

REALLY DIFFERENT LIMITED

Hosting and Connectivity Terms and Conditions

The details on the face hereof, together with these terms and conditions (“Terms”) form the contract between REALLY DIFFERENT LIMITED (“the Company”) and yourselves (“the Customer”) for the supply by the Company to the Customer of the Goods and or Services (as hereinafter defined).

1. DEFINITIONS

1.1 In these Terms the following words and phrases shall have the following meanings:

- “Company” means as is defined above.
- “Customer” means as is defined above.
- “Goods” means those goods specified on your order/invoice.
- “Services” means those services specified on your order/invoice.
- “Subscription Fee” is a periodic fee payable by Customers for which Customers will continue to receive the ongoing Services.
- “Software Fee” is a periodic fee payable by Customers to utilise our software under license.
- “Set-up Fee” is a charge levied to allow Customers to register for certain services.

2.0 AMENDMENTS

2.1 The Company reserves the right to modify, suspend or discontinue any or all of the services at its sole discretion, without prior notice. The Company also reserves the right on giving prior notice on-screen and or in writing to reasonably alter these terms and conditions at any time (without prejudice to the provisions of Clause 7 thereunder).

3.0 THE SERVICES

3.1 On payment of the fees and acceptance of the application to become a Customer, the Company shall provide, and grant the Customer a non-exclusive non-assignable non-transferable license to use the Services, and in the case of on-going Services will do so until the Customers service period expires or is terminated. Acceptance of the services by the customer constitutes automatic acceptance of these terms and conditions of business.

3.2 Services provided and/or amended by the Company, or at the request of the Customer constitute a formal provision of the Service only when acknowledged by the Company in writing.

3.3 Domain names are registered in accordance with the Terms and Conditions issued by the relevant regulatory body (TPP, OpenSRS, Nominet, InterNIC or other). Copies of these Terms and Conditions are available upon request.

3.4 The Company agrees to provide the Customer with transit and routing services for e-mail and general Internet access. The Company agrees, (for the Subscription fee paid by the Customer) to deliver IP packets to the Customer Network boundary only and cannot accept or be held responsible for the transit, routing and delivery to individual workstations on the Customer Network.

4.0 USE OF SERVICES

- 4.1 The Customer is responsible for all use of Services accessed through his/her account and for providing a computer, a modem and/or all additional communications equipment and a telephone line, if appropriate, capable of and necessary for connecting to, and accessing, the Services. The Customer is responsible for all telecom charges to access the Service.
- 4.2 All Services are provided for a 12-month minimum period.
- 4.3 The Customer may use the Services to link into other networks worldwide and the Customer agrees to conform to the acceptable use policies of such networks.
- 4.4 If the communications by a Customer do not conform to these standards to the detriment of the Company or its Customers, the Company reserves the right to suspend access of that Customer to the Service until he/she gives a suitable undertaking as to use.
- 4.5 The Customer acknowledges that the Services can contribute to over-stretching the Service so that the Service provided by the Company to other Customers will degrade. The Customer therefore accepts that the Company may without prior notice terminate or suspend the Customers access to the Service where the Customer is using the Services in a manner that is profligate or wasteful (which the Company shall at its sole discretion but in good faith decide).
- 4.6 Where a single use product is specifically purchased, each customer's account is to be used by a single user only. Simultaneous log-ins using the same account are not allowed.
- 4.7 In an educational or training environment as amongst those persons being trained or taught, such persons may share a single Customers account subject to the restriction of simultaneous log-ins specified in 4.6.
- 4.8 The Customer shall keep his/her User Name/s, Access Code/s and Password/s private and confidential and shall ensure that, except as provided in above, they do not become known to other persons. If the Password/s become known, the Customer will the Company immediately and must change the Password/s immediately using the facility provided. If however, a Customer is unable to make the change, new Password/s will be issued at his/her request. The Company may from time to time with prior notice change the Customers Password/s.
- 4.9 Web space provided by the company for commercial purpose may be used to sell, promote or advertise products or services or for any other commercial use.
- 4.10 The Customer will not use the Services to send, receive, re-transmit, print, publish, reproduce, transfer or commercially exploit any information, material (including software), or other content received through the Service in breach of another's copyright.
- 4.11 The Customer will not use the Service to send, receive, re-transmit, print, publish, reproduce, transfer or commercially exploit any defamatory, offensive, abusive, obscene, intimidating, threatening, harassing, pornographic, sexually offensive material or any material protected by confidentiality or trade secret in any form (text, graphical, audio, video or medium as yet unknown). The Customer shall not contravene any current or future laws of England and Wales. This shall apply whether or not the Customer was aware of the content of the material or of the relevant law.

