



INTERNET SERVICES – GENERAL TERMS

Internet Services General Terms and Conditions

StrataNet Limited

Last updated 26 July 2021

1 Terms and conditions

- 1.1 These terms and conditions, together with the relevant Connection Terms and the Customer Information, Selected Options and Relevant Pricing, form the Contract between the ISP and Customer. The Contract is made on Registration.
- 1.2 The Customer accepts the terms and conditions that apply at the time of Registration. The ISP may amend or replace these terms and conditions and/or the Connection Terms at any time on one month's written notice to the Customer provided that where a fixed term applies, any amendment to or replacement of the terms and conditions will only apply on renewal of that fixed term. The Customer's use and/or continued use of the Internet Service confirms the Customer's acceptance to be bound by the latest terms and conditions and applicable Connection Terms. Any additional or different terms that the Customer may stipulate or state in any communication with the ISP will not be binding on the ISP or included in the Contract unless expressly agreed upon in writing by the ISP.
- 1.3 Each capitalized term used in these terms and conditions has the meaning given to that term in clause 17 of these terms and conditions.

2 Charges and payment

- 2.1 The Customer will pay the Relevant Pricing for the Internet Service in accordance with the applicable timing for payment of the Selected Options. All payments must be made in full using the payment methods on the Website or as specified in the Proposal (as applicable), without deduction or set-off.
- 2.2 All applicable taxes including value added taxes (as applicable) will be charged and payable in addition to the Relevant Pricing unless otherwise stated on the Website or in the Proposal (as applicable).
- 2.3 If any amount is not paid by the due date, the ISP may suspend provision of all or any of the Internet Service until the ISP receives payment in full of all outstanding amounts.
- 2.4 The Relevant Pricing may be changed by the ISP on the ISP giving at least four weeks' written notice (by email) to the Customer of the new charges that will apply.

3 Term

- 3.1 Subject to clauses 3.2 and 3.3, the Contract will commence on the Commencement Date and may be terminated by the Customer at any time on 30 days' written notice to the ISP with the termination taking effect at the end of the month in which the ISP confirms receipt of the Customer's cancellation request.

3.2 The charges for Internet Service will begin when the Connection is established, as determined by the ISP.

3.3 Where a fixed term applies for the Selected Options, the Internet Service will be provided for that term and, subject to the termination provisions in these terms and conditions, early termination options are not available. In the event of any early termination of a fixed term plan, the termination charges on the Website or in the Proposal (as applicable) will apply.

4 Provision of Internet Service

4.1 The ISP will supply the Internet Service in accordance with the Contract.

- (a) The Customer acknowledges that:
- (b) the Internet Service is dependent on many factors which are outside of the control of the ISP, including for example supply by the Suppliers, and as such the ISP cannot and does not guarantee continuous or uninterrupted Internet Service;
- (c) Without limiting clause 4.2(a) above or any other part of the Contract, nothing in these terms and conditions commits the ISP to provide the Internet Service except as described in the Selected Options;
- (d) the Internet Service is provided to the Customer on a non-exclusive basis and the Customer's right to use the Internet Service is not transferable.

4.2 The ISP will provide telephone and/or email support as described on the Website or as specified in the Proposal (as applicable). The support is available for matters which relate directly to the Internet Service and is provided on a reasonable endeavours basis. The Customer acknowledges that the ISP is dependent on its Suppliers in the provision of the Internet Service and as such the support available from the ISP is dependent to some extent on the support available to the ISP by its Suppliers.

4.3 The Customer must not, nor may the Customer permit any other person to do any of the following, or attempt to do so:

- (a) provide the Internet Service to any users through operation of a bureau or like service; or
- (b) resell, rent, lease, transfer, sublicense or otherwise transfer rights to use the Internet Service; or
- (c) use the Internet Service in any way that could interrupt, damage or otherwise interfere with use of the Internet Service by anyone else;
- (d) do any act which would or might invalidate or be inconsistent with the Intellectual Property rights of the ISP or any its Suppliers.

