

Hosting Terms of Service

Wheeler Technology

2026-04-01

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These Hosting Terms of Service govern the monthly web hosting retainer provided by Wheeler Technology to its clients.

1 PARTIES

1.1 Wheeler Technology (Wyatt Wheeler, Sole Trader), of 1/22 Shadwell Place, Saint Heliers, Auckland 1072, New Zealand, email: wyattw@wheeler-technology.co.nz (“we”, “us”, “our”)

1.2 The client identified in the accompanying order form or services agreement (“you”, “your”)

Together, the parties to this agreement are referred to as the “parties” or individually as a “party”.

2 RECITALS

2.1 The Client is acquiring the Services in the course of its business. Both parties acknowledge and agree they are ‘in trade’ for the purposes of the Consumer Guarantees Act 1993 and the Fair Trading Act 1986.

2.2 The parties agree that the Consumer Guarantees Act 1993 does not apply to this agreement or the Services, and each party waives its rights under that Act to the fullest extent permitted by law. The parties contract out of the Consumer Guarantees Act 1993 pursuant to section 43 of that Act.

2.3 The parties contract out of sections 9, 12A, and 13 of the Fair Trading Act 1986 to the fullest extent permitted by law.

3 DEFINITIONS

3.1 In this agreement, unless the context requires otherwise:

- (a) **“Agreement”** means these Hosting Terms of Service together with any accompanying order form or services agreement;
 - (b) **“Client Data”** means all content, data, materials, and information uploaded by the Client to the hosted Website;
 - (c) **“DNS”** means Domain Name System;
 - (d) **“GST”** means goods and services tax chargeable under the Goods and Services Tax Act 1985;
 - (e) **“Infrastructure”** means the underlying server infrastructure provided by the Supplier, including servers hosted in AWS Sydney region and content delivery through BunnyCDN;
 - (f) **“Services”** means the web hosting services described in clause 7;
 - (g) **“Suspension”** means the Supplier’s disabling of public access to the hosted Website while retaining the Client’s data in storage. Suspension does NOT constitute termination;
 - (h) **“Supplier”** means Wheeler Technology (Wyatt Wheeler, Sole Trader);
 - (i) **“Website”** means the Client’s website hosted on the Infrastructure;
 - (j) **“Working Day”** means a day other than a Saturday, Sunday, or public holiday in New Zealand.
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4 COMMENCEMENT AND TERM

4.1 These Hosting Terms of Service commence on the go-live date of your website and continue for an initial minimum term of three (3) calendar months.

4.2 After the minimum term, this agreement continues on a rolling monthly basis until canceled in accordance with clause 15 (Termination).

4.3 The go-live date and minimum term end date will be confirmed in writing to you when your website is first made publicly accessible.

5 FEES AND PAYMENT

5.1 The monthly retainer fee is:

- (a) NZD \$45.00 excluding GST;
- (b) NZD \$51.75 including GST at 15%.

5.2 All fees quoted are exclusive of GST. GST will be added to all invoices at the prevailing rate (currently 15%). The Supplier is registered for GST under number **[GST NUMBER]**. All invoices issued under this Agreement constitute valid tax invoices for the purposes of the Goods and Services Tax Act 1985.

5.3 Fees are invoiced monthly on the go-live anniversary date (or on the 1st of each month for accounts that commenced on other dates).

5.4 Payment is due within seven (7) days of the invoice date.

5.5 Payment must be made by bank transfer to the account details specified on the invoice.

5.6 A GST tax invoice will be issued and sent to your nominated email address.

5.7 We may vary the fees from time to time by giving you at least thirty (30) days' written notice. If you do not accept the variation, you may cancel this agreement within the notice period in accordance with clause 15.2.

6 DOMAIN AND THIRD-PARTY DEPENDENCIES

6.1 The Supplier's hosting service covers hosting infrastructure only. The Client is SOLELY responsible for:

- (a) Maintaining their domain registration and renewal;
- (b) DNS configuration;
- (c) SSL certificate renewals where managed by a third party;
- (d) Any third-party service integrations.

6.2 The Supplier accepts NO liability for downtime, data loss, or service interruption caused by:

- (a) Expiry or misconfiguration of the Client's domain registration;
 - (b) DNS propagation delays;
 - (c) Failure of third-party services integrated with the Website;
 - (d) Actions taken by the Client or any party authorised by the Client.
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7 SERVICE DESCRIPTION

7.1 The monthly hosting retainer covers the following services ("Services"):

- (a) **Web Hosting:** Provision of server space and infrastructure to host your website, making it accessible on the internet, using servers located in AWS Sydney region;
- (b) **Content Delivery:** Content delivery network services through BunnyCDN for optimised delivery of static assets;
- (c) **SSL Certificate:** Installation and renewal of SSL certificates to ensure your website is served over HTTPS;
- (d) **Security Monitoring and Patching:** Regular monitoring for security vulnerabilities and application of security patches to maintain website security;
- (e) **Software Updates:** Updates to content management systems, plugins, themes, and other software components used by your website to ensure they remain current and secure;
- (f) **Technical Support:** Up to two (2) hours of technical support per calendar month for queries related to your hosted website.

