

TERMS AND CONDITIONS

1. General

All Services are provided on an “as is, as available” basis.

We suggest you (hereon referred to as the “Customer” thoroughly read and familiarise yourself with these terms and conditions to ensure you understand the terms and conditions of the agreement you are entering into with Web Intelligence Limited (hereon referred to as “WI”).

1.1 To the extent that there is any uncertainty in the construction of the terms of this contract, the definitions listed in Schedule 1 shall be used to construe the proper meaning of the terms of this contract or the terms shall be construed in the ordinary meaning.

1.2 WI gives no warranty, express or implied, for the Product/Services, including any reimbursement for losses of income due to disruption of Services by WI or its providers for any amount greater than the fees paid by the Customer to WI for the Services. The Customer irrevocably, waives all right to claim reimbursements for lost business income as a result of interruptions to Product/Services provided by WI.

1.3 The Customer warrants to WI that they will use the Product/Services provided by WI in a manner consistent with the laws of New Zealand and any local laws to which the Customer is subject in its use of the Internet. The Customer further indemnifies WI against all liability for the illegal use of the Internet and any criminal, civil or other sanctions which may result from the illegal use of the Internet in any and all jurisdictions in which the Customer operates using WI's Network in any way.

1.4 You may have the benefit of statutory guarantees under the Consumer Guarantees Act 1993. Unless you use, or hold yourself out as using, the Services for the purposes of a business.

1.5 While we take all reasonable security precautions, the nature of Telecommunications Services means that we cannot guarantee the confidentiality of any calls or transmissions you make using our Product/Services.

1.6 We may vary the Product/Service or price from time to time, or decide to stop providing a particular Product/Service. We will notify you 7 days prior to making a variation to your Product/Services via email.

2. Accounts

WI retains the right to refuse service to anyone at any time for any reason.

2.1 The Customer is required to provide and regularly update WI with correct contact details for billing and technical notification purposes. WI accepts no liability for disruption to services due to inability to contact the Customer. It is the Customer's responsibility to provide WI with a valid email address that allows emails from WI to get through your spam filter.

2.2 Credit Worthiness

2.2 If at any time WI has reasonable concerns about the Customer's creditworthiness, or its ability to comply with the terms of this agreement, then WI may require that the Customer do one or more of the following:

- a) Bond: Provide WI with an amount equal to three (3) months estimated charges.
- b) Letter of credit: Provide a letter of credit to WI from your bank.
- c) Guarantee: provide a personal Director's guarantee in support of the Customer's obligations under this agreement.
- d) Trade references: Provide trade references from three creditors.

3. Datacentre

3.1 Waiver for damage if a colocation device is supplied without proper rack mounting equipment, otherwise the customer has to accept the risk of possible damage to their equipment.

3.2 If you cancel your colocation and there is debt due on your account, your server will be held in lieu of any debt due, even if the equipment is more valuable than the debt. You have 180 days to zero balance the due amount left on your account otherwise you agree to forfeit/gift your server asset to WI to sell to recover any debts.

3.3 If you cancel your colocation server and do not pick it up within 14 days after cancellation, WI will charge you a one off storage fee of \$150 +GST until picked up.

3.4 Any parts from your server such as rails, power leads etc are not returned after your colocation service has ended WI, we will do our best to supply the missing parts but will NOT be held liable for them or pay for their replacement.

4. Backups and Data Loss

4.1 While WI makes every reasonable effort to protect data stored in the WI Datacentre, WI accepts no liability for the Customer's data residing on any equipment in any way. The Customer is solely responsible for maintaining offsite backups.

4.2 The Customer agrees that a charge of \$120.00 +GST per hour May be applied per incident to restore the Customer's data where possible.

4.3 The Customer agrees that the scope of WI's backup and scheduling of backups shall be at its sole and exclusive discretion and that the Customer waives any legal right or objection in relation to WI's decisions in relations to these matters.

