

NITRO IT – TERMS OF SERVICE

Nitro IT will hereby be referred to as "we", "us", or "our". The customer will be referred to as "customer", "you", "client", "account holder", "primary account holder" or "I".

1. Account Setup

a. Eligibility. Our services are available only to, and may only be used by individuals & businesses that can form legally binding contracts under applicable law. Without limiting the foregoing, our services are not available to children (persons under the age of 18) or to temporarily or indefinitely suspended customers or customer's users. If you are under the age of 18, you can use this service only in conjunction with, and under the supervision of your parents or guardians. If you do not qualify, please do not use our services.

b. We are a self service provider. The customer will manage their own account using the tools we have provided. We will setup your account after payment has been received & cleared, and our payment partner(s) have screened your order in case of fraud. You may be requested to provide proof of your identity and payment. If paying by credit card, we may require you to email a copy of the front and back of the card to info@nitro-it.com.au before your account is activated. If this information is not provided, we reserve the right to terminate all services on your account without refund. Please provide us with an email address which is not at the domain you are signing up under.

c. Duplicate accounts should not be created. If you have created a duplicate account, these accounts can be merged into one management account. If however, duplicate accounts have been created for personal/business purposes (i.e.: One for personal, one for business) then this is permitted, however support issues must be raised within the relevant account they are for (e.g.: You cannot raise a support issue for one account from within another account)

d. Only the authorised person listed on the account, entered at signup will have access to the account, and they will be referred to as the 'primary account holder'. The primary account holder will be issued with an email address and password which is required to access our "Client Area/My Account Portal" for billing and technical support. You are required to login before we engage your account. Requests received from your account once logged in, will be deemed to have come from the primary account holder. Requests not sent from your primary email account may not be responded to and may be deleted without notice. Please ensure you never give out your login details to anyone and that when contacting us, you ensure you do so from your primary email account that you used when signing up. We may also verify your identity by asking security questions, as required by the privacy laws in Australia. The client agrees to provide this information before assistance can be provided to them. The primary account holder also agrees to keep their contact information up to date at all times.

e. If you wish to change the legal ownership of a whole account (and/or any of the products and services under it) there is a \$30.00 inc GST charge for the administration work involved. To facilitate the transfer, the primary account holder needs to complete a Change of Account Ownership Request. Please allow 5 working days for a transfer of legal ownership

on the account. Changing the legal ownership of an account does not include updating the legal registrant information for an .au domain name. Doing this will incur additional fees

f. If you exceed the predefined limits of your hosting package, and utilise extra resources that have not been paid for or do not form part of your plan, we reserve the right to charge you for the extra resources used from the initial date of usage until the present day.

g. If you wish to change or alter your billing cycle, it is important that you provide us with 10 days notice prior to your service being re-invoiced for your previous nominated billing period. Failure to contact us 10 days prior will result in your service being re-billed for the existing period set on your account.

h. We may suspend or cancel an account or order if we find customer information is false or inaccurate.

i. You agree to inform us within five days of any changes occurring or risk being in breach of this agreement.

2. Content

a. All products and services provided by us may only be used for lawful purposes. We do not allow copyright material, material we judge to be threatening or obscene, or pornographic material to be hosted on our servers. The customer agrees not to host such material.

b. The customer agrees to indemnify, defend and hold harmless Nitro IT from any claims resulting from the use of our products or services in any shape or form. We do not endorse any web site content hosted on our network and the content remains the property of the primary account holder. If you wish to lodge a complaint against a web site, please email us at info@nitro-it.com.au.

c. Examples of unacceptable material that is prohibited, includes:

- IRC Bots
- Warez Sites
- Defamation of person's character
- Pirated Software
- Running processes which cause the server to crash or become non-responsive
- Illegal or pirated sites, content or software (including illegal torrents)
- Breaching copyright and trademarks
- Proxy servers or other servers Hate sites
- Pornographic sites
- MUD applications
- Hack programs and archives
- Spamming related sites or sites that send / relay spam email
- Extremist's sites

- Phishing sites
- Online Gambling Sites
- Other sites where formal complaints are received
- Sites where we are placed 'on notice' or where legal action will be taken against us for hosting a web site, with supporting evidence.
- Sites which have been hacked and/or run malicious scripts

d. If your web site or hosting service is suspended and/or hosts any of the unacceptable material mentioned above, we reserve the right to charge a clean-up fee for the administration time involved to attend to your account and update you on the issue at the standard rate of \$60.00 inc GST per hour (minimum 1 hour). You will be responsible to resolve the issue and rectify the issue after we inform you of the breach.