4.4 The Customer must notify the ISP of any actual, threatened or suspected infringement of any Intellectual Property right and of any claim by any third party that any use of the Internet Service infringes any rights of any other person, as soon as that infringement or claim comes to the Customer's notice. The Customer must (at the ISP's expense) do all such things as

may reasonably be required by the ISP to assist the ISP in pursuing or defending any proceedings in relation to any such infringement or claim.

4.5 The ISP will use reasonable endeavors to notify the Customer:

- (a) if any Supplier notifies the ISP of planned or emergency maintenance in connection with the Internet Service; or
- (b) if unplanned outages occur, following this coming to the ISP's attention.

5 Use of Internet Service

5.1 The Customer is responsible for:

- (a) all aspects of the Customer's access and use of the Internet Service; and
- (b) ensuring that, in using the Internet Service, it complies with all applicable laws.

6 Intellectual Property

6.1 All Intellectual Property in:

- (a) the Website; and
- (b) the software, processes, methodology and know-how used by the ISP in its performance of the Contract;

is the property of the ISP (or its licensors including the Suppliers) and nothing in the Contract operates to change that ownership.

7 Confidential Information

7.1 The parties recognise and acknowledge the confidential nature of the Confidential Information.

7.2 Neither party may use or disclose any Confidential Information other than:

- (a) to its employees, directors or contractors to the extent necessary in the performance of the Contract; or
- (b) with the express prior written consent of the other party; or
- (c) to its professional advisers.

8 Warranties

8.1 Each party warrants to the other that it has authority to enter into and perform and the ability to perform its obligations under the Contract.

8.2 Except as expressly provided in these terms and conditions, all warranties, terms and conditions (including, without limitation, warranties and conditions as to fitness for purpose

and merchantability), whether express or implied by statute, common law or otherwise, are excluded to the extent permitted by law.

9 Termination

9.1 Either party may terminate the Contract immediately if the other party:

- (a) breaches any of its obligations under the Contract and fails to remedy the breach within 10 days of receiving notice requiring the breach to be remedied. For the purposes of this clause 9.1(a), without limiting what may constitute a breach and without limiting any other rights that the ISP may have in relation to payment delays or failure to pay or in relation to termination, a breach includes but is not limited to a failure by the Customer to pay any amount due by the due date; or
- (b) becomes insolvent or goes into liquidation or has a receiver or statutory manager appointed over its assets or ceases to carry on business or makes any arrangement with its creditors.

9.2 On termination of the Contract:

- (a) except as described otherwise in the Selected Options, all amounts due to the ISP and all applicable termination charges will become immediately due and payable, including any applicable termination charges;
- (b) the ISP will cease to provide the Internet Service to the Customer, and the Customer will cease to have any entitlement to use the Internet Service;
- (c) the provisions of the Contract that are by their nature intended to survive termination will remain in full force.

10 Liability and indemnity

10.1 Subject to clause 10.2, the ISP will only be liable for losses (excluding loss of business or profits) which flow directly from a breach by the ISP of the Contract up to a maximum of the amount paid by the Customer to the ISP in the one month preceding the event giving rise to the claim under the Contract.

10.2 In no event is the ISP liable for any indirect loss or for any loss of profits, lost savings, loss of data, business interruption, incidental or special damages, or for any consequential loss. In addition, the ISP is not liable for any damages claimed by the Customer based on any third party claim, including, but not limited to, any claim in negligence. In no event is the ISP liable for any damages caused (whether directly or indirectly) by the Customer's failure to perform its responsibilities under the Contract.