4.4 The Customer agrees that WI shall not be held liable for the retention and or restoration of any data held on its servers at any time.

5. Termination

5.1 This contract may be terminated by WI without cause, by giving the Customer written notice. This notice shall be delivered via email with the termination date set as the end of the Customers current billing cycle.

5.2 If the Customer pays annually and wishes to cancel the service before their next due date; in such case, WI shall not refund any monies for the remaining period.

5.3 WI may, at its sole discretion, cancel an account at any time if, in its opinion, the Customer has failed to abide by this contract or the Acceptable Use Policy or any other policy relating to WI's operations and any future policy or change of policy which is determined as being necessary at the sole discretion of WI. In such case, WI shall be entitled to all reasonable costs and expenses of such enforcement including collection fees, court costs and legal fees.

5.4 The Customer must give 30 days' written notice via email to support@webintelligence.net.nz before cancellation of any service takes place.

5.5 In such cases, if the service is cancelled without due notice by the Customer, WI is not responsible for saving or returning any data, files or directories.

5.6 WI will be entitled to payment for the balance of the month where less than the one month's notice is given.

6. Technical Issues

6.1 In relation to the use of a particular amount of bandwidth, upon purchase of a Product through this website, the Customer agrees to abide by the terms of clause 13.

6.2 WI maintains control and ownership of all IP numbers and addresses that may be assigned to the Customer and reserves the right to change or remove any and all IP numbers and addresses to the Customer's service. If we need to make a change, we will give the customer at least 48 hours prior warning.

6.3 After suspension or termination of a dedicated server, where money is left owing on The Customer's account, WI maintains control and ownership over the dedicated server asset and any data residing on the hardware after the termination date and remains the property of WI.

7. Retrieval of Access Information

7.1 The retrieval of access shall be conducted in the following manner. If the Customer loses their account access information, the Customer must do these things in order:

- a) Request an automatic password re-send if available, via the service login form provided for service in question online;
- b) Email WI's support staff to re-send the details to the email address WI has on record; and
- c) Fax in required identification as requested by WI.

8. Payments, Debt and Pricing

8.1 The terms of payment by the Customer to WI are:

- a) The Customer will be billed one month in advance from the date the service becomes active.
- b) Prices stated on WI's website are in New Zealand dollars and exclude GST.
- c) Customers paying USD dollars via Paypal for NZD value invoices are advised that the exchange rate between NZD and USD is not equal to the market exchange rate. We manually set this once per year based on a NZD/USD value ratio, any differences between the two, up or down are non refundable or collectible, we do this to keep our monthly fee to our customer stable.
- d) All prices are subject to change with 14 days' notice from WI. Prices may increase due to increased operating costs, for example: power, bandwidth and or administration costs, and at WI's sole discretion.
- e) WI only accepts payment by Visa or MasterCard, Cheque, Direct Credit, Automatic Payment and Phone-In Credit Card.
- f) If the Customer's payment is not received for an invoice within seven days of the due date shown on the invoice, Services WILL be suspended or even terminated (at the discretion of WI).
- g) A late payment fee of 11% per invoice will be applied to the Customer's overdue invoice seven days after the date on which payment was first due.
- h) WI does not accept credit cards as a once off payment for option for recurring services unless explicitly stated and pre-arranged with WI, when providing credit card details as a means of payment the Customer accepts that these details will be securely linked to their account and outstanding amounts on any invoices generated will deducted from their credit card once the invoice becomes due

9.2 If your account is between 30 to 60 days overdue then WI will hand the Customer's accounts/records/logs and other information over to a debt collection agency of WIs choice and the Customer will be liable for all costs incurred in recovering its debt.

8.3 WI reserves the right to terminate this agreement as a result of any late payment by the Customer, without notice.

8.4 If the Customer fails to make payments on time each month, WI requires the Customer to pay a deposit as a condition to keeping your account open.