3. Resource Usage

- a. Users may not initiate the following:
- Use 25% or more of system resources for longer than 90 seconds. There are numerous activities that could cause such problems; these include: CGI scripts, scripts, FTP, PHP, HTTP, Mail, MySQL etc.
 - Run any type of interactive real-time chat applications that require server resources. Remotely-hosted services are fully allowed. Run stand-alone, unattended server-side processes at any point in time on the server. This includes any and all daemons, such as IRCD.
 - Run any software that interfaces with an IRC (Internet Relay Chat) network.
 - Run any gaming servers such as counter-strike, half-life, battlefield1492, etc unless otherwise specified within your hosting agreement with us.
 - Any activity which causes the server to crash and/or restart
 - Check their email more than every 5 minutes
- b. We reserve the right to suspend and/or terminate any account found utilising/abusing the above items.

4. Zero Tolerance Spam & Leeching Policy

a. We take a zero tolerance stance against sending of unsolicited email, bulk emailing, and spam. "Safe lists" and "double option" will be treated as spam. We reserve the right to require changes or disable as necessary any web site, account, database, or other component that does not comply with this policy, at its sole discretion. We also reserve the right to make any such modifications that are urgent at our sole discretion without notifying you.

b. We reserve the right to charge the customer of the account used to send any unsolicited email a clean up fee. This cost of the clean up fee is left entirely to the discretion of us, calculated by the number of messages sent, administration time and removal of spam blocks from external networks. This will be based on our typical hourly rate of \$60.00 inc GST.

5. Backups and data loss

a. The backup function in your control panel uses high server resources and may cause the server to become less responsive, affecting the web site performance for other users. You agree to only perform backups of your site (databases, web space, etc) using the backup function in your hosting control panel between the off peak hours of 11.30pm Australian Eastern Standard Time to 7am Australian Eastern Standard Time). Using the backup function outside of these times may result in your account being suspended.

b. Your use of our products and services is at your sole risk. We are not responsible for files and data residing on your account. You agree to take full responsibility for files and data transferred and to maintain all appropriate backup of files and data stored on our servers at all times.

c. We are not liable for any data loss due to server failure, any other failure whatsoever, or unforeseeable corruption of programs, hacking, etc. The client should always have a backup or storage of data that is not corrupted and is available to be used if necessary. If you perform updates to your site, pages, emails etc and for some reason or another data loss is experienced, it is up to you as a client to ensure you performed your own backup beforehand. **We cannot stress this enough.**

d. We provide backup tools in your control panel which will allow you to perform backups of your account during off-peak hours only, or you can always download your web site files from our servers for external storage at any time.

e. We do perform backups of our own servers. These backups are for internal archive use only, such as major disaster recovery or catastrophic failure. Should a server fail to the point where we are required to use these backups, please bare mind that our backups may not be as up-to-date as your data. Once again, we hold no responsibility for your data, data loss or any issues that may occur with these backups and it is your own responsibility to ensure you have your own backups available, should one need to be restored for any reason.

