



iwebgate®

End User License Agreement (EULA)



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iWebGate DMZ Solution – End User License Agreement

NOTICE TO USER: PLEASE READ THIS END USER LICENSE AGREEMENT (EULA) CAREFULLY AS IT IS A LEGALLY BINDING AGREEMENT. BY INSTALLING OR USING IWEBGATE PTY LTD (IWEBGATE) DMZ SOFTWARE (“IWEBGATE DMZ SOLUTION”) ACCOMPANYING THIS LICENSE INCLUDING ANY UPDATES OR NEW RELEASES, YOU INDICATE YOUR ACCEPTANCE OF THE FOLLOWING TERMS AND CONDITIONS.

THE IWEBGATE DMZ SOLUTION IS LICENSED BY IWEBGATE PTY LTD (“IWEBGATE”) FOR USES ONLY ON THE TERMS OF THIS LICENSE. THE DMZ SOLUTION INCLUDES SOFTWARE (“SOFTWARE”) AND RELATED EXPLICATORY WRITTEN OR ON-LINE MATERIALS (“DOCUMENTATION”). THE TERM “SOFTWARE” INCLUDES ANY MODIFIED VERSIONS, UPGRADES, ADDITIONS AND COPIES OF THE SOFTWARE PROVIDED TO YOU. IF YOU DOWNLOAD, INSTALL, OR OTHERWISE USE A MODIFIED VERSION OF THE SOFTWARE PROVIDED BY IWEBGATE, THEN THE LICENSE TO YOUR PREVIOUS VERSION OF THE SOFTWARE TERMINATES, AND YOU HAVE A LICENSE ONLY TO SUCH MODIFIED VERSION, UPDATE, OR UPGRADE OF THE SOFTWARE UNDER THE TERMS AND CONDITIONS OF THIS EULA.

NO AGENT (AGENT) WHICH INCLUDES BUT ARE NOT LIMITED TO IWEBGATE’S OFFICERS, DIRECTORS, SUBSIDIARIES, LICENSORS, DEALERS, DISTRIBUTORS, RESELLERS, AFFILIATES, NETWORK SERVICE PROVIDERS, CHANNEL PARTNERS, SUPPORT PARTNERS AND EMPLOYEES ARE AUTHORISED TO MAKE ANY MODIFICATIONS, EXTENSIONS, OR ADDITIONS TO THIS EULA.

BY DOWNLOADING, INSTALLING, AND/OR OTHERWISE USING THE SOFTWARE, YOU ARE AGREEING TO THE TERMS AND CONDITIONS OF THIS EULA.

IF YOU DO NOT AGREE TO THESE TERMS, DO NOT INSTALL OR DO NOT USE THE IWEBGATE DMZ SOLUTION IN ANY MANNER WHATSOEVER, AND PROMPTLY RETURN IT TO IWEBGATE OR AN AFFILIATED IWEBGATE AGENT, AS APPLICABLE. IF YOU DO NOT ACCEPT THIS EULA YOU MAY NOT INSTALL OR UTILISE THE IWEBGATE DMZ SOLUTION.

1. Grant of License

Subject to the terms and conditions specified hereunder, and subject to payment of the applicable license fees, iWebGate hereby grants to you, and you accept, a nonexclusive, non-transferable, personal license to install and use the Software in machine-readable, object code form only, and solely in the manner described herein and in any accompanying documentation provided to you by iWebGate in connection with your purchase of an iWebGate DMZ Solution. Any references to “sale” or “purchase” of the Software refer merely to the media upon which the Software resides, and not to the Software itself, which is only licensed hereunder and not sold. The Software may not be used by a number of users exceeding the number of users for which a license was granted in the purchase order. You may install and use the iWebGate DMZ Solution and accompanying documentation for use in your organization.

2. Limitations

You may not modify, translate, reverse engineer, decompile, disassemble (except and only to the extent that such activity is expressly permitted by applicable law notwithstanding this limitation) or create derivative works based on the Software. You may not access or allow the Software to be accessed in any manner that constitutes illegal file sharing or that contravenes any applicable law or ordinance limiting the downloading or sharing of software files. You may not allow the Software to be accessed or utilized for activities which harbor pornographic, terrorist or illegal activities. Any violations of the above restrictions shall automatically revoke the license to your iWebGate DMZ Solution.