- 4.12 The Customer shall not transmit, store, facilitate the transmission or storage of, or knowingly receive, computer viruses or other material such that the whole or part of the Service is interrupted, damaged, rendered less functional or less efficient, or the effectiveness of the Service is in any way impaired.
- 4.13 Hardware, and routers, purchased from the recommended list provided by the Company, are configured and tested by the Company and are supplied configured to meet the Customer's basic network and Internet specifications. Any alterations made to the configuration of the hardware can not be supported by the Company and invalidates the Company's support obligation.
- 4.14 The Customer's internal network configuration remains the responsibility of the Customer. Any interruptions to the Service that occur as a result of an internal configuration issue are not deemed as an interruption or suspension of the formal provision of the Service.
- 4.15 All Static IP addresses are rented only and remain the property of the Company.
- 4.16 The Customer shall adhere to our Acceptable Use Policies as laid out in the appendices of this document. Where the customer does not we reserve the right to suspend or cancel the service without notice.

5.0 COPYRIGHT

- 5.1 The entire contents of the Service are copyrighted as a collective work under the proper law of this agreement. The copying, redistribution, or publication of any part of the Service is prohibited, except as expressly provided below.
- 5.2 Each Customer placing information, software or any other material on our servers grants the Company the right to its own discretion to delete, edit, copy, publish, distribute, and translate such information, software or other content. Subject to this grant, each Customer placing information, software or other content on our servers retains any rights the Customer may have in such information, software or other content.
- 5.3 For the purposes of 5.2 above, the Customer hereby waives irrevocably in respect of his/her material placed on our servers all "moral rights" which he/she may have now or in the future (including but without limitation any of your rights under section 77 and 80 of the Copyright, Designs and Patents Act 1988 or any similar laws in jurisdiction).
- 5.4 Material must not be placed on the Service in breach of the copyright holder's rights without the permission of the owner(s) or person(s) he/she specifically authorises for such purpose. Only the owner(s) or such authorised person(s) may upload copyrighted material to the Service.
- 5.5 Except as expressly provided by copyright law, copying, redistribution, or publication must be with the express permission of the owner(s) or authorised person(s). Permission must be specified in the document, on the Service, or must be obtained directly from the Company and the owner(s) or such authorised person(s), if other than the Company. In any copying, redistribution, or publication of copyrighted material, any changes to or deletion of author attribution or copyright notice by a Customer are prohibited.

6.0 FEES

- 6.1 All payments are made annually in advance in New Zealand Dollars except where agreed otherwise in writing. Corporate Customers may pay on an invoice basis, any invoice being raised in advance and due on commencement of the service. The Customer Subscription will be automatically renewed and payments will be automatically invoiced until the Service is terminated in accordance with clause 4.2 and clause 9.0 and sub clauses thereof.
- 6.2 The price payable by the Customer for the Goods and or Service shall be set out on order or invoice directly relating to the goods or Services provided.
- 6.3 The price shall not include GST or any other tax or duty payable by the Customer which shall be added to the Price and shall be paid in addition herein by the Customer.
- 6.4 The Company may increase the Price payable by the Customer by giving the Customer thirty days notice in writing; by post, e-mail, fax or electronic transmission.
- 6.5 In the event of a Subscription lapsing, a reconnection fee may be payable at the Company's discretion to the Company to recommence service.
- 6.6 The Company reserve the right to charge interest at 4% per annum above the base rate of ASB on all and any unpaid sums until payment in full (including all/any interest due) is received by the Company. Interest shall be accrued day to day.