10.3 The Customer acknowledges that in using the Internet Service, the Customer will be accessing third party websites and/or elect to use third party products and services, and:

- (a) access or use by the Customer of any such third party websites, products or service is subject to the third party's terms and conditions; and

- (b) the ISP accepts no responsibility or liability for or in connection with access or use by the Customer of any such third party websites, products or services.
- 10.4 The Customer indemnifies the ISP against any costs (including legal costs on a solicitor/attorney and own client basis, all and any court costs and witness fees and related legal expenses), expenses, claims, demands or liability whether direct, indirect or otherwise, and whether arising in contract, tort (including negligence), equity or otherwise, arising out of, and must at the ISP's request, and subject to clause 10.5 and any reasonable conditions imposed at the ISP's discretion, at the Customer's own cost defend or settle, any claim, action or proceedings brought against the Customer in connection with:
 - (a) use of the Internet Service otherwise than in accordance with the Contract or as reasonably intended by the ISP or any Supplier; or
 - (b) a breach by the Customer of the Contract.
- 10.5 If the ISP wishes to rely on an indemnity under clause 10.4, the ISP:
 - (a) must ensure that the Customer is notified promptly in writing of the relevant claim, action or proceedings ("Claim") once it becomes aware of the Claim;
 - (b) will make no admission of liability regarding the Claim nor any offers of settlement regarding the Claim without the Customer's written approval;
 - (c) may, at its discretion, grant control of the defence or settlement to the Customer;
 - (d) will, where the ISP has granted control of the defence or settlement negotiations to the Customer:
 - i. co-operate reasonably with the Customer in defending or settling the Claim and make its employees available to give statements, advice and evidence, as the Customer may reasonably request, all at the expense of the Customer; and
 - ii. give the Customer sufficient authority and relevant information in its possession or control in order to assist the Customer to conduct the defence of the Claim and all negotiations for its settlement or compromise.

11 Dispute resolution

- 11.1 In the event of any dispute arising between the parties in relation to the Contract, no party may commence any proceedings relating to the dispute (except where the party seeks urgent interlocutory relief) unless that party has complied with the procedures in this clause 11.
- 11.2 The party initiating the dispute ("the first party") must provide written notice of the dispute to the other party ("the other party") and nominate in that notice the first party's representative for the negotiations. The other party must within fourteen days of receipt of the notice, give written notice to the first party naming its representative for the negotiations ("Other Party's Notice"). Each nominated representative will have authority to settle or resolve the dispute. The parties will co-operate with each other and endeavour to resolve the dispute through discussion and negotiation.

11.3 If the dispute is not resolved within one month following the date of the Other Party's Notice (or such longer period as may be agreed upon by the parties in writing), either party may utilize any other legal remedies available to it in seeking to resolve the dispute.

12 Consumer guarantees

12.1 The Customer acknowledges that where it is acquiring the Internet Service for the purposes of a business, to the extent permitted by the relevant legislation, any statutory consumer guarantees or legislation that are intended to apply to non-business consumers only will not apply.

13 Force majeure

13.1 The ISP may suspend its obligations to perform under the Contract if it is unable to perform as a direct result of a Force Majeure Event. Any such suspension of performance will be limited to the period during which the Force Majeure Event continues.

13.2 Where the ISP's obligations have been suspended pursuant to clause 13.1 for a period of 30 days or more, either party may immediately terminate the relevant Contract by giving notice in writing to the other party.

14 General

14.1 Entire agreement: The Contract constitutes the complete and exclusive statement of the agreement between the parties, superseding all proposals or prior agreements, oral or written, and all other communications between the parties relating to the subject matter of the Contract.

14.2 Waiver: No exercise or failure to exercise or delay in exercising any right or remedy by a party will constitute a waiver by that party of that or any other right or remedy available to it.

14.3 Partial invalidity: If any provision of the Contract or its application to any party or circumstance is or becomes invalid or unenforceable to any extent, the remainder of the Contract and its application will not be affected and will remain enforceable to the greatest extent permitted by law.

14.4 Independent contractor: The ISP is an independent contractor to the Customer and is in all respects independent of the Customer. Nothing in the Contract constitutes either party a partner, agent, employee or joint venture of the other.

14.5 Sub-Contractors: The ISP may engage sub-contractors to assist the ISP in its performance of the Contract. Any subcontractors that the ISP engages will report to the ISP and the ISP will be responsible for their performance.