3. Copy Restrictions

You may take a single copy of the Software provided on your iWebGate DMZ Solution for backup purposes only. The iWebGate DMZ Solution provides complete data backup facilities to save your data onto external devices. Your data, which can include files and information uploaded into your iWebGate DMZ Solution, remains your property and should be backed up appropriately by you given that iWebGate has no control of any such content.

4. Copyright

The iWebGate DMZ Solution is owned by iWebGate, its subsidiaries or its suppliers and is protected by copyright laws and international treaty provisions. You acquire only the non-exclusive right to use the iWebGate DMZ Solution as permitted herein and do not acquire any rights of ownership in the Software or any other implied rights or licenses under any intellectual property rights of iWebGate.

You may only use the iWebGate DMZ Solution in relation to iWebGate's commercial offerings. You may not transfer, sell, assign, license, sublicense, transfer or grant rights to the Software (or any part of it) in any form to another party outside of iWebGate's licensing policies without iWebGate's prior written consent.

5. Intellectual Property

All rights, title and interest in and to the Software and/or any modifications, corrections, revisions, enhancements or upgrades thereto, including all connected, related, and associated intellectual property rights (including without limitation, copyrights, trade secrets and trademarks), in and to the Software are and shall remain iWebGate's. You agree that the Software is:

- i) The confidential information and proprietary property of iWebGate; and
- ii) Distributed only subject to restricted disclosure and that

iWebGate does not, and will not, convey to you an interest in or to the Software, or any part thereof, but only a limited right of use strictly in accordance with the terms of this EULA, and that nothing herein shall be construed as a waiver by iWebGate of its foregoing intellectual property rights under any law. You may not copy the Software or any part thereof outside the terms highlighted in 'Item 3: Copy Restrictions' of this document.

To the extent that you have breached or have indicated your intention to breach this EULA in any manner that violates or may violate iWebGate's intellectual property rights, or may cause continuing or irreparable harm to iWebGate (including, but not limited to, any breach that may impact iWebGate's intellectual property rights, or a breach by reverse engineering), iWebGate may seek injunctive relief, or any other appropriate relief, in any court of competent jurisdiction.

6. Support

The iWebGate DMZ Solution is provided on an "as is" basis and is supported by iWebGate and its Agents. Upgrades, error corrections, and other forms of support only provided by iWebGate and its Agents are permissible under this License. This EULA does not entitle you to any training, support, customization or maintenance services ("Services"). If iWebGate or any of its Agents elect to provide any Services to you, it does so at its sole option and discretion. iWebGate is not obligated thereby to provide any further Services, and provides such support subject to the conditions and limitations of this License unless otherwise agreed.

In the event that you purchase Software maintenance from iWebGate or one of its Agents, and subject to receipt of the associated fees, you are only entitled to receive Software updates and bug fixes ("Updates") from iWebGate as they are made commercially available during the period for which you have purchased Software maintenance.

During the period for which you have purchased Software maintenance, you will be granted access to email support, whereby iWebGate or its Agents will endeavor to respond to your e-mail inquiries regarding Software functionality and "trouble shooting" within forty-eight (48) working hours. In addition, iWebGate or its Agents may make available to you for an extra charge, Software upgrades and major enhancements, including new versions and functionality of the Software ("New Releases").

7. Disclaimer of Warranty

iWebGate warrants, for your benefit alone, that for a period of twelve (12) months from the date you initially registered your iWebGate DMZ Solution with iWebGate's Master Server, that your iWebGate DMZ Solution shall operate substantially in accordance with the functional specifications outline in the Documentation if operated as directed ("Warranty Period"). iWebGate does not warrant, however, that your use of the iWebGate DMZ Solution will be uninterrupted or that the operation of the iWebGate DMZ Solution will be error-free or secure during this Warranty Period.

You agree by accepting this EULA that iWebGate and its Agents are not responsible for, or warrant, any of your network, data connection or power supply issues in addition to end user technical knowledge that may affect the functionality and performance of your iWebGate DMZ Solution.

iWebGate's sole liability for any breach of this warranty shall be, in iWebGate's sole discretion to either:

- i) replace or repair your defective hardware and/or Software; or
- ii) refund the initial purchase price paid by you for the iWebGate DMZ Solution in accordance with your Return of Product Policy. Any replacement or repaired iWebGate DMZ Solution will be warranted under the terms and conditions of your Warranty Period.