7.0 LIABILITY

- 7.1 The Customer agrees the use of the Services is at the Customer's sole risk. The Company, its agents, contractors, licensors, employees and information providers providing the Services for the connection from the Customers hardware to the Company or the Internet do not guarantee that these Services will be uninterrupted or free from error. The Customer accepts that without notice for commercial, technical (see below) or other reasons:
- a) The Service or part thereof may be suspended
 - b) A network or service provider connected to the Service may suspend or terminate its connection to the Service.
 - c) The Service may suspend or terminate its connection with another network or service provider, and that any such suspension or termination shall not be in breach of these terms and conditions. The Services are therefore provided on an "as is" basis without guarantee of any kind except as defined in the appropriate Service Level Agreement (see Appendix).
- 7.2 a) The Company may from time to time close down the whole or part of the network for routine repair or maintenance work. The Company shall give as much notice as in the circumstances is reasonable and shall endeavour to carry out such works during the scheduled maintenance periods as published by the Company as appropriate.
- b) The Company may from time to time without notice close down or restrict the whole or part of the service where necessary for emergency repair, to prevent overload of the network, or to preserve the safety, security or integrity of the service and traffic conveyed. The Company shall at its sole discretion decide when such action is necessary.
- 7.3 The Customer acknowledges that the Company may exercise editorial control over the content of its servers, but the Company does not have the resources, nor is it capable of checking the full content thereof at all times. The Customer further

acknowledges that the Company, its agents, contractors, licensees, employees and information providers providing services are unable to exercise control over the content of the Internet; and the Company therefore excludes all liability of any kind for defamation and the transmission or reception of material of whatever nature other than information inserted by the Company. The Company specifically excludes any warranty as to the quality, content or accuracy of information received through or as a result of the use of the Services.

7.4 The Customer agrees and acknowledges that he/she is in a better position to foresee and evaluate any potential damage or loss he/she may suffer in connection with the Service(s) or software license (if any) or any other Service provided to him/her under this agreement; that the Company cannot adequately insure its liability to the Customer; and that the charges payable under this agreement have been calculated on the basis that the Company shall exclude liability as set out in this condition.

7.5 This agreement contains express warranties, undertakings and obligations of the Company and any other condition or warranty which might be implied or incorporated within these terms and conditions, by reason of statute or common law or otherwise, is hereby expressly excluded so far as may be permitted by law. While the Company and its employees will use all reasonable endeavours to provide a prompt continuing service, it will not be liable for any loss of data resulting from inter alia delays, non-delivery, missed deliveries or service interruptions caused by events beyond the control of the Company or by any errors or omissions of the Customer.

7.6 In no circumstances whatsoever will the Company be liable to the Customer in contract, tort, negligence or otherwise for indirect, incidental, special or consequential damages or any loss of business, contracts, profits or anticipated savings arising out of the use of the Service or inability to use the Service or out of any breach of any warranty.

7.7 In accordance with clause 4.13, any alterations made to the configuration hardware/routers purchased from the recommended list provided by the Company, can not be supported by the Company and invalidates the Company's support obligation.

7.8 In accordance with clause 4.14, the Customer's internal network configuration remains the responsibility of the Customer. Any interruptions to the services that occur as a result of an internal configuration issue may not be deemed as an interruption or suspension of the formal provision of the Service.

8.0 INDEMNITY

8.1 The Customer hereby agrees to indemnify and hold the Company, its agents, contractors, licensors, employees and information providers providing services harmless from any loss suffered by the Company as a result of a breach of the term and conditions of this agreement by the Customer and from any claim brought by third parties alleging that use of the Service by the Customer or under his/her account has infringed any intellectual property or other right of any kind, or any applicable UK or international legislation or regulation. The Customer shall pay all costs, damages, awards, fees (including legal fees) and judgements awarded against the Company arising from such claims, and shall provide the Company with notice of such claims, full authority to defend, compromise or settle such claims and reasonable assistance necessary to defend such claims, at the Customer's sole expense.

9. TERMINATION

- 9.1 The Company may terminate a Customer's account at any time without prior notice and without affecting any accrued rights or claims of the Company where the Services are misused by the Customer, for non-payment of the Subscription Fee or for breach of these terms and conditions. Subsequently such a person may be refused future account facilities with the Company. It should be noted that such termination will in no way indemnify the Customer against any criminal proceedings which may be brought by the authorities of the United Kingdom or any international legislative body, for such misuse.
- 9.2 The Company may, notwithstanding clause 9.1, terminate a Customer's account at any time without any reason on repayment of a pro-rata sum for the unfulfilled period of the Subscription Fee paid by the Customer. In the event of the Customer being in breach of any of these terms and conditions or any rules issued by the Company, the Company will be under no obligation to reimburse the Customer under this provision.
- 9.3 The Company reserves the right to suspend provision of service for the duration of any non-payment period. Suspension of services does not necessarily constitute termination and the Customer may be liable (at the Company's discretion) to pay a reconnection fee to the Company to recommence subscription services.
- 9.4 The Customer may terminate his/her account at any time, and will be required to give written notice (which must follow the "Notice" guidelines below). There will be no refund due to the Customer for any part of their cancelled subscription as the cancellation will take effect at the end of the current billing period.
- 9.5 Should the Customer wish to terminate a service contract at the end of the 12-month minimum period, a formal termination notice must be issued at least three months prior to the renewal date. If no such notice is forthcoming, the contract will automatically renew for the 12-month minimum period, under these terms and conditions.

