



ELMBROOK TECHNOLOGIES LTD Web Hosting Standard Terms & Conditions

Standard Plan includes:

7GB Traffic Monthly

20MB Storage Space

5 Email Addresses

\$25.00 (including GST) is charged for each GB in excess of the monthly traffic allocation.

As a customer of Elmbrook Technologies Limited these standard terms plus our Acceptable Use Policy (AUP) form the basis of Elmbrook Technologies Limited contract with you.

1. STANDARD TERMS AND CONDITIONS

1.1 As a customer of Elmbrook Technologies Limited these standard terms form the basis of Elmbrook Technologies Limited's contract with you. Our contract with you also includes your application form whether it is submitted by fax, or by internet submission and will be deemed to be the original application. We may amend these standard terms at any time. This will vary our contract with you. When we do this we will notify you via e-mail of the amended standard terms. The amendments we make will apply seven days after we send you the details of these amendments. We may interpret your ongoing use of our services after that date as constituting your acceptance of the amendments.

In this contract we use the terms "Elmbrook Technologies Limited", "we", "our", and "us" to refer to Elmbrook Technologies Limited and "you" and "your" to refer to the customer. Headings in this contract do not affect their interpretation.

2. OUR COMMITMENT OF SERVICE TO YOU

2.1 We aim to provide you with consistently reliable and good quality service. We do not guarantee that the service we provide will be perfect. When access to your services are disrupted we will do our best to reinstate the service to you as soon as we can.

The Elmbrook Technologies Limited Support Centre is available via e-mail, and any enquiries should be directed to support@elmbrook.co.nz.

The service we supply to you will be supplied to you in whatever way we think is appropriate. We can choose the carriers used to provide our services and we can change the carriers at our discretion.

3. YOUR GENERAL RESPONSIBILITIES

3.1 You agree that you will:

- (a) Pay for all goods and services to you. Our charges will normally be inclusive of GST.
- (b) Pay each bill by the due date for payment set out in it. If you do not we may charge you interest at a rate we specify and which is equivalent to our bank overdraft interest rate plus 2% per annum on the overdue amount from the due date until payment of the relevant amount and we may also recover from you all legal and related collection costs incurred by us arising from the collection of any amount which you owe to us and which you do not pay to us then due.
- (c) If you have a genuine dispute in relation to amounts we have charged you, pay the undisputed charges and notify us immediately you become aware of any disputed charges. If you do so you must give us full details of the reason you are disputing the charges and you must give us evidence of the grounds for your dispute. We will look into the issue and you will comply with our good faith decision on the issues.
- (d) Ensure that all of the information you give us is correct and complete.
- (e) Comply with any legal requirements concerning the use of our services.
- (f) Comply with any requirements of any other carrier in relation to the use of its network.
- (g) Make sure everyone you are responsible for also meets these responsibilities.

(h) Agree that, whether or not the account you have created is used, all charges incurred between the activation of your account, and the suspension or disconnection of your account will be met by you, including those charges set out in clause 3.1 b

3.2 We may at our discretion request a credit report from a third party. By accepting these Terms and Conditions, you authorise us to use the information supplied for credit checking purposes only.

3.3 We reserve the right to impose a credit limit on your account at any time. You agree that the credit limit imposed by us may be altered at our discretion with effect from the date we notify you of such change. You also agree that if at any time you exceed our credit limit we will be entitled to suspend the provision of our service to you. All costs and expenses of or incurred by us as a result of such suspension and any re-commencement shall be payable by you upon demand.

3.4 We reserve the right to refuse service to any person or entity who applies to use our service. Reasons for refusal may include but is not limited to unfavourable credit rating, notification of bankruptcy, liquidation, business closure, criminal or unfair trading practices.

4. SUSPENSION OR DISCONNECTION

4.1 If you do not meet any one or more of your responsibilities under this contract we may suspend or disconnect you from our network. We may also discontinue any other services we provide to you. In that situation we may also terminate our contract with you. These forms of action may be enforced by us without prior notice.

4.2 We may also suspend or disconnect you from our network if a carrier supplying services to us suspends or interrupts its service to us and that suspension or interruption affects our ability to provide our services to you.

4.3 We may also suspend or restrict a service in an emergency or whenever we, another carrier, or any other appropriate person considers that step necessary or reasonable to protect persons, systems or other property.

