

1. Definitions

"we", "our", or "us" refers to Morepork Online Limited, and "you" or "your" refers to the Customer (as referred to in a Service Agreement).

"Due Date" means the date that payment is due, as specified in the tax invoice.

"Service", "Services", "Product", or "Products" shall refer to all goods and services of any kind that we provide to you as specified in a Service Agreement.

"Service Agreement" means any specific agreement between you and us pursuant to which we agree to supply you with specific products or services and for the avoidance of doubt includes a wholesale services agreement where services are provided to a wholesale provider.

"Service Terms" means any specific terms between you and us pursuant to which we agree to supply you with specific products or services.

"Business Day" means a day on which registered banks are open for general banking business in New Zealand, excluding Saturdays, Sundays and public holidays.

"Commencement Date", unless otherwise specified, means the date on which we notify you that the Service is available.

"Terms" means these Terms (the "Business Terms") together with any terms contained in a Service Agreement and Service Terms.

Other capitalised words, other than proper nouns, will be defined in these Business Terms or in a Service Agreement.

2. Our Charges

The cost ("Charge(s)") for each Product or Service shall be outlined in a Service Agreement and shall begin from the Commencement Date, regardless of when they begin to be used. You are liable for all Charges regardless of who uses the Product or Service.

If Services are provided for a specific term and that term has ended, then we will continue to charge you on a month-to-month basis for that Service unless we agree to a new term. You shall remain liable for those Charges and these Terms shall continue to apply.

3. Billing & Resale

We will send you an invoice for the Charges at the end of each billing period, which you will pay without deduction (other than validly disputed amounts) on the date specified in the Service Agreement or as otherwise as specified on the invoice the Due Date. Unless agreed otherwise, fixed charges are billed in advance, and other charges are billed in arrears.

Part payment of any invoice will not amount to full and final settlement and the remainder of your invoice will remain due on the Due Date.

Unless we explicitly agree in writing (such as by you entering a wholesale service agreement), you are not permitted to resell any Product or Service and you affirm that you are the end user of the Services and/or Products supplied by us.

We may vary our Charges from time to time. If we make changes to Charges for any of the Services we provide to you, we will notify you of the change in writing and provide no less than 30 days' notice of this. If you do not agree to the changes, you may terminate the Service which is the subject of the changes. If you are within contract term with us, the Charges for the Services covered by that contract will not increase until the end of that contract, unless an increase is as a result of a change in the price from a supplier for an input required for your Morepork Service.

4. Disputed Accounts

You agree that unless you dispute a Charge prior to the Due Date, then you accept that Charge as valid and agree to pay it in full and without any deduction or claim for set-off for any alleged claim not directly related to the Charge. If you dispute a Charge, you must notify us immediately and without delay, and in any event within 90 days of the date of our invoice to you (you agree that we will not be liable for any dispute raised later than 90 days from the relevant invoice). We will investigate the dispute, and while we are doing this you do not need to pay the disputed amount but are required to pay any amount due that is not disputed. If we agree with your assessment, we will issue a billing adjustment. If we do not agree with your assessment and you still dispute the account, then we agree that before we exercise our right to suspend or terminate any services or commence any enforcement proceedings for recovery of any unpaid Charges we agree to meet within 5 working days to

resolve the dispute in good faith and if not resolved both parties may within a further 5 working days submit the dispute to a mediator agreed by the parties and if not agreed then appointed by the President of the Auckland Branch of the New Zealand Law Society.

For the avoidance of doubt, the dispute resolution provisions in this clause do not apply where there has been a breach which justifies immediate termination of Service(s) in accordance with clause 14.

5. Overdue Accounts

If you do not pay an invoice by the Due Date, we may charge you interest at 10% per annum on the unpaid amount from the Due Date until the date you pay it. Interest shall be calculated and compounded monthly. You must also pay any costs that are incurred by us (including all reasonable costs incurred by us to our solicitor and and/or any costs charged to us by a debt collecting agency) in recovering the money that you owe us.