6. Support

a. If the customer is experiencing difficulties or issues with our hosting, you are required to notify us of the issue immediately, so we may resolve the issue. If you do not notify us of the problem, no allowances will be made, as we have not been given a reasonable opportunity to resolve the issue. We are an Internet Presence Provider (IPP) and are not responsible for the users Internet Connectivity through their Internet Service Provider (ISP), connection troubleshooting or computer setup. Please contact your ISP for assistance in these matters. You must allow a reasonable time period for your issues to be resolved.

b. Live assistance is not always available 24/7 and should not be relied upon as a primary form of technical support. As such, if you require any technical support, it is

suggested and preferred that a support ticket be lodged via our client area. This ensures that our technical team will receive your request and respond as quickly as possible.

c. Live chat is subject to staff availability and a 5 minute idle time. If you choose to utilise our live chat facility, please take into account that we may close/cancel a live chat session if an idle time of 5 minutes or more is experienced. If you choose to log onto live chat, you must respond to our operator within 5 minutes otherwise we may close/end the chat session.

d. For each issue with your account, a separate support ticket must be logged. When logging support tickets, it is important and vital that you provide us with:

- Details as to the issue you are experiencing.
- Details of any error messages you are receiving (if any)
- Username and password details to the account that is experiencing the issue
- What steps you may have taken to check this issue further (if possible)

Failure to provide enough information may result in your support ticket being rejected or assistance taking longer than normal.

e. Regardless if an issue has been mentioned in a previous ticket, it should all be logged as separate tickets so we can accurately track the status of your account and the work performed to it. This is also required as a method of being able to see what work has been performed to your account over time as well as an audit trail to compare with.

This also matters on a legal standing, that should details of your account and its work be called up by a legal team at any time, we are able to produce such details upon legal request.

f. We can only offer limited support on this software purely because although it may be a part of a package offered, such as Fantastico or cPanel, we cannot offer direct technical support on it. It is suggested that you contact the software developer or your website developer for assistance on your chosen software product for support and advise if you experience technical issues.

g. Under our support, we do however cover issues such as:

- Limited advice on how to resolve some issues.
- Details of what an error may be related to.
- Limited server or service reconfiguration (if found to be a direct issue with our configuration, not an issue with your configuration)
- What steps you may have taken to check this issue further (if possible)
- Issues with cPanel, WHM or the physical server software that publishes your WebPages.

Under our support, we do not cover issues such as:

- Development or coding issues
- Modifications, upgrades or migrations
- Reconfigurations to your chosen system to work with our systems

h. Most software products will work on our server systems and require very little adjustment. If in doubt, check the system requirements and request technical support from the software developers or your website developer.

i. Any work we do carry out on your website software to do with upgrades, modification installations, migrations or coding issues may be subject to a "Workshop Labour" charge, as it falls under "Web Development" and is not covered by our standard hosting agreement. Such labour will be charged at our standard rate of \$60.00 inc GST per hour.

j. Products we will cover with our technical support are:

- cPanel/WHM
- PHP, Apache, MySQL, PostgreSQL, TomCat
- Operating System Issues
- RVSiteBuilder
- General Fantastico issues (does not apply to software that is installed by Fantastico)

k. Technical support is available 24 hours a day, 7 days a week, 365 days a year, however, not all contact methods are operated 24 hours a day. Effectively, our email support is available 24 hours a day, with phone support available at various time points throughout these 24 hour cycles. Not all methods are available at once. Should you consider your matter urgent, you may choose to phone us 24 hours a day for assistance.

l. If you have any questions about what we cover or don't cover, feel free to lodge a support ticket with us and we will provide you with more information.

7. Security

a. We may introduce new security measures from time to time to help prevent malicious use and attacks on and to our servers. This includes regular maintenance and upgrades to our server/s and its software.

b. Upon signup to our services, it is important that all customers understand our security measures, including our security verification methods. This includes providing us with a security password verification method. These methods are in place to protect you, the customer, whereas we can easily indentify you should any information need to be disclosed regarding your account.

