



SmartRange Ltd  
147 Ohauiti Road  
Tauranga 3112 (New Zealand)

Phone: +64 (0)7 929 7040  
Mobile: +64 (0)21 0220 6394  
Email: [info@smartrange.co.nz](mailto:info@smartrange.co.nz)

## SmartRange Ltd "Terms and Conditions" for Web Hosting

This User Agreement (the "Agreement") governs the terms of the use by Client of services offered by SmartRange Ltd ("Provider").

Client agrees to receive access to the Server services according to the following terms and conditions:

### 1. Selection of Service Plan

Client will select one of the service plans offered by Provider, and agrees to receive services according to the service plan selected. (For details of the individual hosting plans, please visit our website: <http://smartrange.co.nz> )

### 2. Payment for Services

Client agrees to a monthly (1 Month) or a one year (12 Months) subscription beginning upon Providers receipt of contract or payment. You may cancel your account at any time; see 16 b (Refunds and Disputes).

This agreement will automatically renew unless cancelled in writing 7 days prior to the renewal date. Renewal prices are subject to change. Renewal of services by Client indicates agreement to Contract revisions.

Initial payment for the first hosting period is required upfront, all recurring payments are required within 10 days of invoice dates. Following a 20 day grace period a late payment fee of \$10.00 will be charged for overdue accounts. If payment is not received within 30 days after due date, your account will be placed on hold and a reconnection fee of \$15.00 may apply.

Account over usage will incur the following extra charges:

Disk Space:

The first 15% of Disk Space your account is over it's allowed limit are free.

Once your Disk Space exceeds 15% of it's allowed limit, the cost is \$0.08 per MB per month extra

Bandwidth/Traffic:

The first 20% of Bandwidth/Traffic your account is over it's allowed limit are free.

Once your Bandwidth/Traffic exceeds 20% of it's allowed limit, the cost is \$0.004 per MB per month extra

We reserve the right to reject any orders made through our online ordering system ([www.smartrange.co.nz](http://www.smartrange.co.nz)).

### 3. Compliance with Law

Client will use the services offered by Provider in a manner consistent with all applicable local, state and federal laws and regulations.

### 4. File Back-up

While Provider maintains daily file-, email- and database back ups with 7 restore points (1 week), Provider is not responsible for Client's files residing on Provider's servers. Client is solely responsible for independent backup of data stored on Provider's servers.

### 5. Prohibition of Publication of Certain Material and Prohibited activities

Client shall not knowingly or unknowingly submit to Provider for publication any of the following material (including pictures, links, or any other content):

(a) any material which violates or infringes any copyright, trademark, trade secret, patent, statutory, common law or other proprietary rights of others;

(b) any material that is libellous or slanderous;

- (c) any material which is or contains anything obscene, pornographic, or offensive including links to such material; or
- (d) distribution lists to be used via unsolicited electronic mail or other mass electronic mailings.

Due to the public nature of the Internet, all material submitted by Client for publication will be considered publicly accessible. Provider does not screen in advance Client's material submitted to Provider for publication. Provider's publication of material submitted by Client does not create any express or implied approval by Provider of such material, nor does it indicate that such material complies with the terms of this Agreement.

Client shall not knowingly or unknowingly undertake in any of the following activities:

(e) Abusive Language Relaying or posting offensive, harassing, hostile, or abusive language through the SmartRange Ltd networks.

(f) Running Background programs including but not limited to IRC bots, eggdrops, BitchX, Xircon, and others which interfere with server operations - these are prohibited.

(g) Abuse of CGI or PHP. Although SmartRange Ltd permits the use of CGI and PHP, we must limit the amount of CPU used on any individual account on a shared server. Since the servers are shared by many accounts we can not let a few customers utilize all of the resources on that server which leads to others suffering from lack of resources. When CPU is used greatly and excessively by a few customers it leads to slowness of FTP, sites and much more which may result in errors and failure in accessing the sites on that server. Accounts found in violation of this term will be warned once. The email warning will notify you that too much CGI and/or PHP is running and suggest ways to reduce the usage or upgrade. We reserve the right to DISABLE your CGI/PHP Script if we consider the usage to be excessive or it is not reduced within 24 hours of the email being sent to you. Excessive amount (SmartRange Ltd is the sole determinant of what constitutes degraded server performance) refers to any amount that leads to extensive and considerable degradation and deprivation of server performance. All scripts (e.g. UBB, YABB) that heavily make use of flat files are prohibited.