We reserve the right to suspend or restrict any Service that we provide for you until payment is made in full. Where your account is overdue we will give you 5 working days' notice before suspending any Service (we may restrict a service without notice to you in appropriate circumstances such as misuse of our fair use policy). Where we suspend or restrict any Service pursuant to this clause you will continue to remain liable for all Charges regardless of such suspension or restriction.

This section does not apply to the portion of any invoice that is validly disputed.

6. Consumer Guarantees Act

Our Product(s) and Service(s) are provided to you for business purposes and you acknowledge and agree that the Consumer Guarantees Act 1993 does not apply.

7. Fair/Acceptable Use Policy

You acknowledge that you have read and understood Morepork's fair and acceptable use Policy that applies to Morepork's end users/customers, available on our website at www.morepork.net.nz.

8. Subcontract & Assignment

We may, at our sole discretion, subcontract any or all of our obligations under this or any other Agreement you have with us without your consent, provided that we will remain ultimately responsible to you for carrying out those obligations.

You may not assign or have someone else perform your side of any agreement with us without our prior written consent. We may assign or have someone else perform our side of any agreement we have with you.

9. Changes to these Terms

We may change these Terms from time to time and will provide you no less than 30 days written notice when we do so. We may further change any Service Agreement, if we are providing the same or equivalent Products or Services for the same or lower cost. If any change to our Terms or Service Agreement substantially reduces the benefit of the Services to you (assessed on an objective basis), then with our agreement that the change will have or has had such an impact on you, you may elect to terminate the affected Service without penalty or fee.

10. Notices

We will send invoices and other notices to the last email address you have given us. Please inform us in writing (via our online forms or email) if you change address. Our address and contact details are available on our website, at www.morepork.net.nz

Any invoice or notice will be deemed to have been delivered on the other party:

- in the case of personal delivery, when received
- in the case of posting by "track and trace" or similar delivery, then when delivered
- in the case of email, when the sender's information system states that the invoice or notice has been sent

11. No Waiver

If either party delays or fails to enforce any of its rights or remedies under any Agreement you have with us, this will not constitute a waiver by that party of that or any other right or remedy available to it.

12. Confidential Information

All Product & Service information and pricing that is not on our website is to be treated as confidential and shall not be disclosed to any other party unless we agree to this in writing. You must also not disclose any commercially sensitive information that you receive from us, unless we agree to this in writing.

13. Intellectual Property

You acknowledge that you do not, as a result of any Agreement with us, acquire any intellectual property rights from us (including in relation to any confidential information). The provisions of this clause will survive the termination of this Agreement

14. Termination

We require 30 days written notice for the termination of any Service. If that Service is being provided to you for a specific term and you cancel within that term, then you must also pay us any applicable early termination fees to cover any costs/losses that Morepork will suffer in such circumstances, as explicitly stated in the Service Agreement and/or Service Terms for relevant services terminated.

Either party may terminate any or all Services immediately and without penalty if the other party:

- materially breaches these Terms; or
- (or its directors/principals) goes into liquidation, bankruptcy, or receivership; or
- has a receiver or statutory manager appointed over any or all of its assets; or
- is removed from the Companies Register, is dissolved, or dies; or
- commits an act of fraud, theft, or dishonesty that impacts the other party.

Without limitation to any other rights available to it, we may terminate Services to you without notice if any invoice is more than 3 months overdue in payment.

If we require consent from owners of any site for access in order to supply you with a particular Service and the owners of that site withdraw such consent or request us to remove our equipment, then we may terminate the Service provided to you by written notice with effect from the date on which access to the site will be unavailable to us. You acknowledge and accept that we will not be liable to you in any way for failure to supply any Service where we terminate such Service under this provision.

We may also cease provision of any service to you at any time for the following reasons; the relevant service is no longer feasible, we are unable to provide it, we are withdrawing it from general availability, or we are replacing it with a new service. In this instance, we shall provide 30 days written notice.

Termination due to breach of these Terms will not affect other rights and remedies. If Services are terminated due to breach, then you agree to pay us any monies owing (including any applicable early termination fees, as set out in the Service Terms) and immediately return any equipment owned by us at your cost. Where any equipment is not returned you will provide access for us to retrieve the equipment (at your cost) and failing that will reimburse us for the cost of replacing such equipment.