8. Security Password Policy

- a. It is important that you select a security password that you can easily provide to us to verify your account, should you contact us regarding important information or changes to your account.
- b. We recommend that you use a security password or identification method that you can remember but that no-one else knows. Security passwords with a combination of numbers, characters and upper case and lower case letters are best.
- c. All details provided to us are stored and encrypted securely on our networks and are not linked to any of our services in any way. These details remain strictly confidential and shall not be provided to any other company or third party without written permission and identification from the owner or under circumstances where a legal requirements needs to be met, such as a court order or magistrate request.
- d. Passwords that use profanity, explicit words or of any offensive nature may result in having your order rejected, account cancelled or suspended at our discretion.
- e. We reserve the right to decline security passwords if they do not meet the standards as outlined in this document.
- f. If you do not agree to any of our security methods in place, we request that you do not place an order with us as these methods are part of our strict policy put in place to protect our clients.

9. Payment

- a. All new orders are required to be paid immediately and invoices hold a 24 hour due period. Invoices not paid immediately will be sent reminder notices and may subsequently be issued with a late fee if not paid within 5 days. If you have placed a new order and wish to cancel the order, no payment will be required and the order will be cancelled.
- b. All invoices for current clients are created 10 days prior to your signup anniversary date and are due within the 7 day period as outlined on the invoice.
- c. The customer agrees to supply full payment for the services received from us, on or before the time period during which such services are provided. You agree that until and unless you notify us of your desire to cancel any or all services received, those services will be billed on a recurring basis. If you want to cancel your account, you must Contact Us 7 days prior to your anniversary date of subscription.
- d. We reserve the right to change the advertised price on products and services and any other charges at anytime. Existing customers will be notified prior to any change in their billing cycle charges if this occurs.

e. All goods and services purchased for which payment has not been received in cleared funds, remains the property, internet property and intellectual property of us.

f. Your account will not be created until funds have been received in full as cleared funds. It is your responsibility to ensure we have received funds by the due date to avoid suspension and/or termination of our products and services. If you have made an over payment on your account and require a refund, you will receive a refund, minus a \$10.00 administration charge, to cover our bank fees and company administration. We may remove any accounts for which payment has not been received.

g. We reserve the right to change and refuse payment methods to clients at our sole discretion. If payment is not received 5 days after the invoice due date, we reserve the right to charge a late payment fee of \$15.00 and suspend your account.

h. Dishonoured cheques will attract an administration charge of \$30.00.

i. If the client account is unpaid after 14 days, we reserve the right to allow a debt collection agency to obtain information to recover the debt. Your information may also be given to legal practitioners and credit agencies if proceedings are initiated. All fees and charges incurred by these proceedings will be added to the overdue amount and are required to be paid.

j. We shall continue to rebill a suspended account as normal notwithstanding that you may not be able to access any products or services.

10. PayPal Payments

a. If you have signed up using a PayPal subscription, your PayPal account will be rebilled on the due date of future invoices. Our system generates and emails you an electronic invoice when your service is due for renewal. Should you cancel your service with us, it is your responsibility to ensure you cancel the subscription via PayPal. If you do not process the cancellation with PayPal or Paymate, you will continue to be charged automatically by these services. Should you then require a refund due to ongoing payments; a \$10 administration charge will apply to cover costs in processing the refund.

11. Credit Card payments

a. If you have signed up using credit card, your credit card will be automatically be rebilled each billing cycle for your account. Our system generates an electronic invoice 10 days prior to your package renewal date which will automatically charge your credit card within 72 hours of the invoice generation. By selecting credit card payment on signup, you agree to these terms. If you do not agree to this occurring, we suggest you do not select credit card payments and you should select an alternate payment method.

b. Please ensure sufficient funds are available on the due date. If rebilling fails due to insufficient funds in credit card account, we reserve the right to add \$10.00 per failed

transaction to your account, to cover our transaction fees. We also reserve the right to change your billing method from automatic credit card payments to manual payments, where the user is required to login and make payment.

c. You understand and agree that you have obtained the credit card owner's permission to use the credit card to purchase our products and services and they are aware, accept and agree that the transaction is taking place on their card.

d. If a charge back is requested where services have been provided and/or you have not followed our cancellation procedure, a \$50.00 administration fee applies per chargeback request.

