

STANDARD TERMS AND CONDITIONS FOR THE SUPPLY OF SERVICES

EnZed PC Services Limited trading is herein referred to as "EPCS Limited".

1. Definitions

- a) EPCS Limited includes its employees and directors.
- b) The "Agreement" means Terms and Conditions and the details on the Application for an account.
- c) The "Customer" means the person(s) or company identified as the customer on the application for an account.
- d) The "Service" means the computing and communication service, including but not limited to: web hosting, domain registration, server hosting and SSL certificates.
- e) The "Users" refers to the Customer's employees, agents, affiliates and customers.

EPCS Limited retains the right to refuse service to anyone at any time.

2. Application and Variation of these Terms

These terms and conditions are the terms on which EPCS Limited provides the Service to the customers, modified only by any written variation between EPCS Limited and the Customers in any particular case. The terms so modified constitute the agreement in its entirety and supersede all prior agreements (excluding specific term contracts and contracts with Service Level Agreements.) EPCS Limited may modify these terms, the pricing structure for the Service (excluding term contracts) and the operation of the Service by notice to (the last email address provided to EPCS Limited by) the Customer.

The Customer is required to keep their contact details with EPCS Limited current.

3. Charges

The Service is a subscription service payable in advance. The Customer must pay for all services by the due date.

A discount may be available when prepaying for multiple months and will be advertised when subscribing to the Service.

If the Customer chooses to pay by credit card, the details the card will be stored and used for processing future payments (except in the case where a one-off payment is made by the Customer.) Upon request, the card will be removed from the EPCS Limited billing system.

Payments can be made by Cheque, Direct Credit, Visa, Mastercard, American Express and Diners. Direct Debit is available on some services. Cash will not be accepted as a payment method.

The Customer must pay for all service data charges and other amounts incurred by the Customer or its Users or incurred as a result of any use of the Customer Password (whether authorised or not) in accordance with the billing option selected. In addition, the Customer may be liable for all charges and expenses incurred by EPCS Limited resulting from any security breach or attack or customer error that involves Customer hardware, software, or network configuration, including IP addresses.

4. Customer Costs

In addition the Customer must provide and pay for the installation and use of telephone lines and all other equipment needed to access the Service at their own cost.

5. Payment of Accounts

Invoices are sent by email to the last email address provided to EPCS Limited by the Customer. Posted invoices are available on some services.

It is the customer's responsibility to keep all contact details up-to-date.

a) Payment for all service is due upon the invoice due date. The Customer must pay all amounts billed in accordance with the billing option selected by the Customer. Any questions regarding the charges on an account must be addressed within 60 days of the billing date. Changes to the monthly account part way through a month are permitted with a \$10 administration fee and a resetting of the billing date. Where a charge is in dispute the Customer may withhold the disputed portion whilst it is investigated but non-disputed charges may not be withheld.

b) No credit terms are given. If payment is not received after the due date a finance fee of 2% (minimum \$1) per month will be payable on all overdue amounts.

c) Accounts with an overdue balance may be suspended without further warning and a \$10.00 suspension fee will automatically be applied to a suspended account more than 15 days overdue. Suspended accounts may not be altered or closed until full payment is received.

d) Suspended accounts may be sent to EPCS Limited's debt collection agency without further notice. Any expenses incurred in the recovery of debt, including but not limited to legal and debt collection costs, shall be payable by the Customer.

EPCS Limited will endeavour to notify by email where an account is overdue and facing suspension, however no responsibility is accepted for the successful receipt of email messages.

6. Security Deposit

EPCS Limited may require the payment of a security deposit before providing, or as a condition of continuing the Service, and may use the security deposit to meet any costs, loss or liability incurred by the Customer. When the Customer has fully performed his or her obligations, EPCS Limited shall return the outstanding balance of the security deposit, without interest.

7. Credit Checks Privacy Consent

The Customer consents to EPCS Limited obtaining credit reports and information containing personal information (as well as information concerning commercial credit worthiness and activities) for the purpose of assessment by EPCS Limited of an application for credit (whether commercial or personal) or for the purpose of the collection of payments that are overdue.

