

Community Voting Systems Service Level Agreement and Privacy Policy

Document Purpose

This "Service Level Agreement" (aka "SLA"), is between [Customer] and [Provider] effective as of [effective date].

Service Level Agreement (SLA)

Customer: _____

Provider: Website Creative Pty Ltd.

Effective Date: _____

Document Owner: Website Creative Pty Ltd.

Version History

Version	Update Date	Description
1	Foundation	Created this Service Level Agreement
1.05	23-May-2021	Updated Support Services

Approval

(By signing below, all Approvers agree to all terms and conditions outlined in this Agreement and confirm that they have the legal right to approve this document as a representative of the organization.)

Role	Approval Date	Representative Name	Position	Signature
Provider				
Customer				

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1. Introduction

1.1. Parties to the Service Level Agreement

- i. Community Voting Systems application is referred to as “Software” for the purpose of this Service Level Agreement.
- ii. The Customer, by subscribing to the Service, agrees to the following terms and conditions governing the use of the Service including Acceptable Use Policy at any time.
- iii. The Provider agrees to provide the Services to the Customer in accordance with the Invoice and this agreement.
- iv. The Provider reserves the right to change these terms at any time with notification to the Customer via email.

1.2 Defined Terms for this Service Level Agreement

- i. **Account:** An account enabling a person to access the use of the Service including both Administrator accounts and Authorized User accounts.
- ii. **Agreement:** A contract between the parties incorporating the Invoice, including our Terms, Privacy Policy, Acceptable Use Policy, Support Policy and any amendments made from time to time.
- iii. **Authorized User:** The employees or contractors as nominated by the Customer to have an account.
- iv. **Confidential Information:** Includes all information exchanged between the parties to this Agreement, whether in writing, electronically or orally, including the Software, that is marked confidential or should have been reasonably understood by the disclosing party to be confidential, but does not include information which is or becomes, publicly available other than through unauthorized disclosure by the other party.
- v. **Customer Data:** Any data and materials inputted by the Customer into the Software or stored by the Software or generated by the Software of result of the Customer’s use of the Software.
- vi. **Data Breach:** Any unauthorized access to, use or disclosure of Personal Information held by or on behalf of the Customer.
- vii. **Force Majeure Event:** An event or series of related events that is outside the reasonable control of either party and without fault or negligence of either party and which by the exercise of reasonable diligence either party was unable to prevent (including failures of the internet or any public telecommunications network, hacker attacks, denial of service attacks, power failures, disasters, explosions, fires, floods, riots, terrorist attacks and wars).
- viii. **GST:** Goods and Services Tax or Value Added tax imposed by any applicable legislation or regulation.
- ix. **Incident:** An event in which the Software service does not perform the functions as intended.
- x. **Intellectual Property Right:** Any patent, trademark, copyright and any other intellectual or industrial property rights, anywhere in the world whether agreed to or not.
- xi. **Functions:** Software options that the Customer may access and use with their subscription during the term of this SLA.
- xii. **Party or Parties:** A party or parties of this SLA, its successors and assigns or any person acting on behalf of and with the authority of the parties in this SLA.
- xiii. **Services:** All subscribed functions of the Community Voting Systems software by the Customer.

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- xiv. Software: The Community Voting Systems application, as may be modified from time to time by the Service Provider.
- xv. Service Level Agreement (SLA): This document which serves as agreement between the Customer and Provider for provision of the Software.
- xvi. Support Services: Support in relation to the use of and the identification and resolution of errors in the Service and includes the provision of training services and Customer Support.
- xvii. Training Services: Means the electronic training library available to Authorized Users and any workshops or webinars provided by the Provider. It can, at the decision of the Provider, include live Customer Support where deemed more efficient.