8.5 WI does not offer any Credit Services to its Customers.

8.6 The Customer acknowledges that WI has the right to pass on any extra costs incurred that arise from a complication during the install of either ADSL2+, Naked ADSL2+, VDSL2, Naked VDSL2, HSNS and Fibre Services.

9. Indemnity

9.1 The Customer agrees to indemnify, defend and hold WI and its affiliates, licensors and suppliers harmless from any liability, loss, claim and expense, including reasonable solicitor's fees related to the Customer's breach of this contract.

9.2 Notwithstanding anything else in the contract, WI shall not be liable to the Customer for loss of profits, contracts, loss of reputation, loss caused by any third party deleting, removing, deactivating or tampering with the WI Service or other indirect or consequential loss whether arising from negligence, breach of contract or howsoever.

9.3 The Customer shall immediately indemnify WI against all proceedings, fees, expenses, payments, liabilities, injury, costs and damages arising out of:

- a) The breach by the Customer of any of its obligations under the contract; and
- b) Any express or implied warranties, representations, confirmations or acknowledgements that are given by the Customer which are untrue or misleading.

9.4 The Customer agrees that WI shall not be liable to the Customer for any force majeure event (unavoidable event) being any situation (other than a failure to pay money due to the other party) in which WI fails to comply with its obligations under the contract due to anything beyond its reasonable control.

9.5 The Customer agree that WI shall not be liable to the Customer for loss arising from or in connection with any representations, agreements, statements or undertakings made prior to the date of execution of the contract other than those representations, agreements, statements or undertakings confirmed by a duly authorised representative of WI in writing or expressly incorporated or referred to in the contract.

9.6 This contract represents the entire understanding between Customer and WI, regarding Customer's relationship and supersedes any prior statements or representations.

10. Warranties and Guarantees

10.1 WI gives no warranties in relation to any of the Product/Services content, goods or services provided through its websites. WI does not guarantee in any way the merchantability, quality or use of Products purchased through the site.

10.2 The Customer warrants that they are in possession of the following and that they waive any legal right to claim against WI in relation to loss of damage resulting from the absence of the following:

- a) An Internet connection with sufficient bandwidth and quality to allow trouble-free browsing and data uploading and downloading;
- b) A fully functional Internet browser;
- c) Suitable and necessary tools to develop and publish content; and
- d) Tools with which to access database servers.

10.3 The Customer warrants that:

- a) The Customer has full power and authority to enter into and perform the contract;
- b) All information provided by the Customer to WI shall be complete, accurate and not misleading;
- c) The Customer will comply with all its duties under any data protection laws and regulations applicable to the Customer's

operations;

d) The Customer's performance of its obligations under the contract will not infringe the Intellectual Property Rights of WI or any third party; and

e) None of the information or materials supplied by the Customer to WI shall be libelous, obscene or abusive nor shall it breach any law or regulation or give rise to any legal claims of any sort.

10.4 The Customer agrees that all conditions, warranties, representations or other terms concerning the supply of the Product which might otherwise be implied or incorporated into the contract or any collateral contract, whether by statute, common law, custom or otherwise, are hereby expressly excluded to the fullest extent permitted by law.

10.5 The Customer should have their own insurance organised for their owned equipment stored or hosted at WI's datacentre.

11. Disclaimer

11.1 The Product/Services provided from or through its website by WI is provided on an "as is", "as available" basis. All warranties, express or implied, are disclaimed including but not limited to, any implied warranties of the merchantability and fitness for a particular purpose of Product/Services. The maximum liability of WI for the Product, for any reason shall be limited to the amount paid by the Customer for the particular items purchased and in the event of a regular supply of Product, a sum equivalent to three month's such supply. The Customer hereby accepts that the maximum liability of WI, for any reason shall be limited to the cost of the content, goods or services provided to the Customer by WI.