12. Credit Terms

a. By default, all accounts are invoiced 10 days prior to the anniversary of your signup. These invoices are to be paid within the 10 days. If they are not paid within the 10 days, they will fall into overdue, where at any time, we reserve the right to suspend your account due to non-payment. We do not provide credit terms unless formally agreed in writing and the appropriate credit checks are performed.

All invoices are due at time of order or 10 days if service is active.

13. Package changes

a. From time to time, we may update our hosting package plans. Customers on previous plans will not be automatically upgraded to the newest version of the plan. Customers on previous plans will keep the features of their current hosting package. If a customer wishes to upgrade to the newest plan, a \$10.00 administration fee will apply. Your hosting account may also need to be transferred to another server to take advantage of the newer features.

Packages are up-to-date as of 25 August 2009

14. Suspension

a. We reserve the right to suspend your account if you have an outstanding invoice/account, your account is in dispute, or if you are in direct violation/breach of any of the terms disclosed in this agreement.

b. If your invoice or account remains unpaid, or until the dispute is resolved, we reserve the right to cancel or suspend your entire account(s) and all products and services under it. If your account has been suspended or cancelled, no further support resources will be provided by us in relation to products and services on your account, including domain names, web hosting or SSL certificates until the account has been paid in full.

c. We reserve the right to pass your information onto a collections agency for debt recovery, if for 14 days your account remains unpaid.

d. We reserve the right to suspend your account at any time for breaching our terms and conditions, for initiating in activities which may reduce the security of other web sites on our servers, or where we have been given misleading or false information regarding the type of web site to be hosted or the customer information provided has been inaccurate or false.

e. We may investigate to recover any outstanding debts.

15. Cancellation

a. We reserve the right to cancel your account at any time. If your account has been terminated or suspended for breaching our terms and conditions, non-payment or where a formal complaint is received, no refunds will be given, and you will forfeit your money back guarantee.

b. Any proof of misleading, giving false information, abuse, swearing, extortion, harassment, improper conduct, attempting to damage relations, reputation or goodwill of ours, or attempting to damage relations of our employees, third party providers, and wholesaler providers will lead to automatic cancellation of your account without refund, and your money back guarantee will be forfeited. You agree you will not damage relations, reputation or goodwill with our current, future and prospective clients. This can be by email, live chat, forums, web sites, telephone and may include threatening, attempting to damage business relations or reputation, providing incorrect information, extortion, harassment, improper conduct, abuse, swearing, publishing and distribution of any communication between you, employees, third party providers or wholesaler providers, or other unlawful activities. We also reserve the right to seek and claim damages and losses.

c. How to cancel your account: To cancel your account or products and services on your account, please submit a cancellation request via your Client Area->My Services->View Details->Cancellation Request.

d. You must provide a minimum of 7 days notice prior to your product/service renewal date if you do not wish your product/service to be renewed. This includes the cancellation of product licences issued by us. When cancelling your account, you are able to either select immediate cancellation or cancellation at the end of your billing period. Please note that immediate cancellations will be processed immediately, and as such, your account on our server will be terminated immediately. If you do not wish for this to occur, you are required to select the alternative cancellation option. If you have any questions regarding the cancellation process, please contact us via email at info@nitro-it.com.au

e. Once you have cancelled your account, no further support resources will be provided by our staff in relation to products and services on your account, including domain names, web hosting, SSL certificates etc. We will not engage, discuss or alter your account in any way once your account has been cancelled.

f. No refunds or credit will be given if you cancel your account or downgrade to a lower package. If you have a credit on your account to be refunded, a \$10.00 administration charge applies. If you have a subscription enabled with PayPal, you must cancel this subscription yourself. Failure to do so will result in payments continuing to be automatically debited from your nominated account or credit card. Refunds of these payments can be issued however they will incur a \$10.00 administration charge to cover our company administration and various fees. All refunds will be processed within 7 days and may take up to 10 days to appear in your account.

g. Domain names, SSL certificates, Parallels licences (including Plesk, Virtuozzo & Sitebuilder) and other hosting account add-ons are non-refundable.