7.2 Technical support does not include:

- (a) Development of new features or functionality;
- (b) Significant design changes or rebuilds;
- (c) Data recovery beyond reasonable endeavours;
- (d) Support for third-party services or integrations not originally implemented by Wheeler Technology;

(e) Support for websites or content not hosted by Wheeler Technology.

7.3 The Client acknowledges that the Infrastructure uses servers located in Sydney, Australia (AWS Sydney) and content delivery services provided by BunnyCDN (an offshore provider). The Client consents to the storage and processing of their data on servers located outside New Zealand for the purposes of this Agreement.

8 LATE PAYMENT AND SUSPENSION

8.1 If payment is not received by the due date, the following escalation process applies:

Day	Action
Day 8	Friendly reminder sent via email
Day 14	Formal written notice issued, setting out the overdue amount and requesting payment within 7 days
Day 28	Final written suspension notice issued, advising that hosting will be suspended if payment is not received
Day 30	Hosting services suspended

8.2 Definition of Suspension: For the purposes of this Agreement, “Suspension” means the Supplier’s disabling of public access to the hosted Website while RETAINING the Client’s data in storage. Suspension does NOT constitute termination.

8.3 Data Retention During Suspension: The Supplier will maintain the Client’s data during suspension up to thirty (30) days from the suspension date. If the account is not reinstated within thirty (30) days of suspension, the Supplier may treat the account as terminated and apply the post-termination data deletion provisions in clause 15.6.

8.4 If your hosting is suspended due to non-payment:

- (a) We will endeavor to restore hosting within 24 hours of receiving full payment of all outstanding amounts;
- (b) You remain liable for all fees accrued during the suspension period;

- (c) The Supplier accepts no liability for loss of business, revenue, or reputation arising from a suspension imposed due to non-payment.

8.5 We reserve the right to charge a reasonable reconnection fee to restore services following suspension.

9 SERVICE LEVELS

9.1 We will use reasonable endeavours to maintain continuous availability of your website, but we do not guarantee 100% uptime. No Service Level Agreement (SLA) is provided under this Agreement.

9.2 We are not liable for downtime caused by:

- (a) Scheduled maintenance, provided we have given you at least 48 hours' notice where practicable;
- (b) Emergency maintenance required to address critical security vulnerabilities or equipment failures;
- (c) Factors outside our reasonable control, including but not limited to internet service provider failures, DDoS attacks, or third-party infrastructure issues;
- (d) Issues with your website's own code, plugins, or configuration;
- (e) DNS propagation delays or domain expiry;
- (f) Failure of third-party services or integrations.

9.3 We will endeavor to schedule non-urgent maintenance during off-peak hours and will provide advance notice where practicable.

9.4 "Emergency maintenance" means maintenance required to address:

- (a) Critical security vulnerabilities being actively exploited;
 - (b) Hardware or infrastructure failures affecting service availability;
 - (c) DDoS attacks or other malicious activity targeting your website.
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10 ACCEPTABLE USE POLICY

10.1 You must not use the hosting services to host, display, distribute, or promote any Prohibited Content.

10.2 Prohibited Content includes WITHOUT LIMITATION:

- (a) Adult or sexually explicit material;
- (b) Unlicensed financial services, investment advice, or cryptocurrency promotion;
- (c) Gambling or wagering services without applicable regulatory approval;
- (d) Content promoting illegal activity;
- (e) Content that infringes third-party intellectual property rights;
- (f) Spam or bulk unsolicited communications infrastructure;
- (g) Malware, phishing, or fraudulent content;
- (h) Pyramid schemes, multi-level marketing schemes, or similar;
- (i) Any content that would breach the Supplier's upstream provider (AWS, BunnyCDN) terms of service.

10.3 If we reasonably believe that your use of the hosting services breaches this clause, we may immediately suspend your hosting without notice.

10.4 We will endeavour to notify you promptly if we become aware of a suspected breach, but are not obligated to do so if doing so would compromise security or exacerbate the issue.