WI and any of its affiliates, dealers or suppliers are not liable for any indirect, special, incidental or consequential damages including damages for loss of business, business profits, litigation judgments or the cost of legal fees whether based on any claim for breach of contract, breach of warranty, tort, negligence, product liability or any other claim which the Customer may raise against WI. This term is to subsist despite any advice from the Customer of the nature of damages proposed by the Customer or their legal representative.

This clause is to be considered a material, fundamental and essential term of the bargain between the Customer and WI.

12. Refunds

12.1. WI does not provide refunds for any service or product purchased by the Customer.

12.2 Any refunds that are offered or available to the customer will be reviewed by WI and any refund amount and decision is at the sole discretion of WI.

13. Fair Use

13.1 You can use our bandwidth for any purpose other than that outlined in our Acceptable Usage Policy (13).

13.2 The term "unmetered" or "unlimited" bandwidth means "fair use", without hidden data charges.

13.3 It is important to WI that all eligible Customers are able to access our Services, and get the best possible experience. For this reason, and to ensure the provision of a quality Service, a Fair Use Policy applies to some of our Services where your usage can affect that of other Customers. We have developed this Fair Use Policy by reference to an average of Customer profiles and estimated use of our Services.

13.4 We may issue a warning or suspend your Services under this Fair Use Policy where in our reasonable opinion your use of our Services is excessive and/or unreasonable by materially exceeding estimated usage patterns over any month.

13.5 If, after we have requested that you stop or alter your use to come within our Fair Use Policy, your excessive or

unreasonable use continues, we may without further notice, apply charges to your account for the excessive and/or unreasonable element of your use; suspend, modify or restrict your use of our Services or withdraw your access to the Services.

13.6 Bandwidth allocated to unlimited internet users is reviewed and increased as required, but at any time there is a fixed amount of bandwidth available. The aim of this clause of the Fair Use Policy is to ensure that the experience of the vast majority of unlimited internet users is not compromised by the extreme and unreasonable usage of a few. WI reserves the right to modify (through speed and other variables) the behaviour of individual users that frequently use significantly more data than the majority of the unlimited users and/or use their internet service in a way that negatively affects the experience of other users. If an unlimited internet customer is found to be in the top 1% to 5% of users and their usage is negatively impacting the network, WI may attempt to communicate with the user asking them to modify their usage, may suggest a more suitable solution for all parties involved, or may exercise its rights outlined in clause 14.5.

13.7 You acknowledge that WI does not and cannot in any way supervise, edit or control the content and form of any information or data accessed through the internet, and WI shall not be held responsible in any way for any content or information accessed via the Service. Furthermore, WI disclaims all or any responsibility or liability for any material on the internet that you may find offensive, upsetting, defamatory, and personally offensive and in any way unsuitable for minors.

13.8 Some internet sites may have embedded within them the ability to program your modem to dial overseas numbers without your knowledge or direction. You are liable for any charges arising from such calls and WI accepts no liability for such charges.

13.9 You are not permitted to operate hosted services from our Broadband and/or UFB Services and you are not permitted to on-sell this Service without written approval from WI.

14. Bandwidth

14.1 If you are on an “unmetered” or “unlimited” plan, the Customer will be provided with unmetered national (within New Zealand) and international bandwidth per month. Bandwidth use is subject to our Fair Use policy Clause 13.

14.2 Customers must agree to our “Fair Use” and if heavy amounts of bandwidth are used that affect the performance of our CIR upstream connections, other available options will be offered to the Customer.

14.3 Bandwidth management (traffic shaping) is employed on different Services and times within the WI Network to ensure Service to priority applications and to avoid filling our links to capacity.

14.4 “Shared Pool” offers are subject to clauses 13, 14 and 15 and do mean “unmetered” or “unlimited” bandwidth.