h. If your account with us has been terminated due to unpaid accounts, and would like to reactivate your account, a \$30.00 Inc GST administration fee will apply to cover the administration time involved in recreating your account and updating our billing system, including a new invoice for the desired billing cycle being issued for continued service on the account.

i. If your account remains unpaid for a period of 14 days, we reserve the right to terminate your account at our discretion.

j. If you have filed a cancellation request but have failed to provide the above notice required, any outstanding invoices will still be required to be paid. Failure to pay any outstanding amounts may result in your account being referred to our legal team for recovery, to which you will be liable for all costs incurred to do so. If within our 30 day money back guarantee period, this is further explained below.

k. If you are within the 30 day money back guarantee period and wish to file a refund request, please do so as outlined in Section 18.

l. After your cancellation is complete, we will still retain information regarding transaction history, account history, ticket information and other account related information for taxation, administrative and legal purposes for a minimum period of 7 years. This information will be held in accordance with our Security and Privacy policies at all times and will not be released unless required by law in the form of a court order or magistrate request.

m. If you wish to re-activate or re-establish a service to which you cancelled with us via a Cancellation Request, an administrative fee of \$30.00 Inc GST will apply to cover the administration time involved in recreating your account and updating our billing system, including a new invoice for the desired billing cycle being issued for continued service on the account. In order to reactivate a service, you must open a ticket with our Accounts Department requesting this. Any previous pricing would not be valid and the invoice would be subject to the current pricing at the time of re-activation.

n. It is your responsibility to cancel your service with the required notice as specified above. Should the notice not be provided 7 days prior to your anniversary date as requested, it will automatically be determined that you wish to continue service for the further billing

cycle selected on signup and your service will automatically be renewed and invoiced for the selected billing period, being that of monthly, quarterly, semi-annually or annually.

16. Bandwidth Usage / Disk Space

- a. It is your responsibility to upgrade your account and monitor your account usage.
- b. You are allocated a monthly bandwidth allowance. This allowance varies depending on the hosting package you purchase. Should your account pass the allocated amount you will be required to upgrade to the next level plan of bandwidth usage and/or disk space for increased limits. It is the customer's responsibility to ensure they do not exceed their assigned limits.
- c. Our system will automatically suspend your account if you exceed all of your allocated resources. We reserve the right to suspend the account until the start of the next allocation or until you upgrade to a higher level of package, terminate the account and/or charge you an additional fee for the overages.
- d. Unused bandwidth transfer in one month cannot be carried over to the next month.

17. Price Change

- a. We reserve the right to change prices listed on our web site, and the right to decrease or increase the amount of resources given to plans. Customers will be notified by email before any price changes are implemented to their account. It is your responsibility to ensure your email address listed in our billing system is functional and working and can accept email from us.

18. Money Back Guarantee

- a. If you find that you are not completely happy with your service provided by us within 30 days of initial signup, you may contact us by email to request a full refund for services (excluding domain registration fees, SSL Certificate fees and any outstanding amounts owing)
- b. Money back guarantee does not apply if you have been a client of ours previously or if you are an existing client.
- c. From time to time, we may query a client regarding their reasons for cancellation. By signing up with us, you agree that we may query your reasoning for cancellation. The information obtained from these questions will only be used as reference information for quality and training purposes so as we can determine improvements required for our services.

d. Money back guarantee does not apply if your service/s is/have suspended or terminated due to breach of our terms of service.

e. Money back guarantee does not apply if you are providing 24 hours notice cancellation prior to your renewal order due date.