Only if you inform iWebGate or any of its Agents in writing, in accordance with your Return of Product Policy, of your problem with the iWebGate DMZ Solution during the applicable Warranty Period and provide evidence of the date on which you purchased a license to the iWebGate DMZ Solution, will iWebGate or its Agents be obligated to honor this warranty. iWebGate will use reasonable commercial efforts to repair, replace or refund pursuant to the foregoing warranty within thirty (30) days of being so notified in accordance with this EULA. You agree that the foregoing constitutes your sole and exclusive remedy for breach by iWebGate of any warranties made under this EULA. If the Software is subjected to modifications, accident, abuse or improper use or if you violate the terms of this EULA, then this warranty shall immediately be terminated.

Except for the warranties set forth above, the iWebGate DMZ Solution (including without limitation the related Documentation) is provided on an "as is" basis, without warranty of any kind, including without limitation the warranties that it is free of defects, merchantable, fit for a particular purpose or non-infringing. The entire risk as to the quality and performance of the iWebGate DMZ Solution is borne by you. Should the iWebGate DMZ Solution prove defective in any respect, you and not iWebGate or its Agents assume the entire cost of any service and repair in accordance with your Return of Product Policy. This disclaimer of warranty constitutes an essential part of this EULA. No use of the iWebGate DMZ Solution is authorized hereunder except under this disclaimer. Some states or jurisdictions do not allow the exclusion of implied warranties or limitations on how long an implied warranty may last, so the above limitations may not apply to you.

8. Limitation of Liability

In no event will iWebGate or its Agents be liable for any direct, indirect, special, incidental, economic or consequential damages, claims or costs (such as but not limited to loss of property, life, profit or data) arising out of the use of or inability to use the iWebGate DMZ Solution, including the Documentation, even if advised of the possibility of such damages. You agree that, regardless of the form of claim you may have, in no case shall iWebGate's or its Agent's liability exceed the amount paid by you for your iWebGate DMZ Solution, which excludes any Services, for the 6 (six) months prior to making a claim. These limitations apply to the maximum extent permitted by law. Some regions do not allow the exclusion or limitation of liability for incidental or consequential damages, so in those states, the above limitation or exclusion may not apply to you. As a condition of your use of the iWebGate DMZ Solution, you agree to indemnify iWebGate and its Agents for all claims relating to your use, reproduction and/or receipt of content through use of the iWebGate DMZ Solution.

9. Representations and Warranties

You represent and warrant that you possess the legal rights and ability to enter into this EULA and to comply with its terms. You will use the iWebGate DMZ Solution for lawful purposes only in accordance with this EULA and all applicable laws. You agree you will not use any device or process to interfere with the proper working and security mechanism of the iWebGate DMZ Solution or iWebGate's network.

10. Government Restricted Rights

The iWebGate DMZ Solution is a commercial computer and Software solution. Use, duplication and disclosure of the iWebGate DMZ Solution by the Government is subject to restrictions set forth in this license or in a written agreement specifying the Government's right to use the iWebGate DMZ Solution. iWebGate reserves all unpublished rights under copyright laws.

11. Termination

Without prejudice to any other rights, iWebGate may terminate this EULA upon the breach by you of any term hereof. Upon such termination by iWebGate, you agree to destroy, or return to iWebGate or its Agents the iWebGate DMZ Solution and all Documentation. The following sections of this EULA will survive termination for any reason: 2 (Limitations), 4 (Copyright), 5 (Intellectual Property), 6 (Support), 8 (Limitation of Liability), 14 (Confidentiality), 15 (Privacy), 16 (Governing Law and Jurisdiction), 17 (Statute of Limitations), 18 (Severability) and 20 (Complete Agreement).

WITH ACCEPTANCE OF THIS EULA, YOU AGREE AND UNDERSTAND THAT YOUR IWEBGATE DMZ SOLUTION WILL BE DISABLED AND CEASE TO OPERATE IF, IN THE SPECIFIED TIME PERIOD, IWEBGATE OR ITS AGENTS HAVE NOT RECEIVED FEES AND CHARGES FOR THE FOLLOWING ("ITEMS"):

- THE INITIAL PURCHASE PRICE OF YOUR IWEBGATE DMZ SOLUTION;
- ANY ONGOING SOFTWARE MAINTENANCE AND LICENSING FEES ASSOCIATED WITH YOUR IWEBGATE DMZ SOLUTION; OR
- ANY SERVICES RELATED TO YOUR IWEBGATE DMZ SOLUTION.

iWebGate and its Agents stipulate that all invoices raised, for the Items outlined above, must be paid in full within the period of seven (7) days after the date of issue ("Specified Time Period"). This Specified Time Period is not permitted to change unless it is agreed in writing by iWebGate.