4.4 If you are suspended or disconnected from our network for failing to meet any of your responsibilities under this contract you may have to pay a re-commencement fee before you can use our services again.

4.5 Usually normal charges will continue to apply during your suspension or disconnection from our network.

5. COMPENSATION AND LIABILITY

5.1 If you receive goods or services from us for the purposes of a business, then you agree that the Consumer Guarantees Act 1993 will not apply to this contract or any of our business dealings.

5.2 If our service fails to operate for any reason and you use a service provided by another carrier, we will not be responsible for that carrier's service charges.

We also exclude all other liability we may have to you for acts or omissions by us, our directors, employees, agents, representatives and contractors. This includes both direct and indirect losses, including loss of profits, loss of revenue and loss of any opportunity. These exclusions of liability also apply under the Contracts (Privity) Act 1982 for the benefit of any other carrier who allows us to use its network to provide our service to you.

To the extent permitted by law none of the persons referred to in the preceding paragraph are liable to you or has to pay you for anything else caused by or resulting from anything any of them does or does not do, or delays in doing, whether or not it is contemplated or authorised by these standard terms

This exclusion of liability applies whether or not our contract with you has ended and regardless of the type of damage you suffer or howsoever it was caused.

6. LIMITATION OF LIABILITY

6.1 To the extent permitted by law if, despite the provisions contained in the previous section, we or any other carrier is liable to you for any breach of these standard terms, or for breach of any other obligation that might be owed to you, our liability shall be limited, at our discretion, to any one or more of the following:

(a) If the breach relates to the provision of services:

- (i) supplying of the relevant services again; or
- (ii) payment of the cost of having the relevant services supplied again; and

(b) If the breach relates to goods:

- (i) replacement of the relevant goods or supply of equivalent goods;
- (ii) repair of the relevant goods;
- (iii) payment of the cost of replacing the relevant goods or of acquiring equivalent goods; or
- (iv) payment of the cost of having the relevant goods repaired.

7. MAINTENANCE

7.1 Elmbrook Technologies Limited may provide maintenance services if required by the Purchaser and upon the Purchaser executing Elmbrook Technologies Limited's maintenance contract.

8. CUSTOMER INFORMATION

8.1 You agree, for the purposes of this contract and the performance of our obligations to you, that we may collect information about you. The information we collect about you may be obtained from you and others. We may obtain information about you when the services offered to you are used, either by you or anyone else.

8.2 You may decide not to provide any information sought from you. If you do not provide it then we may not be able to provide our services to you.

8.3 We may use the information we hold about you and may exchange information about you with our contractors, agents and representatives, with other carriers, and with credit reporting and debt collection agencies for the purposes of our business.

8.4 You may obtain access to, and correct, any information held by us under the Privacy Act 1993.

9. OTHER TERMS

9.1 Other terms may apply to some of the services provided by us to you. We will tell you about the terms that apply in those circumstances.

10. INVOICES AND NOTICES

10.1 We will deliver our invoices and any other notices to the most recent email address you have given us. We may assume that any such invoice or notice has been received 1 day after we have sent it. Please ensure that you inform us when you change your address.

10.2 It is essential that if you change address or move premises, you must inform us of this event in writing to enable us to ensure that there is no interruption in our supply of service to you. If you do not inform us of this event we will not be able to ensure continued supply of our service to you.

11. ASSIGNMENT AND DELEGATION

11.1 We may assign or transfer our rights and responsibilities under this contract to someone else. We will give you written notice in advance if we intend to do this.

11.2 We may also subcontract the performance of any of our responsibilities under this contract to anyone else.

11.3 You may not assign or transfer any of your rights or responsibilities under this contract to anyone else without our prior written consent.

12. TERMS SEPARATELY BINDING

12.1 If, for any reason, any provisions of this contract cannot be enforced or relied on by either of us, all other terms of our contract with you remain binding.

13. TERMINATION

13.1 If you do not pay any of the invoices we send to you or you otherwise fail to meet your responsibilities to us we may end our contract with you. Ending the contract between us in this way shall not release you from any outstanding obligations or responsibilities you owe to us.

13.2 If you want to end the contract between us please write to us C/- 23 Miro Road, Raumati, Paraparaumu, New Zealand, or e-mail us at support@elmbrook.co.nz. Our agreement will end and all charges will cease at the end of your current billing cycle provided you have paid us in full all outstanding amounts due to us.