10.0 ASSIGNMENT

- 10.1 The Company shall be entitled to assign this agreement either in whole or in part. The Customer shall not assign, re-sell, transfer or sub-lease the Services or his/her rights under these terms and conditions. Breach of this restriction in any way, whether successful or not, will result in the Customer's account being terminated.

11. PERSONAL DATA

- 11.1 The Company and/or its assignees reserves the right to hold the names and other information relating to Customers in a computerised directory for internal use only, unless specific written instructions are received from the Customer regarding other usage.

12.0 FORCE MAJEURE

- 12.1 The Company shall not be liable to the Customer for any failure of performance thereunder which is due to an Act of God, accident, fire, lockout, strike or other labour dispute, nor a civil commotion, failure of technical facilities not within reasonable control of that party, enactment, rule or order or act of Government or other act or event beyond the reasonable control of the Company. Should any event of Force

Majeure continue for more than 90 days then either party shall be entitled to terminate this agreement forthwith.

13.0 GENERAL

13.1 This agreement constitutes the entire agreement between the Parties and supersedes any prior agreement whether written or oral.

13.2 This agreement shall be governed by and construed in all respects in accordance with the laws of England and Wales and the parties submit to the jurisdiction of the Courts of England and Wales. In the event that this agreement is translated into any other language, the English language version shall prevail.

13.3 If any of the provisions or clauses or sub-clauses of this agreement is held not to be valid but would be valid if parts of the wording were deleted or modified, then that term shall apply with such deletion or modification as may be necessary to make it enforceable.

13.4 Expressions in the singular include the plural and the masculine include the feminine and vice versa.

14.0 WAIVER

14.1 Failure by the Company to exercise any of its rights thereunder shall not amount to a waiver of any such right, or operate so as to bar the exercise of enforcement at any time or times hereafter.

15. NOTICES

15.1 Any notice to be served by the Company on the Customer shall be deemed to have been duly served if sent by e-mail or first class post in a prepaid envelope to the Customer at his last known address. Any notice served by first class post shall be deemed to have been served five days after posting and any notice served by e-mail shall be deemed served 24 hours after sending.

15.2 Any notice to be served on the Company shall be served by sending the same first class in a prepaid envelope to the Company's main address, or may be sent by e-mail. Any notice served either by first class post or e-mail shall only be deemed served once the Customer has received an acknowledgement from the Company. The Company's acceptance of such notice will also be submitted in writing, stating the day, month and year of service termination/disconnection.

APPENDIX

Service Level Specification for Shared Servers

- (a) This is the Service Level Specification for the Service(s) invoked by, and governed by the terms of, the Hosting and Connectivity Terms and Conditions.
- (b) Each transit and routing service is to be used exclusively for an individual web server. This service is not suitable for providing transit either directly or indirectly to more than

one machine. All hosting services are provided to serve HTTP or equivalent data and under no circumstances should these services be used for IP routing.