(h) Accessing other party's computers or networks without authorization to do so is prohibited. Any activity that is used as an endeavour to system invasion such as port scan, stealth scan or any other info gathering action is prohibited. Any access to any part of our servers, files, content or similar is prohibited and if found immediate cancellation of account will occur without refund of any payment made to SmartRange Ltd regarding any of our Hosting or Account services, being made to the deactivated sites account payee.

(i) Spamming

We will in no shape or form tolerate spamming of any kind. We, the provider, reserve the right to terminate any account without notice or warning that violates this rule. Use of provider's services signifies acceptance and comprehension of this and every Term of Service. Provider at our option may charge NZ\$ 100.00 per Spam complaint we receive. This fee is non refundable and will be charged at the time of complaint notice. Provider reserves the right to determine what is considered Spam. Also, to conclude from the evidence presented if the e-mail recipients were from an "opt-in" e-mail list. The following forms of Spamming are prohibited:

A - Bulk Unsolicited Commercial E-mails AKA Spam, promotional material or any other form of advertising or solicitation sent through e-mail that promotes any IP address belonging to Provider or their party contracted by Provider or any other domain hosted by Provider is prohibited.

B - Misrepresenting, perjurying, or falsifying all or part of message headers to conceal the true source of the message.

C - Transmitting, promoting, offering, or making accessible software of any kind designed to assist in Spamming.

D - Unwanted postings to newsgroup promoting or advertising any IP or URL hosted by Provider.

E - Use of web pages that permit spamming which directly or indirectly sends clients to IP addresses or domains which are hosted by Provider.

## **6. DISCLAIMER OF WARRANTIES**

PROVIDER'S SERVICE IS PROVIDED ON AN "AS IS, AS AVAILABLE" BASIS.

PROVIDER SPECIFICALLY DISCLAIMS ANY OTHER WARRANTY, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT SHALL PROVIDER BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL OR INCIDENTAL DAMAGES, EVEN IF PROVIDER HAS BEEN ADVISED BY CLIENT OF THE POSSIBILITY OF SUCH POTENTIAL LOSS OR DAMAGE. IF PROVIDER'S SERVICE TO CLIENT IS DISRUPTED OR MALFUNCTIONS FOR ANY REASON, PROVIDER SHALL NOT BE RESPONSIBLE FOR LOSSES OF INCOME DUE TO DISRUPTION OF SERVICE, BEYOND THE FEES PAID BY CLIENT TO PROVIDER FOR SERVICES, DURING THE PERIOD OF DISRUPTION OF MALFUNCTION.

## **7. Limitation/Disclaimer of Liability**

Provider 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 utilize.

Provider does not represent or warrant to Client that Client will receive continual and uninterrupted service during the term of this Agreement. In no event shall Provider be liable to Client for any damages resulting from or related to any failure or delay of Provider to provide service under this Agreement if such delays or failures are due to strikes, riots, fire, inclement weather, acts of God, theft or vandalism or other causes beyond Provider's control, as defined by standard practices in the industry. Such failure or delay shall not constitute a default under this Agreement.

## **8. Indemnity**

Client agrees to defend, indemnify and hold Provider harmless from and against any and all claims, losses, liabilities and expenses (including attorneys' fees) related to or arising out of the services provided by Provider to Client under this Agreement, including without limitation claims made by third parties (including customers of Client) related to any false advertising claims, liability claims for products or services sold by Client, claims for patent, copyright or trademark infringement, claims due to disruption or malfunction of services provided hereunder, or for any content submitted by Client for publication by Provider, but excluding those related to the negligence of Provider.

