



1. GENERAL HOSTING TERMS AND CONDITIONS

1.1 These General Hosting Terms and Conditions apply to Services provided to you by NOW. NOW's General Terms and Conditions (available at www.nownz.co.nz) will also apply to you.

2. CHANGING THE GENERAL HOSTING TERMS AND CONDITIONS

2.1 We may amend these General Hosting Terms and Conditions at any time. When we do this we will notify you via email of the amendments. The amendments we make will apply seven (7) days after we send you the details of the amendments. Your continued use of the Services after that date will constitute your acceptance of the amendments.

3. DEFINITIONS

3.1 In this document:

"Agreement" means any written agreement between NOW and you for the provision of Services and shall include these General Hosting Terms and Conditions and NOW's General Terms and Conditions (available at www.nownz.co.nz).

"NOW", "our", "us" or "we" means NOW New Zealand Limited.

"AUP" means our Acceptable Use Policy (available at www.nownz.co.nz/terms)

"Business Hours" means from 8:30 am to 5:00 pm Monday to Friday (excluding public holidays).

"Equipment" means either your Equipment or NOW's Equipment used to provide the Services.

"Facility" means NOW's colocation data centre facility.

"General Hosting Terms and Conditions" means the terms and conditions contained in this document.

"Services" means the general hosting services provided to you by NOW which includes, but is not limited to, website hosting (as set out in clause 5), colocation hosting (as set out in clause 6), domain and email hosting (as set out in clause 7) and IP sub allocation (as set out in clause 8).

"You" means the customer who has entered into the Agreement.

4. TERM

4.1 The Agreement shall commence when you first use the Services, and shall continue until terminated by either party upon providing one (1) month's notice in writing to the other. By using our Services you agree to comply with the General Hosting Terms and Conditions.

5. WEBSITE HOSTING

5.1 Unless otherwise agreed, NOW shall host websites in a shared hosting environment.

5.2 Email from NOW's shared hosting environment is restricted so that it is delivered to NOW hosted mailboxes only.

5.3 If you wish to host a website with NOW with the ability to send email to non-NOW hosted mailboxes, NOW may impose restrictions or require aspects of your website to meet standards, which in NOW's sole discretion, minimise the ability for unauthorised emails or spam to be generated via your website, including but not limited to the following:

(a) The implementation of 'captcha' images on any publicly accessible forms; and

(b) The use of a NOW based email forward for limited distribution emails.

5.4 You acknowledge that CGI execution on the server is disabled.

5.5 It is your responsibility to confirm that the server environment offered by NOW is suitable for the purposes of your website. NOW will not be liable if limitations of the server affect your ability to perform a task or utilise a technology that NOW does not offer.

5.6 NOW may perform updates to its server environment to ensure security and stability of its Equipment. NOW will attempt to ensure that such updates do not affect the compatibility of any existing system but will not be liable for any service performance changes resulting from a commonly distributed security or stability patch to one of the standard software packages on the server (including but not limited to Apache, MySQL or PHP).

5.7 If your use of the Services exceeds the allowed levels (as specified in your Agreement with NOW) NOW may, in its sole discretion, require you to reduce your usage to within the allowed levels or to upgrade your hosting package to one that covers your usage.

5.8 If you decline to comply with any requests by NOW pursuant to clause 5.7 above, NOW may deem your usage to be in breach of your agreed use of the Services and exercise its rights under clause 12.

6. COLOCATION HOSTING

6.1 Shared colocation hosting means server colocation hosting in a shared rack within NOW's colocation facilities. Shared colocation hosting packages include the following:

(a) UPS power, physical hosting (up to 3U's, one device only) and internet data as specified in the Agreement;

(b) Each month NOW staff will provide you with one server reboot or one hour's assisted access during Business Hours without charge. Additional assistance thereafter shall be charged at the rate of \$100.00 + GST per hour (with a minimum 1/2 hour charge);

(c) A KVM will be available for you use within the Facility;

(d) Access to the Facility shall be available to you during Business Hours on the basis that an NOW staff member shall be present at all times within the Facility; and

(e) After Hours access to the Facility shall be available to you and requires NOW staff to be present at all times. Such access shall be charged at the rate of \$120.00 + GST per hour (with a minimum one hour charge) and requires at least one hour's notice to NOW.

6.2 Dedicated colocation hosting means server colocation hosting in a dedicated rack within NOW's colocation facilities. Dedicated colocation hosting packages include the following:

(a) A 38 RU rack to host your Equipment;

(b) Power and/or UPS power provided in accordance with your Agreement with NOW;

(c) Any Internet data will be subject to an internet services agreement separate to these General Hosting Terms and Conditions;

(d) A KVM will be available for your use within the Facility;

(e) Access to the Facility shall be available to you during Business Hours on the following terms:

i. A security access swipe card will be provided for your use to access the Facility during Business Hours;

- ii. You must immediately report to NOW a lost or stolen security access swipe card;
 - iii. You must not modify the swipe card in any way that identifies you or NOW
 - iv. You must identify yourself to any NOW staff member within the Facility;
 - v. You must not loan your security access swipe card to any other person without the express written consent of NOW;
 - vi. You must not touch or interfere with any racks or Equipment that do not house your Equipment;
 - vii. You must log your access to the Facility in the log book located in the Facility;
 - viii. You must report to NOW any Facility damage or if you are aware of any suspicious activity.
- (f) After hours access to the Facility shall be available to you and requires NOW staff to be present at all times. Such access shall be charged at the rate of \$120.00 + GST per hour (with a minimum one hour charge) and requires at least one hour's notice to NOW.

