

# Web Matters Web Hosting Terms & Conditions

## BACKGROUND

*This agreement covers the supply of all website hosting ordered by the Client from Web Matters Ltd and lists the contractual obligations of both parties, even in the absence of a specific written contract.*

WEB MATTERS hosting service is designed to serve the web hosting needs of small, independently owned and operated businesses. It is not appropriate to use the service to support large enterprises or internationally based businesses with a sustained demand that places undue burden on our systems.

WEB MATTERS hosting service is on a shared web hosting service, which means that a number of web sites are hosted from the same server. WEB MATTERS uses controls to ensure that the use of our services does not adversely affect the performance of our system or other customers sites. It is **therefore not appropriate to use an account primarily as an online storage space or for archiving electronic files.**

## TERMS

Subject to the terms and conditions of this Agreement, Web Matters will provide Web Hosting services to the Client subject to the following terms:

### Length of Service

The Client agrees to an initial twelve (12) month contractual term of service ("Term").

### Service Start Date

The contractual term of service begins on the date of the first invoice generated for the service and this will also be the hosting anniversary renewal date.

### Renewal by the Client

This Agreement will automatically renew for a successive twelve (12) month Term on the anniversary date of the hosting, unless cancelled in writing by the Client at *least 30 days prior to the end of Term renewal date*. Renewal prices are subject to change. Renewal of the service by the Client indicates agreement to any Contract revisions and price changes. Renewal fees for the web hosting term will be automatically invoiced to the Client's account.

## LAWFUL USE ONLY

The Client will use the web hosting for lawful purposes only. The display of adult or indecent content is strictly prohibited and will result in immediate cancellation of the hosting service. Nor will the hosting be used in support of any illegal activities or activities that breach New Zealand law. The transmission of any material that infringes the proprietary rights of any third party is also prohibited.

## TRADEMARKS AND COPYRIGHTED MATERIAL

The Client warrants that it has the right to use any applicable trademarks or copyrighted material used in connection with this service.

## TERMS OF PAYMENT

Payment for hosting is due within 7 days of invoicing. Web Matters has the right to revoke any credit extended if payment is in arrears for more than 30 days. Web Matters has the right to suspend the hosting account for non-payment. Any debt collection costs incurred by Web Matters for recovery of any monies owed to Web Matters by the Client will be paid for by the Client.

## ACCOUNT SUSPENSION

Web Matters has the right to suspend the web hosting service to the Client at any time and without notice.

## ACCOUNT TERMINATION & CANCELLATION OF SERVICES

Web Matters may terminate this Agreement at its sole discretion upon the occurrence of one or more of the following events: 1) failure to comply with any provisions of the Agreement upon receipt of written notice from Web Matters of said failure, 2) appointment of A Receiver or upon the filing of any application by the Client seeking relief from creditors, 3) upon mutual agreement in writing of Web Matters and Client. The Client may cancel by providing written notice of

cancellation at *least 30 days prior to the end of Term renewal date*. Should the Client cancel part way through a fixed-term any amounts paid in advance for Services will not be refunded.

#### **BACKUPS**

Backups are run once a month and are for emergency purposes only. Websites larger than 10GB will not be backed up automatically. As each backup, will overwrite the last one, the backup is not intended as a full and final backup of your website, and that we strongly recommend that you back up your site(s) independently to another location independent of your website hosting account (an off-site backup).

#### **DELETION OF HOSTING ACCOUNT DATA**

On termination or cancellation of this agreement for whatever reason, Web Matters has the right to delete all data and files residing on the hosting account including but not limited to WordPress installation files, themes, plugins and content uploads.

#### **WARRANTIES**

Web Matters makes no warranties or representations of any kind, whether expressed or implied for the service it is providing. Web Matters also disclaims any warranty of merchantability or fitness for any particular purpose and will not be responsible for any damages that may be suffered by Client, including loss of data resulting from delays, non-deliveries or service interruptions by any cause or errors or omissions of Client. Use of any information obtained by way of Web Matters is at Client's own risk, and Web Matters specifically denies any responsibility for the accuracy or quality of information obtained through its services. Connection speed represents the speed of an end-to-end connection. Web Matters does not represent guarantees of speed or availability of end-to-end connections. Web Matters expressly limits its damages to Client for any non-accessibility time or other down time to the pro-rata monthly charge during the system unavailability. Web Matters specifically denies any responsibilities for any damages arising as a consequence of such unavailability.

#### **LIMITATION OF LIABILITY**

IN NO EVENT WILL WEB MATTERS ITS DIRECTORS, EMPLOYEES OR AGENTS BE LIABLE TO YOU OR ANY THIRD PERSON FOR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, SPECIAL OR PUNITIVE DAMAGES, INCLUDING FOR ANY LOST PROFITS OR LOST DATA ARISING FROM YOUR USE OF THE SERVICES, OR ANY USER CONTENT, USER WEBSITES OR OTHER MATERIALS ACCESSED OR DOWNLOADED THROUGH THE SERVICES, EVEN IF WEB MATTERS IS AWARE OR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, WEB MATTERS'S LIABILITY TO YOU, OR ANY PARTY CLAIMING THROUGH YOU, FOR ANY CAUSE WHATSOEVER, AND REGARDLESS OF THE FORM OF THE ACTION, IS LIMITED TO THE AMOUNT PAID, IF ANY, BY YOU TO WEB MATTERS FOR THE SERVICES IN THE THREE (3) MONTHS PRIOR TO THE INITIAL ACTION GIVING RISE TO LIABILITY.

#### **INDEMNIFICATION**

The Client agrees to indemnify, defend and hold harmless Web Matters, from and against any and all claims, damages, losses, liabilities, suits, actions, demands, proceedings (whether legal or administrative), and expenses (including, but not limited to, reasonable legal fees) threatened, asserted, or filed by a third party against any of the Indemnified Parties arising out of or relating to (i) the Client's use of the Services, (ii) any breach or violation by the Client of this Agreement; or (iii) any acts or omissions by the Client. The terms of this section shall survive any termination of this Agreement.

#### **APPLICABLE LAW**

This agreement shall be interpreted in accordance with the laws of New Zealand. If the Client acquires the services for the purpose of a business, they agree that the provisions of the Consumers Guarantee Act 1993 do not apply to the service provided.

#### **SEVERABILITY**

If any one or more of the provisions of this agreement shall be held to be invalid, illegal or unenforceable; the remaining provisions of this agreement shall not be void for this reason alone. The invalid, illegal, or unenforceable provision shall be replaced by a mutually acceptable provision which reflects the original intention of the parties.

#### **FORCE MAJEURE**

Neither party is liable for any default or delay in the performance of any of its obligations under this Agreement (other than failure to make payments when due) if such default or delay is caused, directly or indirectly, by forces beyond such party's reasonable control, including, without limitation, fire, flood, acts of God, labour disputes, accidents, acts of war or terrorism, interruptions of transportation or communications, supply shortages or the failure of any third party to perform any commitment relative to the production or delivery of any equipment or material required for such party to perform its obligations hereunder.