## **9. Resale of Provider's Service**

If Client acts as a "reseller" of the services provided by Provider to Client hereunder, by Client providing similar services to its customers, then all the terms of this Agreement shall provide to the resale. Without limiting the foregoing, Client's obligations under Section 8 ("Indemnity") shall apply to any and all claims made against Client and/or Provider which arise out of the resale of Provider's services.

## **10. Governing Law/Venue**

This Agreement shall be governed by the laws of New Zealand.

## **11. Relationship of the Parties**

The parties intend that an independent contractor relationship will be created by this contract, and that no partnership, joint venture or employee/employer relationship is intended.

## **12. Taxes**

If any federal, state or local governmental entity with taxing authority over the services provided under this Agreement imposes a tax directly on the services provided by Provider to Client under this Agreement (excluding any income, business and occupation, capital gain, death or inheritance, or other indirect taxes), then Provider may pass the direct amount of such cost on to Client, and Client shall promptly pay such cost.

## **13. Waiver**

Any party's failure to insist on compliance or enforcement of any provision of this Agreement shall not affect its validity or enforceability or constitute a waiver of future enforcement of that provision or of any other provision of this Agreement.

## **14. Attorneys' Fees**

If a legal proceeding is commenced to enforce or obtain a declaration of rights under this Agreement, the prevailing party in such proceeding shall be entitled to recover its reasonable attorneys' fees and costs incurred in the proceeding from the non prevailing party, as well as any reasonable attorneys' fees and costs that the prevailing party incurred prior to commencing the proceeding.

## 15. IP Addresses

Provider maintains control and any ownership of any and all IP numbers and addresses that may be assigned to Client and reserves in its sole discretion the right to change or remove any and all IP numbers and addresses.

## 16. Refunds and Disputes

We have a strict non-refund policy for ALL our web hosting services and domain names.

Overcharges and disputes of billing MUST be reported within 60 days of the time of the dispute. Refunds will be given only at the discretion of Provider.

## 17. Email Policy

There is a 300 outgoing email hourly limit per domain. This limit is also applied towards Mailman. If you send over this amount in any hour, most of the e-mails will bounce back with an undeliverable error. If this occurs, it will then take some time for your account to be able to send again so we recommend waiting at least 1 hour after this issue occurs to begin sending email again.

## 18. Suspension of Account

Provider reserves the right to suspend an account at any time. Reasons for suspension include, but are not limited too, breach of terms of service, unable to contact client, lack of client details being maintained and updated, non payment, overdue payment, excessive CPU usage or any case of fraud.

## 19. Cancellations

An emailed notice needs to be sent to Provider with 7 days notice before the end of the preceding payment period regarding customer's request for cancellation. Please include your domain name and client ID. Either party has the right to terminate this agreement with prior (by end of preceding payment period) written (emailed) notice. If customer wishes to re-instate a cancelled account they may do so within 7 days of cancellation. Customer will be charged \$20.00 per account prior to re-instatement of their account. Once we have received payment, customer's account will be activated within 2 working days.

To initiate the cancellation of your account you need to email us with the following information to us, Attention Billing, [billing@smartrange.co.nz](mailto:billing@smartrange.co.nz)

"I (your name) of (your address) wish to cancel my hosting account (domain name) and (username) with SmartRange Ltd. I am providing you with the required minimum 7 days notice and request that my account be terminated.

My reasons for requesting cancellation of my account are as follows :( please state your reason/s)"

This email needs to be dated and received within 7 days prior to your next billing period and also sent from the owner of the account. For your convenience emails are accepted 24/7/365. Upon receipt of a request for Cancellation Provider will email the account holder and notify them of the scheduled date for termination of the requested account.

Alternatively you may login to your SmartRange Ltd client account and request a cancellation for your product from there.

### **ONLINE ACCOUNT SETUP:**

**By ticking the box: "I have read and agree to the Terms of Service", you agree with all of the above.**

**OFFLINE ACCOUNT SETUP: please sign here and return to us:** \_\_\_\_\_