14.6 Assignment: The Customer is not permitted to assign its rights under the Contract. There is no restriction on assignment by the ISP of its rights or obligations under the Contract, provided that the ISP and/or the assignee complies with any applicable Supplier requirements in respect of the assignment.

15 Notices

- 15.1 Except where the Contract anticipates that notifications will be made via the Website, notices from the ISP to the Customer under the Contract will be sent to the Customer at the Customer's contact details specified in the Customer Information. The Customer may notify the ISP of a change to the contact details specified in the Customer Information, on seven days' notice in writing to the ISP. Notices from the Customer to the ISP under the Contract must be sent to the ISP at the ISP's contact details included on the Website or otherwise as notified by the ISP.
- 15.2 Notices sent by email will be deemed received on sending, provided that the sender does not receive an automatic delivery failure notification. Notices sent by post will be deemed received:
- (a) on the third day following posting if sent and received within New Zealand; and
 - (b) on the tenth day following posting if posted from outside of New Zealand.

16 Governing law and jurisdiction:

- 16.1 The Contract is governed by the laws of New Zealand. The parties hereby submit to the non-exclusive jurisdiction of the courts of New Zealand.

17 Definitions: In these terms and conditions:

"Commencement Date" means the date of Registration as confirmed by the ISP;

"Confidential Information" means any proprietary information, know-how and data disclosed or made available by one party to the other party but does not include any information which (a) is in the public domain without any breach of the Contract; (b) on receipt by the other party is already known by that party; (c) is at any time after the date of receipt by the other party, received in good faith by that party from a third party; (d) required by law to be disclosed by the other party;

"Connection" means a connection to the Internet of one of the following types:

- (a) fixed line:
 - i. fibre;
 - ii. ADSL (asymmetric digital subscriber line) or VDSL (very high bit-rate digital subscriber line);
- (b) wireless:
 - i. fixed wireless;
 - ii. rural broadband

as described in the applicable Connection Terms, and includes in each case, any other fixed line or wireless connection types made available by the ISP from time to time;

“Connection Terms” means the terms and conditions applicable to each connection and internet service type;

“Contract” means the relevant Connection Terms, the Customer Information, Selected Options, Relevant Pricing and these terms and conditions (as updated from time to time under clause 1.2 above);

“Customer” means the customer named in the Customer Information;

“Customer Information” means the customer name, email address and any other contact information submitted by or on behalf of a customer in the course of Registration;

“Force Majeure Event” means any war, riot, third party strike, pandemic, civil emergency, natural disaster or other circumstance of a similar nature that is outside of the control of the ISP;

“Intellectual Property” includes all copyright, trademarks, designs, patents, domain names, concepts, know-how, trade secrets, logos and all other similar property and rights whether registered or unregistered;

“Internet Access” means internet access made available, subject to the terms and conditions of the Contract, via the Connection;

“Internet Service” means the Connection and Internet Access, and related services provided by the ISP in relation to that Connection and Internet Access, provided in accordance with the Selected Options;

“ISP” means StrataNet Limited a company registered in New Zealand;

“Proposal” means an application form or other form or written proposal (by whatever name called) issued by the ISP to the Customer, covering details of the Internet Service to be provided by the ISP and which includes pricing and may include setup details and other matters, which is signed by both parties;

“Registration” means the Customer places an order to begin receiving Internet Service, or purchases an Internet Service:

- (a) on the Website; or
- (b) from the ISP, otherwise than via the Website, including for example by written acceptance of a Proposal;

“Relevant Pricing” means the pricing for the Connection and Selected Options chosen on Registration, as specified on the Website or in the Proposal (as applicable);

“Selected Options” means Connection type and other options selected by the Customer during Registration, including the Service Plan (if applicable), the term (if applicable) and other matters;

“Service Plan” means a set of options relating to a Connection type, grouped together and documented by the ISP and for which specified pricing applies;

“Suppliers” means the third party suppliers to the ISP, which the ISP is dependent on to provide the Internet Service;

“Website” means www.stratanet.co.nz.