8. Privacy

EPCS Limited will not reveal, sell, or in any way divulge information about the Customer or the Internet usage of the Customer to any individual, business, marketing, or research group without prior consent of the customer or without legal warrant. Upon termination of your account, EPCS Limited will destroy any files or any service assigned to your account.

9. Publication at Customer's Risk

The Customer accepts responsibility for all information and material issued by the Customer over the Service, and indemnifies EPCS Limited against any liability in relation thereto. In particular the Customer undertakes that it shall not publish, distribute or issue any information that is illegal or defamatory. The client can not publish copyrighted materials unless the Customer owns the copyright, as defined by the NZ 1994 Copyright Act. The Customer also acknowledges that EPCS Limited does not vet or approve, and therefore does not accept any liability for any information or material available through any service. To the full extent permitted by law the Customer accesses and uses such information and material at his or her own risk.

10. Provision of Service

EPCS Limited endeavours to provide continuous uninterrupted service at all times; however the Service provided to the Customer is not fault-free and relies on factors outside the control of EPCS Limited. The Service is provided to the customer at such times and means as EPCS Limited decides.

11. Exclusion of Liability

Except as provided in clause 12 EPCS Limited is not liable to the Customer or any other person for:

- a) any cost, loss or liability (including loss of profit or other consequential damage) arising from EPCS Limited's supply or failure or delay in supplying Service including as a result of our own negligence.
- b) the content, context, or confidentiality of any communications made using the Service. EPCS Limited does not provide support for third party software, including software downloaded from the Internet.

12. Limitation of Liability

Except as provided below, all terms, warranties, undertakings, inducements and representations, written or verbal, express or implied, relating to the provision of any Service or goods are excluded and EPCS Limited will not be liable for any loss or damage (including consequential loss or damage) however caused (whether by negligence or otherwise) in respect of any Service inclusive of any software material hosted or designed by EPCS Limited. However, EPCS Limited's liability for any breach of such implied term or warranty will be limited at EPCS Limited's option in accordance with this clause or in any way permitted by the legislation.

13. Breaches

The Customer shall indemnify EPCS Limited against any loss (including any loss of profit) incurred by EPCS Limited as a result of any breach of the terms of any agreement with EPCS Limited including damages in respect of any period up to and including the date of actual termination (including termination under clause 16).

14. Indemnity

The Customer shall indemnify EPCS Limited against all claims, expenses, damages, loss of income or other liabilities arising directly or indirectly from using the Service.

15. Termination

Either party may terminate a non-fixed term agreement with 30 days' written notice. Any balance owing on an account must be paid prior to closure. After reasonable notice is given EPCS Limited may terminate any agreement of the provision of any Service if:

- a) the customer breaches any term of any agreement; or
- b) EPCS Limited forms the opinion in good faith that the Customer is or may be insolvent.

All outstanding charges become immediately payable on giving of such notice and in no circumstances shall the Customer be entitled to any refund of payments made under this Agreement. Normally, we will charge a \$10.00 cancellation fee to cover Administration charges in the process of a refund.

Upon the request of the Customer for termination or due to an EPCS Limited procedure, all customer data, email, back-ups and configurations will be deleted from our servers.

16. Suspension of Service

EPCS Limited may from time to time (without notice, for reasons other than non-payment, reasonable notice will be given when possible) suspend any Service or disconnect or deny the Customer access to any Service:

- a) during any technical failure, modification or maintenance involved in the Service although EPCS Limited will endeavour to procure the resumption of the Services as reasonably practicable; or
- b) if the Customer fails to comply with any agreement (including failure to pay charges due, having been notified of the overdue amount) until the breach (if capable of remedy) is remedied, or does, or allows to be done anything which in EPCS Limited's opinion may have the effect of jeopardising the operation of any service.

Notwithstanding any suspension of any Service under this clause the Customer shall remain liable for all charges due through the period of suspension. An account that is suspended may not be altered or closed until full payment on any outstanding balance is received.

17. Information Received

Except as otherwise expressly permitted in writing, no person may reproduce, redistribute, retransmit, publish or otherwise transfer or exploit any information which they receive regarding the Service in any way which is to be used for purposes which are or could be competitive with the Service.

18. Assignment

The Customer cannot assign its rights under the agreement without the prior written consent of EPCS Limited. EPCS Limited may transfer our rights and responsibilities under this assignment to another party with 30 days' written notice to you.