19. Abuse Policy

a. We have a very strict abuse policy in place. As such, any abuse towards our staff will not be tolerated and any client, contact or contractor of the client, or authorised representative of the client found abusing or disrespecting any of our staff members may have their hosting account and/or services suspended or cancelled without notice.

b. Examples of unacceptable abuse:

- Swearing towards or at our staff and/or our associates
- Any disrespectful or defamatory comments against or towards our staff (this includes libel)
- Any form of abusive written or verbal communication with our staff

c. Any client found performing any form/act of abuse towards our staff or any of its contractors or associates in accordance with the above policy is immediately subject to either cancellation or suspension of their hosting account/services with us. As such, if we nominate to cancel/terminate hosting, we will do so at our own discretion without notice and as such, your data can and is subject to complete removal from our server without any notification. No refunds or credits will be provided under these circumstances.

d. Any client found in breach of this abuse policy will be requested to Cease and Desist their actions immediately. Should actions continue upon our request to Cease and Desist, legal action may be sought against the client and all costs in doing so will also be sought upon commencement of legal action.

20. Publish and author of website

a. We do not create or publish web sites and are not the publisher or author of any web site that you host or create. As the publisher, author, or reseller, it is your responsibility to ensure your web site(s) do not breach our Terms of Service or interfere with the server functions for other users.

b. If your site, content or actions interferes with server functionality, causes network connectivity issues or attracts any form of distributed denial of service attacks (collectively, a "service disruption event") whether on purpose or otherwise, then we reserve the right to charge you for cleanup fees, loss of revenue and other direct expenses caused by the service interruption event as applicable.

c. We reserve this right irrespective of whether you have explicit knowledge of the service interruption or not. It remains entirely your responsibility not to host content that may have the potential to cause service interruption events.

d. From time to time, a client that experiences difficulties in publishing their web site or troubleshooting technical problems may request that we publish their website on their behalf. In this instance we do not become the web site publisher or author as we are making these changes by instruction of the Primary Account Holder and/or authorised representatives of the account holder. By accessing any web site hosted on our network or servers, you understand, agree and are bound by this agreement.

21. Indemnification

a. Customer agrees that it shall defend, indemnify, save and hold us harmless from any and all demands, liabilities, losses, costs and claims, including reasonable attorney's fees asserted against us, its agents, its customers, officers and employees, that may arise or result from any service provided or performed or agreed to be performed or any product sold by customer, its agents, employees or assigns. Customer agrees to defend, indemnify and hold us harmless against liabilities arising out of; (1) any injury to person or property caused by any products sold or otherwise distributed in connection with our hosting; (2) any material supplied by customer infringing or allegedly infringing on the proprietary rights, legal and/or civil rights of a third party; (3) copyright infringement and (4) any defective products sold to customers from our servers. We do not guarantee uptime.

By accessing any web site hosted on our network or servers, you understand, agree and are bound by this indemnification.

22. Reporting violations of our Terms of Service/Acceptable Use Policy

a. We request that anyone who believes that there is a violation of this TOS/AUP direct their communications with any information to info@nitro-it.com.au

b. If available, it is requested that the following information be provided:

- The IP address used to commit the alleged violation
- The date and time of the alleged violation, including the time zone or offset from GMT
- Evidence of the alleged violation
- Email with full header information provides all of the above, as do system log files.

c. Other situations will require different methods of providing the above information. We may request or take any one or more of the following actions in response to complaints:

- Issue a written or verbal warning
- Suspend the members account

- Terminate the members account
- Bill the member for administrative costs and/or reactivation charges
- Bring legal action to enjoin violations and/or to collect damages, if any, caused by violations of this policy

23. Disclaimer

a. We will not be responsible for any damages your business may suffer. We make no warranties of any kind, expressed or implied for neither services we provide, nor do we guarantee your web site or applications will work error free on our servers or guarantee uptime or service availability. We disclaim any warranty or merchantability or fitness for a particular purpose. This includes, but is not limited to loss of data resulting from delays, software incompatibility, server or software issues, outages, no deliveries, wrong delivery, and any and all service interruptions caused by us or our employees.

24. Changes to the Terms and Conditions

a. We reserve the right to revise our policies from time to time without notice to you. By continued use of our services, you agree to and are bound by the updated terms and conditions that can be accessed on our web site at any time.

b. However, if we revise our terms in a way that impacts you both materially and detrimentally (and you have more than a month's worth of hosting paid in full remaining on your account), you may request a refund for services. Price changes in line with inflation, exchange rate movements, price increases from our suppliers or other factors beyond our direct control would not trigger this clause.

c. Refunds shall be provided for whole months only; parts of a month shall be rounded down. They cannot be given for products or services we have purchased from 3rd party providers (such as domain names, SSL, etc).