15. Computer Viruses

For the purposes of this clause, a “virus” is a computer program or a code or portion of a computer program which is intentionally created and programmed to cause damage to, corrupt, hinder, crash, tie up or otherwise create negative effects on a computer system. WI shall not be responsible for any incidental, consequential or special damages, whether foreseen or foreseeable, or whether they have been informed of the possibility thereof and take no actions to prevent the same.

15.1 The Customer gives WI the right to immediately, and at the sole and exclusive discretion of WI, delete any file on the server systems or data network which is operating as a computer virus as defined at the discretion of WI. The Customer also waives any right to claim against WI in relation to damage caused by a computer virus transmitted through WI’s servers or data network. The Customer also undertakes to immediately notify WI of any file in existence on WI’s servers or data network which is potentially a threat to the integrity, security or value of WI’s servers and data network.

16. Privacy

16.1 WI reserves the right to disclose information about the Customer requested for a lawful purpose by a third party organisation and without limiting the total scope of what WI will disclose. WI will disclose information in the following circumstances:

- (a) Where WI is required to do so by law;
- (b) For the purpose of the transfer of a business asset;
- (c) To enforce or apply its Services and other contracts; or protect the rights, property or safety of WI, its users or others. This includes exchanging information with other companies and organisation's for fraud protection and credit risk reduction;

16.2 From time to time, WI will collect information entered through our website, given by telephone or through electronic mail for billing purposes, WI will also collect credit card information and billing addresses. The Customer agrees to allow WI to collect and hold this information for relevant business purposes.

16.3 The Customer agree that WI may use personal information stored by WI in order to contact the Customer by electronic mail concerning the use of services and other promotional marketing material regarding WI's business Services, Operations and Products.

16.4 The Customer waives any right it may have to claim against WI, in relation to any possible breach of privacy related legal obligations. The Customer warrants that they will take all necessary steps to protect their personal information from unauthorised access, including but not limited to, signing off after the use of a publicly shared computer.

16.5 The Customer warrants that it will provide accurate, timely and the relevant information to WI in relation to any matters which WI may require for the purposes of updating information.

17. Inconsistency

To the extent that any dispute should arise about the inconsistency of terms in relation to this contract, the Customer will submit to the discretion of WI to determine the interpretation of an inconsistency.

Schedule 1

Definition of Terms:

For the purposes of these terms and conditions, the following words and expressions shall have meanings hereby assigned to them except where the context otherwise requires:

"WI", "us", "we" and "our" means WI;

"Customer", "You" and "Your" means the party or parties who are authorised to make decisions regarding signing up/registering and understanding/accepting these terms and conditions – who utilize Products and/or Services provided by WI;

"DNS" The Domain Name System (DNS) is a hierarchical naming system for Computers, Services, or any resource connected to the Internet or a private network. It associates various information with domain names assigned to each of the participants. Most importantly, it translates domain names meaningful to humans into the numerical (binary) identifiers associated with networking equipment for the purpose of locating and addressing these devices worldwide. An often-used analogy to explain the Domain Name System is that it serves as the "phone book" for the Internet by translating human-friendly computer hostnames into IP addresses.

"IP Address(s)" The Internet Protocol (IP) is a protocol used for communicating data across a packet-switched network using the Internet Protocol Suite, also referred to as TCP/IP.

"WHOIS" means the query and response protocol widely used for querying domain databases in order to determine the registrant or assignees of Internet resources, such as a domain name, an IP address block or an autonomous system number.

“Network” means any IP data going via WI’s network, TCP or UDP, data transmission, digital transmission or digital communications is the physical transfer of data (a digital bit stream – is a time series of bits) over a point-to-point or point-to-multipoint communication channel. Examples of such channels are copper wires, optical fibres, wireless communication channels, and storage media. The data is represented as an electro-magnetic signal, such as an electrical voltage, radio wave, microwave or infra-red signal.

“Servers” means a computer, sometimes called a web server, is a computer system that provides essential services across an IP network, to private users inside a large organisation or to public Internet. Many servers have dedicated functionality such as web servers, print servers, file servers and database servers.