19. Governing Law

This Agreement is governed by the laws of New Zealand and the parties submit to the jurisdiction of the New Zealand Courts.

20. Acceptable Use

Users of EPCS Limited are expected to adhere to all the policies of EPCS Limited, available in writing upon request.

While spamming and port scanning may not currently be fully illegal activities in New Zealand, EPCS Limited does not support or condone these activities without the express consent of the recipient or administrator of the recipient system.

The EPCS Limited servers may be used only for lawful purposes. Users may not use EPCS Limited's Network in order to transmit, distribute or store material (a) in violation of any applicable law, (b) in a manner that will infringe the copyright, trademark, trade secret or other intellectual property rights of others or the privacy, publicity or other personal rights of others, or (c) that is obscene, threatening, abusive, hateful or otherwise defamatory.

Note: Pornography and sex-related merchandising are prohibited on all servers. This includes sites that may infer sexual content, or link to adult content elsewhere. This is also true for sites that promote any illegal activity or content that may be damaging to our servers or any other server on the Internet. Links to such materials are also prohibited.

In addition any site selling or promoting bulk email services is not allowed.

Examples of non-acceptable content or links include: pirated software, hacker programs, warez sites, IRC bots and file archives (such as audio/video).

We will be the sole arbiter as to what constitutes a violation of this provision.

21. Server Abuse

Any attempts to undermine or cause harm to a server is strictly prohibited.

22. Scripts

Customers are free to use any CGI/PHP/ASP (not an exhaustive list) Scripts provided with their account or add any additional ones they require. Any scripts deemed to be adversely affecting the server performance or the network integrity may be shut down without prior notice. Script sharing with Domains not hosted by EPCS Limited is not allowed.

23. Background Running Programs

Background Daemons in general are prohibited. Virtual Private Servers (VPS) accounts are not prohibited from running Background Daemons.

24. Spam

EPCS Limited's servers may not be the source, intermediary, or destination address involved in the transmission of spam, flames or mail bombs. Your Domain may not be referenced as originator, intermediary, or reply-to address in any of the above. We consider spam to include any mass unsolicited message in the mediums of Newsgroups and Email. If you are found to have spammed, then we will immediately, without warning, disable your Domain.

We reserve the right to refuse or cancel service to known spammers. Lastly, we reserve the right to determine what violates this policy.

As such, any violation will result in immediate deactivation of services without refund.

25. Client Content, Back-ups and Data Loss

EPCS Limited performs backups of Shared Hosting (Standard Hosting and Reseller Plans) content on a daily basis. EPCS Limited makes every effort to ensure that these back-ups are valid. EPCS Limited assumes no liability for any information published to any server including all customer web site content, related files, backup files, databases or mail belonging to any customer hosted at EPCS Limited. Back-up arrangements for client content for any frequency other than the standard backup frequency must be made by written contract and acceptance by EPCS Limited and any such contract will be subject to premium monthly charges. EPCS Limited does not back-up up any dedicated, co-located or Virtual Private Server ("VPS") without a written contract to do so and EPCS Limited assumes no responsibility for any content published to or stored on any dedicated server, co-located server or VPS. These servers are leased and maintained by the Customer and because the Customer has full control over all aspects of these servers, EPCS Limited assumes no liability in the operation or reliability of these servers other than hardware failure.

EPCS Limited assumes no liability for lost content if a hardware or system failure occurs and data maintained on the affected servers cannot be recovered from the most recent backups. Access to your own customer content is provided to the Customer at any time. It is the sole responsibility of the account owner to ensure that they maintain their own backup copy of any materials placed on EPCS Limited Servers, or of any database maintained on any server operated by EPCS Limited in the event EPCS Limited is unable to restore customer content from backup.

AT NO TIME SHALL EPCS Limited ASSUME ANY LIABILITY FOR LOST CUSTOMER CONTENT.

26. IP Addresses

EPCS Limited maintains control and any ownership of any and 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.

27. Notices

All notices under this agreement shall be given to the last known e-mail address of the Customer, either the address on the Application or as advised by the Customer to EPCS Limited at any time after the Customer enters into this agreement. The Customer shall ensure that it keeps EPCS Limited informed of the current and active e-mail address of the Customer.