

Simply Wordpress Webhosting Terms Of Service

Hosting on Neal Ghoshal's VPS Account with InMotion Hosting

Last Updated February 2016

1. Definitions

The following words and expressions shall have meanings hereby assigned to them except where the context otherwise requires:

“Additional Service Agreement”

means the terms and conditions specific to a Service, which will become a part of this Agreement when you order that Service.

"Client" and "You"

means the party or parties who enter into this Agreement with Simply Wordpress.

“Content”

means textual, graphical, audio or like materials, together with any software, which can be uploaded or downloaded to or from the web.

“Intellectual property rights”

means patents, Trade Marks, registered designs, applications of any of the above, copyright and other similar protected rights in any country.

"Managed Services"

means any procedures carried out by Simply Wordpress at the customer's request which is outside the scope of standard support and for which a charge will apply.

"Our web site"

means www.simplywordpress.co.nz or secure.simplywordpress.co.nz or any promotional domains which resolve to the same IP address as www.Simply Wordpress.co.nz from time to time.

"Service",

means any Service provided to you by Simply Wordpress.

“Service Agreement”

means a written service agreement of any service, in a form prescribed by Simply Wordpress.

“Third-Party Service Provider”

means any third party service provider or contractor on whom Simply Wordpress depends in the provision of any Service or any part thereof or whose service, license, approval or fulfilment or certain obligations to Simply Wordpress will affect Simply Wordpress provision of a service or any part of a service.

"Simply Wordpress", "us", "we" and "our"

means Umbrellar Limited trading as Simply Wordpress.

"My Account"

means the secure and password-authenticated portion of our web site which allows you to view and/or manage your information and/or the Services.

2. General

1. Simply Wordpress agrees to provide you with Services, and you agree to accept the Services subject to the terms herein.
2. Our Agreement with you also includes:
 1. Additional Service Agreement(s) specific to any Service or Services, which you will agree to when purchasing or applying for that Service or Services.
 2. Your application forms for the initial account and for any Services ordered subsequently or in the future, including any information supplied by you on such forms.
 3. Our Acceptable Use policy.
 4. Our Privacy Policy.
 5. Any other policies which Simply Wordpress formally adopts from time to time.
3. If, in our opinion, there has been a breach of the acceptable use policy by a person using an account ID allocated to your account, you agree we are entitled to suspend the service concerned without notice.
4. Unless otherwise specified in an additional service agreement, the service provided by Simply Wordpress will not include:
 1. The development or uploading of your website
 2. Any service to reconfigure your computer system, hardware or

software

3. Providing us with Information

1. You agree to provide us with accurate information about yourself and/or your organisation. In particular, you agree to ensure the customer name field of the account application form bears your full legal name.
 1. If the applicant is a corporate body, you warrant that you are duly authorised to enter Agreements on behalf of the applicant.
 2. If you are an individual, you warrant that you are over 18 years of age.
2. You also agree to provide us with any information we reasonably ask for to help us provide Services to you, or to comply with any legal requirement we may have in providing the Services.
3. You agree to modify your details by contacting us at www.simplywordpress.co.nz when any of your contact details change. Simply Wordpress will not be responsible in any way for any losses, damages, costs or expenses as a result of your failure to comply with this clause.
4. Simply Wordpress may publicly refer to you orally and in writing as a customer of Simply Wordpress.

4. Your responsibilities

1. You agree to ensure your service is not used for any activity that breaches the law or infringes another person's rights.
2. You agree to ensure our service is not used in any way that interferes with other customers, defames, harasses or menaces anyone.
3. You must not reproduce, distribute, copy, download, transmit or otherwise exploit any content which infringes any third party intellectual property rights or similar right unless you own or control the relevant rights or have obtained all the requisite licenses and approvals.
4. You must not interfere with, disrupt, hack, break into or access any part of the service, our content or any data areas on ours or our Third-Party provider's servers for which you have not been authorised by us in writing.
5. Simply Wordpress may monitor your use of the Services and any material posted, downloaded, transmitted or communicated using the Services for compliance with Simply Wordpress's Terms. Simply Wordpress may pass any material or information it suspects to be illegal or offensive, to the relevant authority and you will have no claim against Simply Wordpress for this.