15. Our Equipment & Access

We may supply and install any equipment needed to provide the Services. Acquiring our Products or Services does not give you any proprietary rights to any part of our network or equipment. You agree to provide a safe and secure operating environment for our equipment; follow our directions when connecting anything to our network or equipment; not damage or interfere with our equipment; and notify us as soon as reasonably practicable if there is any failure of or damage to our equipment.

You agree to pay for any damage or loss to our equipment caused by any reason other than normal wear and tear.

You agree to provide us access to any premises where our equipment is located or due to be located for the purposes of installing, maintaining, replacing, or retrieving that equipment. We will endeavor to provide at least 24 hours' notice of requiring access to your premises.

16. Other Disputes and Limitation of Liability

You agree with us that if there is any dispute between the parties other than a disputed Charge (referred to in clause 4) then the party raising the dispute will do so in writing and will follow the dispute resolution procedure set out in clause 4 (good faith meeting and failing that mediation) before instituting any proceedings.

You acknowledge further that some of the Services we provide can depend on third party suppliers and that outages can be caused due to circumstances outside our control. In such cases we will not be liable to you for any costs incurred for any such outage. In such an outage, we will provide a letter for your insurance company.

Any compensation will be limited to service credits applicable under any applicable Service Terms or Service Agreement.

Further, and regardless of the cause of any outage or use of the Services, to the fullest extent permitted by law, Morepork excludes all liability for damage or loss (including without limitation, financial or economic loss, damages for loss, any alleged loss of/in business projects, loss of profits, revenue or anticipated savings, loss or damage to reputation or goodwill, indirect or inconsequential losses, punitive or special damages), arising in contract, tort, (including negligence), equity or otherwise from the use, delay, or temporary or permanent unavailability of all or any part of the Services, or from any action or decision taken as a result of using these Services. You agree to such exclusion of liability.

If for any reason, Morepork is found liable to Customer, notwithstanding the exclusion of liability set out above, in no case shall Morepork's aggregate liability for any loss or damage, whether direct or indirect, incurred by Customer, or anyone claiming through Customer, exceed the amount of fees, if any, paid by Customer under this Agreement for the affected service in the 6 month period preceding the earliest of date of the alleged event giving rise to any claim for damages or compensation.

17. Invalidity and Severance

If any provision of these Terms is unlawful and/or unenforceable, then it will be severed from the rest of these Terms which shall remain in force. Each provision of these Terms is separately binding.

18. These Terms

These Terms supersede all prior business terms that may have applied between you and us.

The termination of Services with us does not affect any rights and responsibilities that are intended to continue or come into force after such termination.

Where there is a conflict between the meaning of these Business Terms and the terms and conditions in any Service Agreement or other specific written agreement between you and us the Service Agreement, or specific written agreement, shall prevail.

Where there is an alleged conflict between these terms and any alleged oral/unwritten agreement between you and us, then these Business Terms will prevail.

19. No Partnership & No Third-Party Rights

Nothing in these Terms is deemed to constitute either party as partners, agents, or legal representatives of the other.

Neither you nor we intend to create rights in or grant remedies to any third party as a beneficiary of these Terms or any Agreement with you, and these

Terms or any Agreement with you shall be for the sole and exclusive benefit of you and us.

20. Pricing excludes GST

Unless explicitly stated otherwise, all pricing quoted to you by us excludes New Zealand Goods and Services Tax.

21. Force Majeure

Neither party will be liable for any failure to perform its obligations under a Service Agreement caused by any circumstance beyond its reasonable control provided that party uses its reasonable endeavours to perform despite the cause. This provision does not apply to lack of financial resources or disputes with a party's own personnel or contractors.

The party failing to perform will:

- promptly give written notice to the other party specifying the cause and extent of its failure to perform

- take all reasonable steps to remedy or abate the cause and extent of its failure to perform
- resume performance of its obligations under the Service Agreement as soon as possible

22. New Zealand Law

All Products and Services are provided to you under New Zealand law. The New Zealand Courts have exclusive jurisdiction to resolve any dispute that is not resolved in accordance with clause 4, above.