- (c) "Server" means the facility provided to the Customer by REALLY DIFFERENT LIMITED in order to act as an HTTP server. "URL" means Uniform Resource Locator. "Server IP Address" means an IP address assigned by REALLY DIFFERENT LIMITED to the Server for the purpose of distinguishing HTTP requests for URLs in one Internet Domain Name. For the avoidance of doubt, such IP addresses are not assigned to the Customer. "Customer HTTP Hit" means an HTTP request made to the HTTP daemon on the Server which contains a Server IP address provided to the Customer. "Test Page" means an HTML document provided, on the Customer's request, by REALLY DIFFERENT LIMITED. "Appropriately Installed Test Page" means a Test Page which has been installed by the Customer in a manner approved by REALLY DIFFERENT LIMITED and according to the relevant Internet Standards, and whose URL REALLY DIFFERENT LIMITED has been given prior notice. "Data Return" means the first data that is written by the Server to the Network in response to any Customer HTTP hit. The Customer understands that REALLY DIFFERENT LIMITED may use the same physical equipment to provide service to more than one virtual server customer.
- (d) Unless Overload Conditions (as defined below) apply, REALLY DIFFERENT LIMITED shall meet the Service Level Specification if in any hour 99% of all HTTP requests for an Appropriately Installed Test Page generate Data Return within 4 seconds of a customer HTTP hit.
- (i) "Overload Conditions" shall apply if during the relevant hour more than 1,000 customer HTTP hits are received.
 - (ii) While the Customer is free to enter Overload Conditions, it does so at its own risk; and the Customer acknowledges that there shall be no Service Level Specification (and, for the avoidance of doubt, the Service Level Specification deemed to be met) in the event that it does so. For the avoidance of doubt, please note that REALLY DIFFERENT LIMITED cannot guarantee any level of performance will be brought about by (for instance) congestion or malfunction outside the networks managed by REALLY DIFFERENT LIMITED.
- (e) Subject to the restrictions contained in the Hosting and Connectivity Terms and Conditions, and provided that the Customer adheres to the procedures set out in the Hosting and Connectivity Terms and Conditions, REALLY DIFFERENT LIMITED shall give service credits in respect of Service Interruptions offer the Relevant Evaluation Period(s) as follows:
- (i) subject to (iii) below, if the Service is unavailable for a cumulative period of 3 hour in any calendar month a service credit of 10 times the pro-rate service value shall be given against the next billing period;
 - (ii) subject to (iii) below, if the Service is unavailable for a cumulative period in excess of 48 hours in any calendar quarter a service credit equal to the service value of one full billing period shall be given;
 - (iii) if the Service is unavailable for any continuous period of 12 hours or more in any calendar quarter a service credit equal to the service value of one full period shall be given;
 - (iv) where the quantum of a service credit is referable to a "period" the period of the service credit shall be one three month period.

Acceptable Use Policies

The Customer shall not use the Service(s) (and shall ensure that the Service(s) are not used):

- (a) to send, receive, make available, copy, transmit, broadcast or publish whether directly or indirectly, and whether in cashed, mirrored or proxy form or otherwise) any statements or material which: (i) infringe any copyright, moral right, patent or other proprietary (including, without limitation, intellectual property) right of any person or entity, or (ii) which infringe any applicable law, regulation or right of any person or entity including, without limitation, rights under contracts and of confidence, laws relating to defamation, contempt, blasphemy, infringement of privacy or personal data rights, malicious

falsehood, seditious libel and any equivalent or related laws in any territory in which they are (or maybe) accessed or made available;

- (b) to send, receive, make available, copy retransmit, broadcast or publish (whether directly or indirectly, and whether in cached, mirrored or proxy form or otherwise) any statements or material which are (or may, in places where they are accessible or made available) offensive, abusive, indecent, obscene, or menacing, or which are likely to encourage or capable or encouraging anything which is in any way unlawful, or to incite violence, sadism, cruelty, or racial hatred, or which promotes or facilitates prostitution, or which are likely to mislead by inaccuracy, ambiguity, exaggeration, omission or otherwise;
- (c) to cause annoyance, inconvenience, or needless anxiety;
- (d) other than in conformance with policies of any connected networks and the Internet Standards;
- (e) use a Name such as to infringe the rights of any person, whether in a statute or common law, in a corresponding trademark or name;
- (f) in a manner which occupies communications capacity or bandwidth frivolously, vexatiously or in a manner which is intended to or may inhibit any other person's use thereof (including, without limitation, by use of facilities intended to substantially fill the communications capacity of leased lines, such as SPAM, UCE, TCP Sprayers and Flood Ping);
- (g) in manner which permits IP data packets to be sent with source addresses outside the IP address range granted to the Customer;
- (h) send Unsolicited Bulk Email. The Sender (whether User or Customer) must have explicit permission from all destination addresses before that Sender has been granted permission by passive actions such as the posting of an article to Usenet or a visit made to senders web site. Where Sender has acquired explicit permission, either on a web site or through some other relationship Sender should keep a record of this permission and must cease sending email when requested to stop;