6. Simply Wordpress may monitor your use of the Services at any time with regard to reasonable usage and if it deems your usage is in excess of the agreed service plan(s), and, or it places an unreasonable strain on Simply Wordpress resources or services to its existing or prospective clients, Simply Wordpress reserves the right to request you to upgrade your service plan within 48 hours of email notification from Simply Wordpress to your last known contact address. Failure to authorise, or provide suitable remedies in the above event may result in the suspension of your services.
7. For 'Unlimited' shared Hosting services, there is no bandwidth or storage space limit. However, 'Unlimited' shared hosting services are not intended to support the needs of large enterprises that require substantial bandwidth and storage. To ensure that our shared hosting is reliable and available for all of our small business users, your usage cannot adversely affect the performance of other customers' sites. Using our 'Unlimited' shared hosting services as online storage space for archived electronic files is prohibited. You agree that if your bandwidth and storage space usage adversely affects other customers on our shared hosting platform, Simply Wordpress may suspend or terminate your Hosting Services without liability.
8. You agree to ensure that no minor will use our service with an account id allocated to your customer account unless they have your express permission and are under your personal supervision.

5. Backups

1. Every shared server is backed up daily.
2. In the event of server failure, backups are used to restore services.
3. Simply Wordpress makes no guarantee that any individual backup attempt will succeed; nor will any restoration attempt succeed.
4. Simply Wordpress makes no guarantee regarding the performance or uptime of the backup server.
5. You acknowledge the daily backup performed by Simply Wordpress is not intended as full and final backup of your website, and that we strongly recommend you back up your site(s) independently.
6. Backups are not permitted on your own server space.
7. We recommend that you back up your site to another location e.g. Amazon S3.
8. Simply Wordpress reserves the right to remove any backups that are stored

on the server.

9. Simply Wordpress reserves the right to limit the amount of backups that are stored within your hosting account.
10. A service charge of \$130 + GST will apply to requests to extract data from a backup for any circumstance other than the failure of the server.

6. Verification

1. Simply Wordpress reserves the right to delay fulfilment of any request for Services for so long as it shall require verifying the authenticity of the request or credit worthiness of the Client.
2. Simply Wordpress reserves the right to request and require whatever form of identification it deems necessary to verify the authenticity of any request regarding the Service.
3. You agree that Simply Wordpress shall have the right, at any time, to perform a credit reference check and/or trade reference check with respect to your circumstances or status, whether financial or otherwise.

7. Payment of Fees

In consideration of Simply Wordpress providing you with the Service, you agree to make payment as follows:

1. Our fees for each Service are displayed on the order form for the service displayed on our web site. All our prices are stated in New Zealand Dollars and unless explicitly stated otherwise are exclusive of Goods and Services Tax.
2. The acceptable methods of payment for Simply Wordpress services are credit card, direct credit, cheque or cash.
3. The minimum term of this agreement for provision of Web Hosting/Email services is 12 months, renewable annually for further periods of 12 months.
4. Renewal notices will be issued by email.
5. Provided payment of the renewal fee is made prior to the expiration of the existing agreement, supply of your Web Hosting/Email services will roll over without disturbance.
6. Payment of renewal can be made at any time in or prior to the 45-day period. Note that payment received in the 45-day period does not change the expiration/anniversary date, which remains 12 months from the date of initial

commencement of services.

7. This agreement is for a minimum term of 12 months. No refunds for early cancellation will be made.
8. If payment of renewal fee is not received by 5 days after expiration date, your Web Hosting/Email services may be automatically terminated.