10.5 Supplier may terminate this Agreement IMMEDIATELY without notice or refund upon discovery of Prohibited Content.

10.6 The Client indemnifies the Supplier for any costs, penalties, or account actions imposed by upstream service providers arising from Client's Prohibited Content.

11 YOUR OBLIGATIONS

11.1 You agree to:

- (a) Keep your contact details current and notify us promptly of any changes;
 - (b) Pay all invoices by the due date;
 - (c) Maintain your domain registration, DNS configuration, and any third-party integrations;
 - (d) Ensure that any content you upload to your website is lawfully hosted and does not contain malicious code;
 - (e) Maintain backups of your own content and data, as specified in clause 13 (Data and Backups);
 - (f) Not exceed the resource limits of your hosting plan (we will notify you if limits are approaching);
 - (g) Not use the hosting services for any illegal purpose.
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12 INTELLECTUAL PROPERTY

12.1 All website code, design, and content created specifically for your website (“Foreground IP”) is governed by the terms of your Client Services Agreement with Wheeler Technology.

12.2 Hosting services do not affect the ownership of intellectual property as set out in your Client Services Agreement.

12.3 We retain all rights to our underlying frameworks, tools, methodologies, and know-how used in providing the hosting services.

12.4 You retain all rights to your content, data, and materials uploaded to your website.

13 DATA AND BACKUPS

13.1 We will maintain reasonable backup copies of your website data to protect against data loss.

13.2 Backups are performed on a regular schedule, but we do not guarantee that backups will be available or complete.

13.3 You are responsible for maintaining your own copies of all content, data, and materials that you upload to your website.

13.4 We are not liable for any loss of data beyond our reasonable endeavours to restore data from backups.

13.5 Upon request (and payment of any applicable fees), we can provide a copy of your website files and database. We will endeavour to fulfil such requests within 7 business days.

14 TECHNICAL SUPPORT

14.1 Up to two (2) hours of technical support per calendar month are included with your retainer.

14.2 Support requests should be submitted via email to wyattw@wheeler-technology.co.nz.

14.3 Support is available during business hours (Monday to Friday, 9:00am to 5:00pm NZST), excluding public holidays.

14.4 Unused support hours do not roll over to subsequent months.

14.5 Support requests requiring more than the included hours will be quoted at an agreed hourly rate before work commences.

14.6 We will endeavour to respond to support requests within 2 business days.

15 TERMINATION

15.1 After the minimum term, either party may terminate this agreement by giving thirty (30) days' written notice to the other party.

15.2 If we vary the fees under clause 5.7 and you do not accept the variation, you may cancel this agreement by giving written notice within the notice period. The cancellation takes effect on the date the variation would have commenced.

15.3 We may terminate this agreement with immediate effect by written notice if:

(a) Payment of any amount due is more than thirty (30) days overdue;

(b) You breach the acceptable use provisions in clause 10;

- (c) You become insolvent, enter into receivership, or have a liquidator appointed;
- (d) You cease to carry on business;
- (e) Prohibited Content is discovered on your Website.

15.4 Upon termination:

- (a) You must pay all outstanding fees up to the date of termination;
- (b) We will provide you with a copy of your website files and database within 7 business days of receiving your written request (we may require payment of a reasonable fee for this service).

15.5 After providing the copy under clause 15.4(b), we may delete all data and backups associated with your account.

15.6 If you do not make arrangements for your website to be migrated or hosted elsewhere within thirty (30) days of termination, we reserve the right to delete your website and all associated data.

15.7 Our obligation to host your website ceases on the termination date.

16 LIABILITY

16.1 Consequential Loss Exclusion: To the fullest extent permitted by law, the Supplier is not liable for any:

- (a) Loss of revenue, profit, or anticipated savings;
- (b) Loss of business, contracts, or commercial opportunities;
- (c) Loss of data or cost of data recovery;
- (d) Business interruption;
- (e) Reputational damage;
- (f) Any indirect, consequential, or special loss whether or not foreseeable;

whether arising from contract, tort (including negligence), equity, or otherwise, even if the Supplier has been advised of the possibility of such damages.

16.2 Liability Cap: Subject to clause 16.4, the Supplier's total aggregate liability arising from or connected with this Agreement, whether in contract, tort (including negligence), equity, or otherwise, is capped at three (3) months of retainer fees (\$135.00 NZD excluding GST).

16.3 Clauses 16.1 and 16.2 do not apply to:

- (a) Fraud or wilful misconduct;
- (b) Death or personal injury caused by negligence;
- (c) Breach of confidentiality obligations;
- (d) Breach of intellectual property obligations;
- (e) The Client's indemnification obligations under clause 10.6.