2. Terms of Engagement

2.2 The Customer agrees unconditionally to the following;

- i. The Provider owns, or holds all the relevant rights to, the Software and will license the use of this Software to the Customer.
- ii. The Customer wishes to access the Provider's Services.
- iii. This SLA sets out the terms upon which the Provider has agreed to grant the use of the Software by the Customer according to Invoice. The SLA is binding, with any use, from the Effective Date.
- iv. By accessing and using the Services; the Customer
 - a. Warrant to us, the Provider, that you have reviewed the Service Level Agreement, including our Privacy Policy and Acceptable Use Policy, and agree to each of these.
 - b. Warrant to us, the Provider, that you have the legal capacity to enter into a legally binding agreement with us.
 - c. Agree to use the Services in accordance with this Service Level Agreement, and acknowledge that the Provider reserves the right at any time and from time to time to modify these terms or modify the Service for improvement purposes.
- v. The Customer agrees to not use the Service except as permitted by this SLA. The Customer agrees and acknowledges that it must not and will not permit any person or company to;
 - a. Access the system with the intention of reviewing, copying, altering, modifying, creating a derivative work from, reproducing, reselling, transferring to a third party, reverse assembling, reverse engineering, reverse compiling or enhancing the Software.
 - b. Alter, remove, or tamper with any trademarks, any patent or copyright notices, or any confidentially legend or notice, or any numbers, or other means of identification used on or in relationship to the Services or Software.
 - c. The Customer agrees to not use the Software in any way which is in breach of any statute, regulation, law or legal right of any person within Australia or the jurisdiction in which the Customer or its Personal are located.
 - d. The Customer agrees not to allow access to the system to any person who is not confidentiality-bound personal of their organization.

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- vi. The Customer acknowledges that complex Software is never wholly free from defects, errors and bugs; and subject to other provisions of this SLA, the Provider gives no warranty or representation that the Service will be wholly free of defects, errors and bugs.
- vii. Among other things, the operation and availability of the systems used for accessing the Software, including public telephone systems, computer networks, and the Internet can be unpredictable and may from time to time interfere with or prevent access to the Software. The Provider or its suppliers are not in any way responsible for any such interference or prevention of your access to use the Services.
- viii. The Customer acknowledges that it is the Customers sole responsibility to determine that the Software and the Services meets the needs of its business.
- ix. The Customer acknowledges the Software and Services do not themselves constitute and are no substitute for, the Customer's own identification of and compliance with applicable laws and regulations in its jurisdiction.

3. Confidentiality

3.1 The parties to this SLA must keep the terms of this SLA confidential and must ensure that their officers and employees keep the terms of this agreement confidential, save for any necessary disclosure to their respective legal and financial advisors and any disclosure required for a purpose related to this agreement or the performance of the rights or obligations of any party in, or by law.

4. Intellectual Property

4.1 The Provider warrants that it owns all applicable rights, title and interest in and to all Intellectual Property Rights embodied in or associated with the Software and Services.

4.2 The Customer agrees and acknowledges that nothing in this SLA operates to assign or transfer any Intellectual Property Rights from the Provider to the Customer.

4.3 The Provider agrees and acknowledges that the Customer owns the all the Customer Data and Intellectual Property Rights in the Customer Data.

5. Acceptable Use Policy

5.1 With acceptance of this SLA, the Customer accepts rules governing acceptable use;

- i. The Customer must not intentionally use the Service in any way that causes or may cause damage to the Service or impair the availability of the Service.
- ii. The Customer must not use the Service in any way that is unlawful, illegal, fraudulent or harmful or in connection with any unlawful, illegal, fraudulent or harmful purpose or activity.
- iii. The Customer must not attempt to undermine the security or integrity of the Service, including computing systems or networks enabling the Service.
- iv. The Customer must not use the Service to send spam messages to unsolicited emails or phones.

6. Fees

6.1 Payment of Fees: In return for the provision of Services by the Provider, the Customer agrees to pay the Fees set out in any Sales Agreements and/or Invoices, and pay subsequent Invoices for Services activated by the Customer during the term that are additional to the original Invoice.

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- 6.2 Invoicing: The Fees are invoiced to the Customer for each billing period for the amount and with a frequency as subscribed, unless otherwise stated. Services activated by the Customer during the term, including pricing, are shown clearly to the Customer and require agreement before activation.
- 6.3 Fees: Fees are inclusive of GST or similar taxes.
- 6.4 Payment: Invoices are transmitted by email. Payment is by direct debit on invoice or as otherwise agreed.

7. New Service Costs

- 7.1 If during the term of the SLA the mix of subscribed Services is amended by agreement of both parties, and the provision of any agreed new Services to the Customer could incur a third party or additional cost, the Provider will provide the Customer with advanced notice if any of these third party or additional costs are to be passed on to the Customer.