9. Dispute

1. If you maintain that you have a valid claim against Simply Wordpress arising out of the service agreement, it must be notified in writing to Simply Wordpress within 12 months of the incident giving rise to such claim or you will be deemed to have waived your rights under the respect of such claim.
2. You will not withhold any payment for any fees which are not in dispute.

10. We may alter our fees from time to time. When we alter them we will post notice on our website of the alteration 30 days before the new fee takes effect. If the change of fees is not acceptable to you, you may cancel the service. We will interpret your ongoing use of our Services after that date as constituting your acceptance of the amendments. If you do not agree to the amendments, you may notify us by email requesting termination of the Agreement, and any applicable minimum terms will be waived in these circumstances.

11. In the event of a charge back by a credit card company (or similar action by another payment provider allowed by us) or other reversal of payment by you in connection with the Service, your Service may be suspended without notice. A chargeback fee of NZ\$50 will apply.

8. Termination of Agreement and Cancellation of Services

1. Subject to any fixed or minimum term set out in this or any Additional Service Agreement, either party may cancel this Agreement either in total or for any specific Service. If there are Services for which a minimum term applies, no refunds for early cancellation will be made.
2. Services can either be cancelled by non-payment on the renewal notice, or by sending an email to accounts@Simply Wordpress.co.nz, including the password of the account.
3. Simply Wordpress reserves the right to cease immediately without liability (other than for the refund of unearned prepaid Service fees) to provide the

Service and to terminate the Agreement if you should go into liquidation or bankruptcy or if you fail to comply with any obligation in accordance with this Agreement.

4. Promotions: At the end of a promotional campaign, current products and services fees will be charged at the normal billing cycle unless otherwise stated or product(s) duly cancelled by you.

9. Guarantees

1. Most of Simply Wordpress's Services are backed by a money back guarantee. Unless explicitly stated otherwise on the order page for a specific Service, the "Guarantee Period" shall be 30 calendar days.
2. The Guarantee Period shall commence on the day we send you notification that we have provisioned your Service and (if necessary) provided access passwords.
3. If you are not completely satisfied with our Services or support within the Guarantee Period, request a cancellation via your Web Account or email. The Service will be terminated and you will be given a refund of the fees excluding an NZ\$15 administration fee and any applicable a) Setup fees, b) 3rd party Services, c) License Fees, d) Excess usage charges or e) Managed Services fees authorised by you. If you have been provided a free domain name with your service, the cost of this will also be deducted from any refund given.
4. If you require your refund to be paid via Direct Credit to your Bank account, this will take up to 10 business days to be processed.
5. The Guarantee Period shall apply even where there is a minimum initial term for a Service.
6. The Consumer Guarantees Act 1993 may apply to any Services we provide to you if these Services are of a type ordinarily acquired for personal, domestic or household use. If this Act applies, all rights you may have under it apply in addition to the rights you may have in this Agreement. Nothing in this Agreement will limit or exclude your rights under this Act.
7. Where you acquire or hold yourself out as acquiring our Services for the purpose of a business, then you agree that the provisions of the Consumers Guarantee Act 1993 will not apply to our Service or the provision of any other Services to you.

10. Disclaimer of Liability

1. Simply Wordpress shall not be liable under any circumstances and whether in contract, tort or otherwise, for:
 1. Any costs, losses, expenses and/or damages whether direct or indirect which are incurred by you as a result of your failure in whole or in part to comply with any of these terms and conditions.
 2. Any costs, losses, expenses and/or damages whether direct or indirect which are incurred by you for any reason as a result of our failure to fulfil our commitments under this Agreement in circumstances where the failure is due in whole or in part to any cause or event outside the reasonable control of Simply Wordpress.
 3. Any indirect or consequential costs, losses, expenses and/or damages including but not limited to loss of profits, caused by any failure on the part of Simply Wordpress to perform its commitments under this Agreement.
 4. Any third party claims and/or third party costs, losses, expenses and/or damages whether brought against Simply Wordpress or you and which relate to your site. Further you agree to fully indemnify Simply Wordpress, its employees, owners and directors against all such third party claims, costs, losses, expenses and/or damages, including any reasonable legal costs of and incidental to Simply Wordpress (and/or its employees, owners and directors) defending themselves.
 5. Any amount by way of claim not otherwise excluded above, which exceeds in total an amount equal to 12 months fees paid by you for the Services.
 6. Simply Wordpress is not liable for protection or privacy of electronic mail or other information transferred through the Internet or any other network provider or its customers may utilise.
 7. Simply Wordpress does not represent or warrant to the Client that the Client will receive continual and uninterrupted, error free and virus free Service during the term of this Agreement.