16.4 The limitations in clauses 16.1 and 16.2 are cumulative. Where a provision of this Agreement is found to be void or unenforceable but would be valid if some part of it were deleted or modified, that provision shall apply with such deletions or modifications as necessary to make it valid and effective.

16.5 We are not liable for any failure or delay in providing services to the extent caused by:

- (a) Your acts or omissions;
- (b) Third-party infrastructure providers, including hosting providers, domain registrars, and CDN providers;
- (c) Force majeure events as described in clause 19.

16.6 You indemnify us against all claims, losses, damages, and expenses arising from your breach of this agreement, including any illegal or prohibited content hosted on your website.

17 PRIVACY

17.1 We collect, use, and disclose your personal information in accordance with our Privacy Policy and the Privacy Act 2020.

17.2 Our Privacy Policy is available at wheeler-technology.co.nz/privacy-policy.

17.3 You must ensure that you have all necessary consents and rights to collect and disclose personal information to us for the purposes of providing the Services.

17.4 The Client acknowledges and consents to the storage and processing of Client Data on servers located in Australia (AWS Sydney) and through offshore content delivery services (BunnyCDN) as described in clause 7.3.

18 DISPUTE RESOLUTION

18.1 Any dispute arising out of or in connection with this Agreement shall be subject to the following dispute resolution process:

- (a) The parties shall first attempt to resolve the dispute through good faith negotiations;
- (b) If the dispute cannot be resolved through negotiation within twenty (20) Working Days, either party may refer the dispute to mediation;
- (c) If the dispute cannot be resolved through mediation within thirty (30) days, either party may commence proceedings in the Disputes Tribunal of New Zealand or, if the claim exceeds the Tribunal's jurisdictional limit, the District Court or High Court.

18.2 The jurisdiction of the Disputes Tribunal is acknowledged to be \$60,000 NZD as of 1 January 2026.

18.3 Nothing in this clause shall prevent either party from seeking urgent interlocutory relief from any court of competent jurisdiction.

19 FORCE MAJEURE

19.1 Neither party is liable for failure to perform obligations if that failure is caused by a force majeure event, including war, terrorism, natural disaster, epidemic, pandemic, government action, or failure of third-party infrastructure.

19.2 The affected party must notify the other party promptly of the force majeure event and its expected duration.

19.3 If a force majeure event continues for more than thirty (30) days, either party may terminate this agreement by written notice.

20 CONSUMER GUARANTEES ACT AND FAIR TRADING ACT

20.1 The parties acknowledge that they are “in trade” for the purposes of the Contract and Commercial Law Act 2017 and the Consumer Guarantees Act 1993 does not apply to this agreement or the Services.

20.2 Both parties warrant that they are acquiring the Services for business purposes and agree to exclude the Consumer Guarantees Act 1993 to the fullest extent permitted by law.

20.3 The parties contract out of sections 9, 12A, and 13 of the Fair Trading Act 1986 to the fullest extent permitted by law.

21 GOVERNING LAW

21.1 This agreement is governed by and construed in accordance with New Zealand law.

21.2 The parties submit to the exclusive jurisdiction of the courts of New Zealand, being the courts of Auckland.

22 ELECTRONIC EXECUTION

22.1 This Agreement may be executed electronically and in counterparts, each of which shall constitute an original.

22.2 An electronic signature, including a typed name in an email confirmation, shall be deemed a valid signature for the purposes of this Agreement and the Contract and Commercial Law Act 2017.

23 ENTIRE AGREEMENT

23.1 This Agreement constitutes the entire agreement between the parties and supersedes all prior representations, negotiations, and understandings.

23.2 No variation of this Agreement is effective unless made in writing and signed by both parties.

23.3 No course of dealing, custom, or practice shall be relied upon to vary the terms of this Agreement.

23.4 For the avoidance of doubt, Part 2 of the Contract and Commercial Law Act 2017 (electronic contract formation) is excluded.

23.5 This agreement, together with your Client Services Agreement, constitutes the entire agreement between the parties.

24 GENERAL PROVISIONS

24.1 If any provision of this agreement is held to be invalid or unenforceable, that provision is severed and the remaining provisions continue in full force.

24.2 Neither party may assign or transfer this agreement without the prior written consent of the other party.

24.3 Notices under this agreement must be in writing and sent to the email addresses specified in your Client Services Agreement (or as updated by written notice).

24.4 A waiver of any right or remedy must be in writing and signed by the waiving party.

24.5 This agreement may be amended only by written agreement signed by both parties.

24.6 This agreement is binding on and enures for the benefit of each party's successors and permitted assigns.

[End of Hosting Terms of Service]