13.3 If for any reason we delay in exercising our rights that will not mean we have waived or given up our rights.

On termination of our contract with you, we will cease providing our service to you and all amounts which you owe to us will immediately become due and payable. We shall not be liable to you for any loss or damage suffered, or claimed to have been suffered, by you on or following termination of the supply of our service to you.

14. FORCE MAJEURE

14.1 We shall not be liable to you for any loss or damage directly or indirectly arising out of or in connection with any delay in delivery of the goods or failure to perform its obligations under this Agreement where such delay is caused directly or indirectly by an act of God, armed conflict, labour dispute, civil commotion, intervention of a government, inability to obtain labour, materials or manufacturing facilities, accidents, interruptions of, or delay in, transportation or any other cause beyond our control.

15. COMPLIANCE WITH REGULATIONS AND ACCEPTABLE USE

15.1 You shall be solely responsible for obtaining any necessary permits under and for compliance with all legislation, regulations, by-laws or rules having the force of law in connection with the installation and operation of the services. Elmbrook Technologies Limited will not be held accountable or liable for any illegal activities as seen by the laws of this country or any international laws.

15.2 Elmbrook Technologies Limited may monitor your use of the Services and any material posted, downloaded, transmitted or communicated using the Services for compliance with Elmbrook Technologies Limited's Terms. Elmbrook Technologies Limited may pass on any material or information it finds as a result to the relevant authority if Elmbrook Technologies Limited suspects any illegal or offensive activity is involved, and you will have no claim against Elmbrook Technologies Limited for this.

15.3 Elmbrook Technologies Limited may also monitor your use of the services at anytime with regard to reasonable usage and if it deems your usage is in excess of reasonable, and/or it solely places a strain on Elmbrook Technologies Limited resources or services to its existing or prospective clients, Elmbrook Technologies Limited reserves the right to request an upgrade of plan, or negotiation outside of its standard plan pricing, terms and conditions.

ELMBROOK TECHNOLOGIES LTD Acceptable Use Policy

Overview

This Acceptable Use Policy (AUP) has been created by Elmbrook Technologies Limited to ensure the integrity, reliability and stability of the Elmbrook Technologies Limited network, associated networks and related services.

This AUP shall be effective from the time a service is initiated for the client, through to the time the service is ceased by either party. The client must ensure that the use of any service, product, or resource offered, provided, or controlled by Elmbrook Technologies Limited conforms to this AUP as well as Elmbrook Technologies Limited's Terms and Conditions. The Customer will be held responsible for its direct use of Elmbrook Technologies Limited's services, its systems, and any third-party use.

Elmbrook Technologies Limited may at its discretion modify this AUP at any time and in any way as and when it feels necessary. Notification of changes or amendments to this document will be posted on the Elmbrook Technologies Limited website.

This Acceptable Use policy replaces any previous AUP or agreements that may have been previously made with Elmbrook Technologies Limited in any form.

The use of Elmbrook Technologies Limited's services is deemed to be in agreement with this and the standard Elmbrook Technologies Limited terms and conditions.

1. ACCEPTABLE USE

In addition to the other requirements of this AUP, the Service may be used only in a manner that, in Elmbrook Technologies Limited's sole discretion, is consistent with the purposes of such Service. Customers should contact Elmbrook Technologies Limited if unsure of whether any contemplated use or action is permitted.

- 1.1 The usage of Elmbrook Technologies Limited's services must comply with current laws and regulations;
- 1.2 Including but not limited to regulations pertaining to copyright, license agreements and patents
- 1.3 Must adhere to rules and regulations in Elmbrook Technologies Limited's Terms and Conditions
- 1.4 Mail Services

The following mail limits are designed to enable Elmbrook Technologies Limited's mail servers to operate at optimal efficiency therefore ensuring that all Elmbrook Technologies Limited's clients receive the highest quality mail service possible.

- a) Single E-mail Message Size Maximum 20MB - The maximum size of a single message will be set to 20MB (20 Mega Bytes) in line with the mailbox size. You will be able to receive a message up to 20MB provided you have adequate space in your mailbox.
- b) Maximum E-mail Mailbox Size: 20 MB - The maximum size of the Clients mailbox will be set to 20MB (20 Mega Bytes).
- c) E-mail Message Lifetime: 30 Days - In order to maintain the performance of our mail server, guarantee new mail can be received, as well as service standards, mail left on the server for more than 30 days may be deleted from the server.