“Incident” occurring etc. by chance in connection with something else an incidental occasion.

Acceptance of Terms and Conditions

I have read, understood and fully comprehended these terms and conditions and their full nature, extent and effect.

If I sign or purport to complete this contract on behalf of any corporate body I accept personal responsibility for any guarantee the due performance of the body of this contract and indemnify WI accordingly.

I understand that typing in my First, Last name and Email address and clicking the check box during the signup process on WI’s web sites, I am making an electronic signature with the same nature, extent and effect of a written signature.

Acceptable Use Policy

It is WI’s intent to provide its Customers with good quality Services where reasonably possible.

Without prejudice to or derogation from any of its general rights of termination, as provided herein WI reserves the right to immediately terminate, without notice, any service provided to the Customer which violates our "Acceptable Use Policy".

- a) WI’s Acceptable Use Policy applies to any Customer using any of our Services, either directly or indirectly.
- b) This Acceptable Use Policy applies to any WI Services being purchased or given for free.

Compliance with Policy

By using WI’s Services you agree to comply with this Acceptable Use Policy and to any other policies applying to the Services you use.

Changing the Acceptable Use Policy

WI may change this policy at any time by posting an updated version of the policy on our website. Changes are effective from the date of such posting.

Network Abuse

Network Abuse is strictly prohibited. WI may terminate, alter or suspend Service immediately and may charge for any remedial or other work required as a result of any Network Abuse at WI’s sole discretion.

The Customer agrees they will not:

1. Undertake any unlawful purpose. This includes, but is not limited to, posting, storing, transmitting or disseminating information, data or material which is libellous, objectionable obscene, unlawful, threatening, defamatory, or which infringes the intellectual property rights of any person or entity, or which in any way constitutes or encourages conduct that would constitute a criminal

offence.

2. Violate the law of any foreign state or in particular the laws of the country in which the Customer resides.
3. Impersonate any person, entity or computer address, engage in sender address falsification, forge anyone else's digital or manual signature, or perform any other similar activity.
4. Engage in any form of harassment, or repeated transmission of such messages.
5. Access any other person's computer or computer system, software, or data without their knowledge and consent; breach the security of another user; or attempt to negate the user authentication or security of any host, network, or account.
6. Interfere with the computer networking or Telecommunications Service to any user, host or network, including, without limitation, denial of service attacks, flooding of a network, overloading a Service, and attempts to "crash" a host.
7. Infringe any copyright, patent, trademark, trade secret or other intellectual property right registered in New Zealand, any other country or under an international agreement. Publish material which consists of any form of occult, illegal activities, racism and hate speech, violence, phishing, scams, plagiarism, hacking, stolen Internet content, malware, spam URL's or other unacceptable content as determined in the sole and exclusive discretion of WI.
8. Introduce harmful or destructive software or data (such as Trojan horses, worms, viruses or bots) to interfere in any way with any system on the Internet.

Excessive Use

1. Excessive use of any unlimited service may result in a warning and ultimately cancellation of this type of services if use is not moderated to agreed levels.
2. If, at WI's sole discretion it is decided that a Customer's usage of an unlimited Service is grossly and/or repeatedly excessive then WI may issue a warning to the customer. If the usage levels are not then reduced WI may terminate or limit access to unlimited Services. WI will provide ten (10) days' notice to any Customers affected under this policy.
3. In this situation WI may at its own discretion choose to waive, or choose not to waive any penalties applying for early termination as this applies specifically to the unlimited service.

Customer Responsibilities

1. The customer and any/all of their associates using our Services are responsible for their actions and activities.
2. It is the Customers responsibility to maintain the security of personal information, including any credit card details.
3. The Customer is responsible for any content viewed or obtained using our Services and for content viewed by others using the Customer's account or connection. WI do not accept responsibility for filtering content deemed objectionable.