8. Data Protection and Security / Privacy Laws

- 8.1 The Customer acknowledges that in connection with the subscribed Services, the Provider will be processing Customer owned Data. The Provider shall carry out such operations in compliance with any applicable data protection legislation in force.
- 8.2 If the Provider becomes aware of any act or practice which is an actual or potential breach of its obligations, the Provider must;
 - i. Notify the Customer immediately; and
 - ii. Comply with any reasonable direction for request for information from, and provide reasonable assistance to, the Customer or relevant Privacy Commissioner with respect to:
 - a. Investigating that act or practice;
 - b. Remedying the breach or potential breach;
 - c. Developing and implementing any rectification and preventative measures required by the Customer or the relevant Privacy Commissioner.
- 8.3 The Customer grants to the Provider and its sub-processors a non-exclusive, perpetual, royalty-free, fully paid licence to use, process, transmit, store, edit, modify, aggregate, combine, display, perform and prepare derivative works of the Customers Data in connection with the Service, and otherwise access, use or reference any Customer Data maintained and displayed by the Software.
- 8.4 The Customer acknowledges that is solely responsible for the creation of all Customer Data upon which any third party used in connection with the Software may carry out the processing of Customer Data. The Customer must obtain and maintain all necessary notifications and authorisations by the Customer if required for the processing of Customer Data to be carried out under this agreement.
- 8.5 The Provider agrees all Customer Data belongs to the Customer. The provider agrees to maintain appropriate technical and organizational measures to prevent any unauthorized or unlawful processing of Customer Personal Data and to guard against accidental loss or destruction of, or damage to, Customer Personal Data.

9. Scheduled and Emergency Maintenance

- 9.1 The Provider reserves the right to make unavailable servers, software, or Services in order to conduct maintenance including system upgrades and bug fixes.
- 9.2 Wherein there are planned upgrades, patches, replacements, removals, and failover testing to be made to the Software, the Customer will be notified in advance of any planned unavailability periods.

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9.3 If the Services become unavailable outside of a designated maintenance period, the Provider will perform emergency maintenance with the intention of making the service available again as soon as possible with such issues likely to be resolved within 1 hour of being notified of the access problem.

10. Support Services

- 10.1 Support shall be provided from the Effective Date until Termination Date of Agreement of Use.
- 10.2 The Provider will give support in response to telephone and email queries from Authorized Users as indicated by the Customer. Standard support times are from 9am to 5pm AEST excluding weekends and Australian Federal Holidays. Customers will have access to Emergency Support 24/7 solely to report any critical Software availability problems, for availability to be resolved as an immediate priority.
- 10.3 The Provider agrees to liaise with any Third Party Vendor and in the case of an Error or Incident, the Provider agrees to respond as quickly as possible. The Customer acknowledges that response times of the Vendor may be longer than those set out in the Service Level Agreement and there may be additional conditions that are applicable. The Customer agrees that the Provider shall have no liability in respect to the delays in providing fixes or workarounds, or failure to provide such fixes or workarounds for Errors in Third Party Software or Hardware as a result of delays or failure on part of the relevant vendor.
- 10.4 The Provider will respond to a reasonable number of queries from the Authorized Users including where such queries are not in respect to Errors. However, the Customer acknowledges that Support is not a substitute for training, and if the Provider believes that the volume or nature of queries indicates that one or more of the Authorized Users requires additional training, the Provider reserves the right to withhold response to any further queries from Authorized Users until they have undertaken the necessary training.
- 10.5 Subject to the terms of this SLA the Provider will support the Customer during the Support Hours subject to the terms of this SLA. Support shall include:
 - i. Error / Incident correction
 - ii. Consideration of Software enhancements
 - iii. Further customisations subject to payment of any applicable Fees

11. Software Remedy Procedure

- 11.1 Authorized Users of the Customer will report Software Errors to the Provider via email or telephone.
- 11.2 A member of the Providers Support Team will process the initial email or call from a Customer. This member will identify the caller and discuss or Incident. If this member is unable to immediately resolve the issue, they will escalate to get a resolution and will report progress to the Customer.
- 11.3 If an error requires diagnostic process, it may be referred to the Product Support Manager. Following the review of the issue the product support manager may form a virtual team to assess the Incident or Error and work on the solution. This team may include an Authorized User from the Customer.
- 11.4 The Customer will provide all information reasonably requested by the Support Team of the Provider to properly perform activities to resolve the Error or Incident.
- 11.5 The Customer must provide sufficient detail when reporting errors to resolve them quickly. This may include screenshots, screen-sharing, remote access by the support team, knowledge of devices being used and/or knowledge of browsers being used.
- 11.6 The Incident, will be resolved as quickly as possible. For the Customers general reference they can expect errors to be handled in the Estimated Response Time as defined in Support Definitions below:

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SUPPORT DEFINITIONS		
Priority	Definition	Estimate Response Time
Priority 1 Critical	An incident that causes an emergency condition preventing access to the Cloud Services or loss of critical functions which prevent Customer from conducting normal operations. If the Provider is able to provide a workaround for a Priority 1 incident may be downgraded.	During Emergency Support Times: 15 minutes to 1 hour
Priority 2 Urgent	An event that prevents the use of one or more functions in the cloud service and significantly prevents normal business operations.	During Standard Support Times: 30 minutes to 2 hours
Priority 3 Normal	An Issue impacts one or more functions, but doesn't affect the Customer from conducting normal business.	During Standard Support Times: 2 hours to 5 days
Priority 4 Low	User not impacted, but if the incident not resolved, may impact user or operations in a reasonable time frame.	During Standard Support Times: 3 hours to 5 days
Priority 5 General Request	An incident that doesn't affect a customer's normal use of the Cloud Services, but needs attention.	During Standard Support Times: 8 hours to 5 days

12. Dispute Resolution

- 12.1 The Customer agrees to notify the Provider in writing that a dispute has arisen, noting the particular breach of clause or provision and outline of resolution. The Provider agrees to act within 15 business days of receiving the notice.
- 12.2 The Provider agrees to notify the Customer in writing that a dispute has arisen, noting the particular breach of clause or provision and outline of resolution. The Customer agrees to act withing 15 business days of receiving the notice.
- 12.3 Each party agrees to bear its own cost in connection with mediation or arbitration and must share the fees and expenses of the mutually chosen Mediator and mediation process equally, including any fees and expenses associated with the appointment of a Mediator.
- 12.4 If the Customer fails to pay an invoice, the Provider reserves the right to pause Software access.
- 12.5 The Customer agrees that in situation a dispute cannot be resolved through mediation, the forum of resolution is arbitration with a tribunal with significant technical expertise from the QLS (Queensland Law Society) approved arbitrator in the jurisdiction of Queensland, Australia.

13. Breach and Termination of this SLA

- 13.1 A party beaches this SLA if;
 - i. The party fails to comply with any term of this SLA.
 - ii. The party is a corporation and the corporation is wound up; or
 - iii. A new administrator, a receiver, or an inspector is appointed in respect of the party; or
 - iv. The interest of the party under this SLA is attached to or taken in any legal processes.
- 13.2 Termination for cause
 - i. If a party breaches this SLA; and within 20 business days after the other party serves a written notice on the breaching party;
 - i. The breach is not remedied if it is capable of being remedied; or
 - ii. The beaching party does not compensate the other party in accordance with this SLA or to the other party's reasonable satisfaction if the breach is not capable of being remedied,

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14. The Customers right to terminate for convenience

- 14.1 If the Customer wishes to terminate this SLA for convenience, an Authorized User must serve written notice on the Provider stipulating the termination date which must be no earlier than 20 business days after notice was served.
- 14.2 The Provider will cease providing the Services to the Customer on the Termination Date.
- 14.3 The Provider will in good faith endeavour to facilitate a transfer of the Customer's Data in CSV or Excel form to Customer free of charge.
- 14.4 If media files are also be requested then the Provider will quote a reasonable fee to gather and provide media in the way requested by the Customer and will do so when the quoted amount is paid.
- 14.5 The Customer will pay the Provider any outstanding fees for Services before the transfer of Data.
- 14.6 The Provider agrees to return all data to the Customer directly and has the right to refuse data transfer to another similar Provider.

15. The Providers Right to terminate for Convenience

- 15.1 If the Customer has not paid a correctly rendered invoice in respect of an amount due within the agreed upon time frame on the Invoice, the Provider has right to pause or terminate the Service.
- 15.2 If the customer disputes an invoice, with detailed reasoning by the Customer in writing identifying any amounts which are in dispute. The Provider may:
 - i. Issue a notice to the Customer advising what payment remains overdue after review; and
 - ii. Pause or terminate the Services if the overdue payment is not received within 10 business days of the Customer receiving that notice.

16. Indemnity

- 16.1 Each Party (the Indemnifying Party) hereby agrees to indemnify the other party against all claims, actions, demands, costs, damage, and loss arising from a third party claim arising in connection with this SLA from the Indemnifying Party's negligence or wilful wrongful act or omission or in breach of this SLA.