1.5 Website Hosting Services

The following limits are designed to enable Elmbrook Technologies Limited's web servers to operate at optimal efficiency therefore ensuring that all Elmbrook Technologies Limited's clients receive the highest quality service possible:

- a) Website Traffic Allowance: Hosting plans: 7GB / 28 days - Website traffic under 7GB (7 Giga Bytes) per website per 28 days will be provided free. Traffic used above the allocated 7GB (7 Giga Bytes) will be charged at \$25.00 + GST per 1GB (1 Giga Byte) block used per website.
- b) Warning Message for traffic quota: To ensure clients are aware that they are reaching 75% of their allowed website

traffic limit. A warning message will be sent via e-mail to the contact address of the Elmbrook Technologies Limited account holder once their total traffic generated to their site exceeds 75% of their allowance.

c) System Resources - Clients acknowledge that the web site hosting Service is provided on a multiple shared server environment and agrees not to engage in any activity that could overwhelm the server with heavy CPU, memory or network usage or that requires a disproportionate amount of the resources of the Elmbrook Technologies Limited Web servers, including without limitation, use of highly active CGI scripts or chat scripts.

d) Security - It is the Clients responsibility to ensure that cgi scripts, any executable files or dynamic scripts uploaded to the Elmbrook Technologies Limited Web Servers are configured in a secure manner.

1.6 Database Hosting Services

a) System Resources - The Client acknowledges that Database Service is provided on a multiple shared Database server environment and agrees not to engage in any activity that could overwhelm the Database server with heavy CPU, memory or network usage or that requires a disproportionate amount of the resources of the Elmbrook Technologies Limited Database servers, including without limitation, execution of untested or badly written Database queries.

2. UNACCEPTABLE USE

By way of example, and not limitation, the following sections outline activities that are expressly prohibited. The service shall not be used to post, transmit, re-transmit or store material which, in the judgment of Elmbrook Technologies Limited:

- a) Violates local, state, federal, foreign, or International Law;
- b) Could be considered threatening, obscene, indecent, defamatory, threatening or that otherwise could adversely affect any individual, group or entity.
- c) Deceptive or fraudulent practices.
- d) Any activity infringing on the intellectual property rights of others, including, but not limited to, copyrights, trademarks, service marks, trade secrets, patents. Actions that restrict or inhibit any Person, whether a customer, Elmbrook Technologies Limited, or otherwise, in its use or enjoyment of any Elmbrook Technologies Limited service.
- e) Advertising, transmitting, or otherwise making available any software, program, product, or service that is designed to violate this AUP, which includes the facilitation of the means to spam, initiation of ping, flooding, mailbombing, denial of service attacks, and piracy of software.
- f) Sending unsolicited bulk messages (spam), via any means, including, but not limited to, email, instant messenger services, and newsgroup postings. Elmbrook Technologies Limited reserves the right to determine in its sole discretion and based on the information available what constitutes spam as well as what measures are necessary in response to spamming complaints.
- g) The engagement of Elmbrook Technologies Limited services to promote deceptive and or illegal marketing practices, products or services.
- h) Connecting to IRC (Internet Relay Chat) services from within the Elmbrook Technologies Limited or associated networks).

2.1 System and Network:

- a) The deliberate transmission of computer viruses, worms, trojan software, or other malicious programs.
- b) Interfering with, disrupting, or denying service including, but not limited to, using any technique to intentionally degrade or disable the delivery of any legitimate data (e.g. denial of service attacks).
- c) Attempting to gain unauthorized entry to any site or network including, but not limited to, executing any form of network probing, monitoring or other information gathering on the Elmbrook Technologies Limited or a third party site or network.
- d) Attempting to circumvent host or user authentication or other security measures of any host, network or account.
- e) Maintaining an Open Email Relay/Open Data Relay or allowing any data to be sent through one's system by an unrelated third party, including, but not limited to, via open email gateways and open proxy servers.
- f) Manipulate or bypass Elmbrook Technologies Limited's usage limits.
- g) gain or attempt to gain access to a service or services not provided by Elmbrook Technologies Limited this includes but is not limited to console, command line or shell

h) uploading and or use of a file system manager of any description that provides the ability to access files outside of your allocated website space.

