request without further consent or notification to the The Customer. Wildeye reserves the right to immediately terminate any hosting service found to be hosting content and performing activities of an illegal nature.

8.2 System and Network Security – Users are prohibited from violating or attempting to violate the security of the Wildeye Network. Violations of system or network security may result in civil or criminal liability. Wildeye will investigate occurrences which may involve such violations and may involve, and cooperate with, law enforcement authorities in prosecuting Users who are involved in such violations. These violations include without limitation:

1. Accessing data not intended for such User or logging into a server or account, which such User is not authorized to access.
2. Attempting to probe, scan or test the vulnerability of a system or network or to breach security or authentication measures without proper authorization.
3. Attempting to interfere with service to any user, host or network, including, without limitation, via means of overloading, “flooding”, “mail bombing” or “crashing”.
4. Forging any TCP/IP packet header or any part of the header information in any e-mail or newsgroup posting.
5. Taking any action in order to obtain services to which such User is not entitled.

8.3 Disclaimer – Whilst every effort is made to ensure the information provided on the Wildeye website and by Wildeye staff is accurate and free from errors, Wildeye provides no warranties, either express or implied, including but not limited to the service’s fitness for a particular purpose, except where to not offer any such warranties would be deemed unlawful as defined by the Trade Practices Act 1974(Cth).

8.4 Limitation of Liability – Wildeye provides no guarantees that any hosting or additional service provided will be free from errors or interruptions. Wildeye will not accept liability for any costs or losses incurred by The Customer that result from:

1. the use of or inability to use any Wildeye service;
2. any errors, mistakes, omissions, interruptions, defects, or delays in operation or delivery;
3. unauthorised access to Wildeye’s data or services,
4. the suspension or termination of services due to breaches of the AUP.
5. the suspension or termination of services due to obligations under law

8.5 Indemnification – The customer agrees to indemnify Wildeye from any and all demands, liabilities, losses, costs and claims, including reasonable legal fees asserted against Wildeye, that may arise or result from the use of any hosting service provided.

8.6 Modification to these Terms – Wildeye reserves the right to amend, update or change these terms of service without prior notification. Where changes are made that may impact The Customer’s use of a Wildeye service, The Customer will be advised by email using the primary email contact details within an account and the continuance in operation by The Customer of any hosting or additional services will constitute an acceptance of these Terms of Service.