17. Limitation of Liability

- 17.1 Nothing in this Agreement operates to limit or exclude;
 - i) Liability that cannot be limited or excluded by law;
 - ii) The Provider's liability resulting from its fraudulent or unlawful act or omission.
- 17.2 Force Majeure: Neither party will be liable to the other for delay or failure to perform its obligations under this SLA if such a delay or failure is the cause of a Force Majeure Event.

I, _____ represent the Customer and I am legally able and authorized by the Customer to enter into this agreement with the Provider. I have read, acknowledge, and agree to the Terms of Conditions, Authorized Use Policy and Annex A Privacy Policy in this Service Level Agreement.

Signature

on _____
Date

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Annex A: Privacy Policy

A. Data Collected

- The Provider is committed to protecting and safeguarding any of the Customer's business and user data we are exposed to. We act in the best interests of our Customers and are transparent about how data is processed using our Software.
- When accessing the Software or providing information, you agree to our privacy practices as set out in this Privacy Policy and our Service Level Agreement. The Provider may change this policy from time to time. The Customer will be notified by email if there is an update regarding the Privacy Policy.
- This document describes how we use and process your data with the Community Voting Systems Service. This Privacy Policy applies to any kind of information we collect through this website, the services we provide, or other means connected to these services (such as contacting our Support Team).
- When the Customer uses the Software, their personal information and their users personal information is collected directly from both parties. The collection of this personal information can occur through interactions using the services.
 - Adding personal information in the registry
 - Creating Staff Users
 - Conversations with our team members
 - When training is provided
 - When Customer may need support
- The information that is provided through the System is owned by the Customer. The Provider and other third-party services hold no right to or use of this data for any purpose other than to provide the Service.
- Community Voting Systems must process information from the Customer that is legally necessary for the performance of the contract. This includes for the purpose of contacting the Customer, interact with the Customer, verify Authorized Users, comply with regulatory investigations or compliance measures by the Customer's jurisdiction.
- Personal information is any information that can be used to uniquely identify an individual. The System collects information from the Customer and the system users, including but not limited to:
 - Full Legal Name (incl. first, middle, last)
 - Address
 - Email
 - Contact Number
- We hold the Customer's information for the provision of the subscribed services, and to comply with all legal, taxation and other regularity requirements.
- The Provider may need to access stored Software information from time to time during the provision of Support Services.
- The Provider does not disclose personal information for any purpose other than our employees or contractors or service providers needing to support our Customers, and then only to the extent that is reasonably necessary to fulfill our obligations to the Customer, or to comply with government or other regulatory requirements. Our employees have legally binding confidentiality agreements.

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- The Provider reserves the right to disclose personal information to third parties to comply with any court order or other legal obligation or when data is requested by government or law enforcement authorities.
- Your personal data will not be used by the Provider for other purposes than expressed by the Provider.
 - The Provider does not disclose the personal information of our Customers or our Customer's users to any third party not associated with our Software.
 - The Provider does not sell or rent personal information .
 - The Provider does not operate competitively in your jurisdiction.

B. International Transfer of Data

- The Provider may transfer your personal information to our service providers based outside your jurisdiction for the purposes described in this policy.
- We may process and store data in cloud using services such as Amazon Web Services. The Customer acknowledges that these cloud service providers may process and store personal information in a jurisdiction that may have different privacy and data security protections from those in your own jurisdiction.

C. Security

- The Provider has implemented reasonable measures designed to secure personal information from accidental loss and unauthorised access, use, alteration and disclosure.
- The Provider encrypts data in transmission and at rest and all access to computer hardware containing personal information is password protected.
- Employees access to personal information is only given on a need to know basis.
- The Customer always has access to their Customer Data.
- Customers are the data controllers for their data.
- The Provider is not responsible for the Customers security standards.

D. Internet Transmission

- No data transmission over the Internet can be guaranteed to be secure. While the Provider endeavours to protect Customer information to the best industry standard, it cannot guarantee the security of any information any person may transmit when they access the website.
- Even though the Provider encrypts data transmitted over the Internet, it cannot guarantee data transmitted cannot be unencrypted by persons with nefarious intentions. Nonetheless, the likelihood of this occurring is extremely low.

E. Remote Access

- Remote access to a Customer's database is needed to provide rapid response for assistance.
- The Provider will only connect to a Customer's data with full knowledge of the Customer and will advise when connection is terminated.

If you have any questions regarding this privacy policy, or you think your privacy has been breached please email us. Our team will acknowledge receipt of your email within 24 hours on business days (Monday to Friday, Australian AEST time). If email is received outside business hours, we will respond the following business day.