2.2 Mail Server Facilities:

- a) Sending unsolicited mail messages.
- b) Harassment including, but not limited to, language, frequency or size of messages.
- c) Unauthorized use, or forging, of mail header information.
- d) Solicitation of mail for any other E-mail address other than of the poster's account or service with the intent to harass or to collect replies.
- e) Creating or forwarding "chain letters" or other "schemes" of any type.
- f) Use of unsolicited E-mail originating from within Elmbrook Technologies Limited's network, or networks of other Internet Service Providers, on behalf of, or to advertise any service hosted by Elmbrook Technologies Limited, or connected via Elmbrook Technologies Limited's network.
- g) Infringement of mail service restrictions as outlined in Section 1.4 of this document

2.3 Newsgroups:

- a) Posting the same or similar messages to large numbers of newsgroups ("Newsgroup spam").
- b) Posting excessive numbers of identical or similar messages to any number of newsgroups from Elmbrook Technologies Limited's network or networks of other Internet Service Providers on behalf of, to advertise, any service hosted by Elmbrook Technologies Limited or sites hosted within, or via Elmbrook Technologies Limited's network.
- c) Posting chain letters of any type.
- d) Posting encoded binary files to newsgroups not named for that purpose.
- e) Cancellation or superseding of posts other than your own.
- f) Forging of header information of the poster's account or service.

3. ADDITIONAL OBLIGATIONS

3.1 Bulk Email:

Bulk email must provide recipients with an easy and effective mechanism for removal from bulk email lists. The source of the addressee's address must be included in each bulk email message. Senders of bulk email must take effective steps to confirm that the actual owner of each email address on a list has agreed to receive bulk mailings from the sender before sending email to that list. The utilization of web server SMTP services for the use of sending bulk emails is expressly prohibited.

3.1 (i) Comply with any instructions or requests made by Elmbrook Technologies Limited with regard to the hosting of a particular website(s) domain name or other service in a timely fashion.

3.2 Password Protection:

The Customer is responsible for protecting passwords and for any authorized or unauthorized use of its systems and/or networks. All actions resulted from passwords being compromised will remain the sole responsibility of the Customer.

3.3 Content Protection:

The Customer must provide appropriate protection to prevent minors (persons under 18 years of age) from accessing any unsuitable material published via any Service.

3.4 Content Ownership:

The Customer is responsible for all content or information residing on, obtained or transmitted via the Service.

3.5 Vulnerable Systems:

Elmbrook Technologies Limited reserves the right, without prior notice, to perform vulnerability tests on systems residing on its IP address range, which may be allocated for Customer use. The purpose of such testing includes, but is not limited to, testing of mail servers or proxy servers for unrestricted third party relaying. Elmbrook Technologies Limited will employ all reasonable efforts to ensure that such testing

- a) will be non-intrusive in nature, and
- b) will not adversely affect Service provided to Customer or compromise the security of Customer's network.

The Customer is responsible for correcting any system vulnerability upon notification. Customer must terminate operations of a known compromised system.

3.7 Service Provided Equipment:

Customer is responsible for any modification of, alteration to, or other tampering with any hardware provided with the Service.

4. AUP ENFORCEMENT

4.1 Violation of this AUP may subject Customer to international, federal, and/or state civil and/or criminal liability. Customer activity that facilitates a violation of this AUP by any party constitutes a violation of this AUP by Customer.

4.2 Elmbrook Technologies Limited reserves the right to immediately, and without prior notice, filter, block, suspend, and/or terminate access to the Service at any time for any conduct that Elmbrook Technologies Limited, in its sole discretion, determines violates, or may violate, this AUP and/or Terms and Conditions or is otherwise harmful to Elmbrook Technologies Limited's interests or the interests of others.

4.3 If access is terminated, Elmbrook Technologies Limited, in its sole discretion, may refuse to accept all new E-mail sent to the terminated E-mail address and delete all or part of Customer's data stored on Service.

5. THIRD PARTY COMPLAINT PROCESS

5.1 If Customer, or the public, wishes to notify Elmbrook Technologies Limited of a potential violation of this AUP they should do so by sending an E-mail to support@elmbrook.co.nz. Elmbrook Technologies Limited will review such communication as quickly as possible and take action as deemed appropriate by Elmbrook Technologies Limited.