7. **DOMAIN AND EMAIL HOSTING**

- 7.1 Where NOW is the registrar of the domain used by you, you must advise NOW if you have transferred the registration of the domain away from NOW. NOW will deem the domain name to be active unless you inform NOW otherwise.
- 7.2 Where NOW is not the registrar of the domain used by you the following terms shall apply:
- (a) You must update and maintain appropriate name server records to ensure the proper operation of your domain name;
 - (b) You must maintain proper registration of the domain name with the appropriate registrar;
 - (c) You must inform NOW if you have made changes to the domain name such as pointing the name server records elsewhere; and
 - (d) NOW will deem the domain name to be active unless you inform NOW otherwise.
- 7.3 The following terms shall apply to email addresses and/or email mailboxes provided to you by NOW:
- (a) You must use the email addresses and/or email mailboxes in accordance with NOW's AUP;
 - (b) Unless otherwise stated, your email mailbox shall have a size limit of 500 MB's. NOW may request that you delete emails if you exceed this limit and you must comply with this request within a reasonable time;
 - (c) NOW makes no performance guarantees where NOW provides a webmail interface for your use;
 - (d) NOW shall allow POP3 access to your email and SMTP access to send email on-net by default; and
 - (e) NOW shall allow off-net access to NOW's SMTP server only by request to NOW support (this will require a mail client capable of SMTP Auth).

8. **IP SUB ALLOCATION**

- 8.1 NOW may allocate IP Address resources to you as part of the Services. You may not allocate these IP addresses to any other party.
- 8.2 You must not use the IP addresses for any purpose that will breach NOW's AUP.
- 8.3 You must relinquish your IP address allocation if you cease to use NOW as your primary ISP.
- 8.4 Final approval for sub allocation will require a second opinion from APNIC, NOW will be required to pass certain information onto APNIC for the second opinion process and this information will be made public through the IP WHOIS database.
- 8.5 You must consult with NOW if you wish to use BGP routing protocols. NOW may, at its sole discretion, grant access to you to use BGP routing protocols.

9. **SUPPLEMENTARY SERVICES**

- 9.1 NOW may from time to time perform certain additional Services ("Supplemental Services") on an hourly fee basis, such as the customisation of a particular Service at your request and other professional technical services. Except as described in clause 10 of this General Hosting Terms and Conditions, Supplemental Services will be performed only on your advance approval and will be invoiced at our standard fees applicable at the time the Supplemental Services are performed, or such other rate approved in advance by you.

10. **EMERGENCY AND REMEDIATION SERVICES**

- 10.1 In the event of a security emergency, problems caused by an AUP violation or any other emergency, NOW may, in its sole discretion, perform Supplemental Services for you without your prior consent. You agree to pay NOW's standard fees applicable at the time the Supplemental Services are performed.

11. **YOUR OBLIGATIONS**

- 11.1 You agree to use reasonable security precautions in connection with your use of the Services and, if you resell NOW's Services, you must require your customers and end users to use reasonable security precautions;
- 11.2 You agree to create and maintain a current and verified copy of all content held by you when using the Services (including software, data and other information stored with NOW) and store a copy in a reasonably secure location other than on Equipment owned by NOW;
- 11.3 You agree to comply with all laws applicable to your use of the Services and with the AUP. If you resell NOW's Services, you must require your customers and end users to comply with all laws and the AUP;
- 11.4 You agree to cooperate with NOW's reasonable investigation of any suspected violation of the AUP; and
- 11.5 You represent and warrant to NOW that the information you have provided and will provide to NOW for the purposes of establishing and maintaining the Services is accurate

12. **SUSPENSION OF SERVICE**

- 12.1 You agree that NOW may suspend Services to you without liability immediately upon providing notice to you if:
- (a) NOW reasonably believes that the Services are being used in violation of the AUP;
 - (b) You fail to cooperate with any reasonable investigation by NOW of any suspected violation of the AUP;
 - (c) There is a denial of service attack on your Equipment or NOW's Equipment or other similar event for which NOW reasonably believes that suspension of your Services is necessary to protect NOW's network or other customers;
 - (d) There is a security emergency (as referred to in clause 10) or other similar emergency;
 - (e) As requested by a law enforcement or government agency; or
 - (f) You fail to comply with the terms of the Agreement.
- 12.2 You agree that in order for NOW to carry out works within its network, NOW may suspend Services to you without liability upon providing at least 12 hours notice to you. NOW will use all reasonable endeavours to ensure that such works are performed outside Business Hours and cause the least possible disruption to you. Information on the Equipment will be unavailable during any suspension of Services by NOW.