Failure to make payment or resolve any outstanding invoices with iWebGate or its Agents, for the Items cited above within the Specified Time Period, will result in the temporary disabling of your iWebGate DMZ Solution with no basis for claim. Given the labor and resources involved, iWebGate and its Agents have the right to charge a re-activation fee, penalties and charges which must be paid in full before reinstating the functionality of your iWebGate DMZ Solution.

You agree, by accepting this EULA, that iWebGate and its Agents are not responsible for the suspension of services associated with your iWebGate DMZ Solution which occur as a direct result from you not being able to pay in full for the Items within the Specified Time Period. You take full responsibility and liability for your actions and indemnify iWebGate and its Agents for any claim you or other users of your iWebGate DMZ Solution may raise for any loss or damages incurred as a result of the discontinuation of services which was ultimately caused by your inability to pay for Items within the Specified Time Period.

All disclaimers of warranties, limitations of liability and your obligation to pay accrued charges and fees shall survive any termination of this EULA. This license will terminate automatically if you fail to comply with any term thereof.

12. Cancelling your iWebGate DMZ Solution or Services

You can cancel your iWebGate DMZ Solution at any time by telling iWebGate or its Agents beforehand. iWebGate or its Agents can ask you to put your request in writing. However, if you cancel before the end of any fixed term for your iWebGate DMZ Solution, iWebGate and its Agents can charge you the applicable early termination fee. The amount of the early termination fee is disclosed to you when you acquired your iWebGate DMZ Solution.

If you cancel a Service before iWebGate or its Agents have provided it to you, iWebGate and its Agents can charge you any reasonable costs incurred as a result of preparing to provide it to you.

13. Price Changes

If there are any changes to the pricing associated with your iWebGate DMZ Solution and subsequent Software licensing, your iWebGate Agent will inform you individually beforehand within eight (8) weeks of the change being implemented by bill message, direct mail and/or email.

14. Confidentiality

iWebGate's Software contains trade secrets and proprietary know-how that belong to iWebGate and it is being made available to you in strict confidence. ANY USE OR DISCLOSURE OF THE SOFTWARE, PROTOCOLS OR INTERFACES, OTHER THAN IN STRICT ACCORDANCE WITH THIS EULA, MAY BE ACTIONABLE AS A VIOLATION OF IWEBGATE'S TRADE SECRET RIGHTS.

15. Privacy

All conduct and communications derived from or related to your relationship with iWebGate, including its Agents, and your use of the Software pursuant to this EULA are governed by iWebGate's Privacy Policy which can be found at http://www.iwebgate.com/privacy_policy.php. By installing and utilizing your iWebGate DMZ Solution, you acknowledge that you have read the Privacy Policy and that you agree to the terms set forth in such policy. Your agreement to the Privacy Policy is a precondition to the License granted pursuant to this EULA.

16. Governing Law and Jurisdiction

This EULA is governed only by the law of Western Australia, Australia and the courts of Western Australia shall have sole and exclusive jurisdiction over all matters arising and/or concerning and/or in connection with this EULA, unless otherwise permitted with respect to iWebGate's protection of its Intellectual Property rights as set forth in this EULA. This EULA will not be governed by the United Nations Convention of Contracts for the International Sale of Goods, the application of which is hereby expressly excluded. If any part of this EULA is found void and unenforceable, it will not affect the validity of the balance of this EULA, which shall remain valid and enforceable according to its terms.

17. Statute of Limitations.

Any cause of action arising out of or related to this EULA must be brought by you no later than six (6) months after the cause of action has occurred.

18. Severability

If any provision, or part thereof, of this EULA is held to be unenforceable for any reason, such provision shall be reformed only to the extent necessary to make it enforceable and such reform shall not affect the enforceability of such provision under other circumstances, or of the remaining provisions hereof under all circumstances.

19. Variation

Any variation of this EULA will be published in iWebGate's website unless mutually agreed in writing between you and two (2) Executive Directors of iWebGate.

20. Complete Agreement

This EULA shall constitute your complete and exclusive agreement with iWebGate and its Agents for the use of your iWebGate DMZ Solution, notwithstanding any other written instrument submitted by you, whether formally rejected by iWebGate or not. Nevertheless, if the iWebGate DMZ Solution you received was accompanied by a printed or other form of "hard-copy" EULA whose terms varies from this EULA and was jointly signed by iWebGate's Executive Directors and you, then the hard-copy EULA governs your use of your iWebGate DMZ Solution.

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