25. Governing law

a. This Agreement, your rights and obligations and all actions contemplated by this Agreement shall be governed by the laws of the Australia and the State of South Australia, as if the Agreement was a contract wholly entered into and wholly performed within the State of South Australia. You agree that any action to enforce this Agreement or any matter relating to your use of the Services shall be brought exclusively in the Australian Court for South Australia, or if there is no jurisdiction in such court, then in a state court in Adelaide, South Australia. You consent to the personal and subject matter jurisdiction of any state or Federal court in Adelaide, South Australia in relation to any dispute arising under this Agreement. You agree that service of process on you by either the Primary Service Provider or Backend Service Provider in relation to any dispute arising under this Agreement may be

served upon you by first class mail to the address listed by you in your contact information or by electronically transmitting a true copy of the papers to the email address listed by you in your contact information.

26. Limitation of Liability

a. IN NO EVENT SHALL WE BE LIABLE TO YOU OR ANY OTHER PERSON FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES, INCLUDING LOSS OF PROFIT OR GOODWILL, FOR ANY MATTER, WHETHER SUCH LIABILITY IS ASSERTED ON THE BASIS OF CONTRACT, TORT (INCLUDING NEGLIGENCE), BREACH OF WARRANTIES, EITHER EXPRESS OR IMPLIED, ANY BREACH OF THIS AGREEMENT OR ITS INCORPORATED AGREEMENTS AND POLICIES YOUR INABILITY TO USE THE SOFTWARE OR SERVICES, YOUR LOSS OF DATA OR FILES OR OTHERWISE, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES

b. Some states or territories may not allow such a broad exclusion or limitation on liability for damages as contained herein. In such states or territories, our liability is limited to the full extent permitted by law. You agree that in no event shall our maximum aggregate liability exceed the total amount paid by you for the particular product or service in dispute purchased from us.

27. Force Majeure

a. A force majeure is defined as Acts of Nature (including fire, flood, earthquake, storm, hurricane or other natural disaster even if caused by global warming, i.e., negative human activities that contribute to the destruction of the biosphere), war, invasion, act of foreign enemies, hostilities (whether war is declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation, terrorist activities, nationalisation, governmental or quasi governmental sanction, restraint, embargo, prohibition or intervention, blockage, labour dispute, general strike, lockout or interruption or failure of utilities or telephone service.

b. Where a Party is unable, wholly or in part, by reason of force majeure, to carry out any obligation under this Agreement, and that Party: (a) gives each other Party prompt notice of that force majeure including reasonable particulars, and, in so far as known, the probable extent to which it will be unable to perform or be delayed in performing that obligation; (b) uses all possible diligence to remove that force majeure as quickly as possible, that obligation is suspended so far as it is affected by force majeure during the continuance of that force majeure and that Party shall be allowed a reasonable extension of time to perform its obligations.

c. If after a period of six months, the force majeure has not ceased, the Parties shall meet in good faith to discuss the situation and endeavour to achieve a mutually satisfactory resolution to the problem

d. The requirement that any force majeure must be removed with all possible diligence does not require the settlement of general strikes, lockouts or other labour disputes or claims or demands by any government on terms contrary to the wishes of the Party affected.

28. Online Fraud

a. In compliance with the Privacy Act and laws, we are permitted to share your personal details with competent authorities where there is proof of fraudulent or criminal activities.

29. Non-Agreement

a. If you do not agree to any or all of the above Terms & Conditions or any of the policies this agreement refers to, please do not sign-up for or use our service. By agreeing to our terms of service and selecting the box within our online order form stating that you agree to these terms, it constitutes as a digital signature.

Our terms & conditions are up to date as of 25 August 2009