13. WARRANTIES

- 13.1 NOW does not warrant or represent that the Services will be uninterrupted, error-free or completely secure.
- 13.2 You acknowledge that there are risks inherent in internet and network connectivity that could result in the loss of your privacy, confidential information and property.
- 13.3 To the extent permitted by applicable law, NOW disclaims any and all warranties not expressly stated in the General Hosting Terms and Conditions, including the implied warranties in the Consumer Guarantees Act 1993 and those of merchantability or fitness for a particular purpose.
- 13.4 You warrant that you are solely responsible for the suitability of the Services chosen. All goods and Services are provided on an "as is" basis, except as expressly stated in any portion of the General Hosting Terms and Conditions.

14 UNAUTHORISED USE OF SERVICE

- 14.1 You are responsible for the security of the Services provided pursuant to the General Hosting Terms and Conditions, and NOW agrees to perform only the security services specifically described in the General Hosting Terms and Conditions.
- 14.2 You are responsible for any unauthorised use of the Services by any person (other than any unauthorised use by NOW or its agents), and shall pay all fees incurred for your account by any such person using the Services.

15 INDEMNIFICATION

- 15.1 Each party agrees to indemnify and hold harmless the other party, the other party's authorised representatives, and each of their respective officers, directors, agents, contractors and employees from and against any and all claims, demands, liabilities, obligations, losses, damages, penalties, fines, punitive damages, amounts in interest, expenses and disbursements of any kind and nature whatsoever (including reasonable lawyer's fees) brought by a third party arising out of or related to the indemnifying party's actual or alleged infringement or misappropriation of a third party's copyright, trade secret, patent, trademark, or other proprietary right.

16 CONFIDENTIALITY

- 16.1 Confidential information is:
 - (a) With respect to NOW, NOW's unpublished prices for Services, Equipment configuration designs and other proprietary technology;
 - (b) With respect to you, content transmitted to or from, or stored by you on, the Equipment ; and
 - (c) With respect to both parties, other information that is conspicuously marked as "confidential" or if disclosed in non-tangible form, is verbally designated as "confidential" at the time of disclosure and confirmed as confidential in a written notice.
- 16.2 Each party agrees not to disclose the other's Confidential Information to any third party except to its agents and representatives who need to know the information to represent or advise it with respect to the subject matter of the General Hosting Terms and Conditions.
- 16.3 Neither party may publicly use the other party's logo or other trade or service mark without that party's permission. The parties acknowledge that this does not inhibit each party from referring to the other party by name in any way.
- 16.4 Notwithstanding anything to the contrary above, you agree that NOW may, without notice, provide any information, including Confidential Information, it has about you or any of your customers or end users, in response to a formal request from a law enforcement or regulatory agency or a formal request in a civil action that on its face meets the requirements for such a request.

17 THIRD PARTY PRODUCTS

- 17.1 At your request and as a convenience to you, NOW may from time to time arrange for your purchase or license of third party software, services and other products not included as part of the Services, and/or may provide support to you in relation to those products. NOW makes no representations or warranties whatsoever regarding such third party products and related support services, and they are provided "as is."
- 17.2 Your use of third party software, services and other products is governed by the terms of any license or other agreement between you and the third party.

18. MISCELLANEOUS

- 18.1 The parties acknowledges and agree that the each party shall retain exclusive ownership and rights in the trade secrets, inventions, copyrights and other intellectual property owned by that particular party. NOW shall own any intellectual property that it may develop in the course of performing the Services. You do not acquire any ownership, interest or rights to possess Equipment owned by NOW, and have no right of physical access to the Equipment. Upon expiry or termination of the General Hosting Terms and Conditions you agree that:
 - (a) NOW may put to use for another purpose the Equipment that has been used by you and delete all your information on such Equipment upon giving you a reasonable opportunity (and, in any event, not less than five (5) business days notice) to copy or recover the information from such Equipment; and
 - (b) You will promptly release any internet addresses or address blocks assigned to you in connection with the Services (but not any URL or top level domain or domain name) and you agree that NOW may take steps to change or remove any such IP addresses.
- 18.2 The following provisions of the General Hosting Terms and Conditions will survive expiration or termination of the General Hosting Terms and Conditions :
 - (a) Clause 13 Warranties;
 - (b) Clause 14 Unauthorised Use Of Service
 - (c) Clause 15 Indemnification;
 - (d) Clause 16 Confidentiality;
 - (e) Clause 18 Miscellaneous; and
 - (f) Any other provisions of the General Hosting Terms and Conditions that by their nature are intended to survive termination of the General Hosting Terms and Conditions.
- 18.3 The parties are independent contractors and not partners or joint ventures. Neither party is the agent of the other nor may either of the parties represent to any third party that it has the power to bind the other party on any agreement.
- 18.4 The General Hosting Terms and Conditions is non-exclusive. NOW may provide Services to any other, including your competitor(s).