11. Force Majeure

1. Neither party to this Agreement shall be responsible for failure to fulfil its commitments in this Agreement if such failure is due to any circumstances outside its reasonable control. Such circumstances comprise, but are not confined to, acts of God, war, riots and sabotage, technological deficiency in

the Internet or telecommunications systems or similar.

12. Governing law

1. This Agreement shall be deemed to be an Agreement made in New Zealand and shall be subject to, governed by and interpreted in accordance with the laws of New Zealand.

13. Assignment

1. We may assign or transfer our rights and responsibilities under this Agreement to someone else. We will give you notice by email in advance if we intend to do this.
2. We may also subcontract the performance of any of our responsibilities under this Agreement to anyone else.
3. You may not assign or transfer any of your rights or responsibilities under this Agreement to anyone else without our prior written consent.
4. Each Clause Separately Binding Each clause of the Agreement you have with us is separately binding. If for any reason we, you, or any of the persons specified in clause 9 cannot rely on any clause, all other clauses of it are binding.

14. Notices

1. Notices to us which are required to be by email must be to the following address: info@simplywordpress.co.nz or call Neal on 021 180 7867.
2. Any notice which is required to be by email may also be sent in writing on company letterhead.
3. Notices by email from us to you will be sent to the email address currently listed in our records.
4. Either party may deem the other party to have received any notice sent under this Agreement within the following time of its being sent to the relevant address:
 1. For notices transmitted electronically, within 24 hours of its sending by email, facsimile or SMS Service, provided that no bounce or failure response has been received in that time.
 2. Within four days of its being lodged with the postal or courier service in the case of notices that are sent by writing.

15. Intellectual Property and Copyright

1. You agree and acknowledge that all Intellectual Property Rights and other rights in any Service, (whether developed individually, collectively or jointly with you) including but not limited to the Equipment and the Software are either owned by or licensed to Simply Wordpress.
2. You agree to not use the name, brand, logo or Trade Marks of Simply Wordpress or its affiliated or related companies without prior written consent of Simply Wordpress and not to take action or be associated with any activity that may interfere with or diminish Simply Wordpress or its affiliated companies rights, titles and or interest in any of the Trade Marks.

16. Agreement and Variation of Agreement

1. You shall be deemed to have read this Agreement and agree to be bound by this Agreement. This Agreement shall supersede all proposals or prior Agreements, oral or written, and all other communications between the parties relating to the subject matter of this Agreement.
2. We may amend these General Terms or any “Additional Service Agreement” or any other Policy at any time. This will vary our Agreement with you. When we do this we will provide the updated Policy for your review and acceptance through the secure account portal on our website. The amendments we make will apply on the date specified on the updated Policy and we will give 28 days’ notice where possible. We will interpret your ongoing use of our Services after that date as constituting your acceptance of the amendments. If you do not agree to the amendments, you may notify us by email requesting termination of the Agreement, and any applicable minimum terms will be waived in these circumstances.
3. We reserve the right to modify, enhance and withdraw the service at any time. In the event of any change, we will notify you by email giving reasonable notice of the change(s).
4. You may have multiple Services or Services with us. Any variation in your Agreement as it affects one Service or cancellation of one Service shall not affect any other Service you have with us, nor give rise to a right to cancel such other Service(s).