



Terms of Service

This Web Hosting Agreement ("Agreement") is between Nividium Technologies, Inc. ("Nividium"), and the person (individual or legal person) whose signs Nividium's service order and set up form (the "Order") incorporating this Agreement by reference ("Customer"). This Agreement governs Customer's use of Nividium's Web Hosting service.

Please read this agreement carefully. By agreeing to our terms of service and acceptable use policy on the account signup form, signing up, communicating with us, paying for and/or using our services, you are agreeing to be bound by the conditions and terms of this agreement, our acceptable use policy, and our privacy policy.

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- **Account Setup**

We will setup your account after we have received payment and we and/or our payment partner(s) have screened the order(s) in case of fraud. It is your responsibility to provide us with an email address which is not @ the domain(s) you are signing up under. If there is ever an abuse issue or we need to contact you, the primary email address on file will be used for this purpose. It is your responsibility to ensure the email address on file is current or up to date always. Providing false contact information of any kind may result in the termination of your account. In high risk transactions, it will be necessary to provide government issued identification and possibly a scan of the credit card used for the purchase. If you fail to meet these requirements, the order may be considered fraudulent in nature and be denied.

Transfers

Our transfers team will make every effort to help you move your site to us, however, we cannot make guarantees of the transfer process. We provide this as a courtesy service and cannot make guarantees regarding its availability or the amount of time it may take as each host is configured a little differently. We will try our best to transfer your sites; however, in some cases, we may be unable to assist you in the transfer of data from an old host.

Abuse & Prohibited Use

Nividium reserves the right to decide as to what constitutes as abuse and any material not mentioned below is left entirely up to the discretion of the Nividium staff.

Abuse can include, but is not limited to the following offenses:

A) Any attempts to compromise or actual compromise of a network device belonging to Nividium or any other company, individual, or other entity is strictly prohibited. This offense also includes port scanning, IP range scanners and vulnerability scanning. All infractions and or suspected infractions will be vigorously investigated and may result in immediate termination of service.

B) Denial of Service attacks directed at us, or any attempts to launch a Denial of Service attack from our servers are strictly prohibited. All infractions and or suspected infractions will be vigorously investigated and may result in immediate termination of service.

C) Sending unsolicited email, newsgroup postings, chain letters or anything else that could be considered as "spam", is strictly prohibited.

The gathering of email addresses to be used for sending unsolicited email on a 3rd party service "harvesting" is also prohibited and may result in termination of service.

D) The hosting of material that infringes on any copyright, trademark and or service mark is strictly prohibited. This also includes the storage and transmission of pirated movies, music, software, ring tones or anything else considered "warez". Any DMCA complaint received will be investigated and may result in termination of service.

E) The hosting of material which is illegal in the United States is strictly prohibited. This includes child pornography, bestiality, hate speech, scam sites, phishing sites and any other material which is deemed illegal. All infractions and or suspected infractions will be vigorously investigated and may result in immediate termination of service.

F) Hosting any software, source code or any other material that is illegal or could be used to commit an illegal act is strictly prohibited. This includes but is not limited to software exploits, exploit source code, hacking tutorials, hacking tools, viruses and trojans, bomb making and similar device tutorials. All infractions and or suspected infractions will be vigorously investigated and may result in immediate termination of service.

G) The use of IRC software, Bit Torrent software, Proxy software, and automated "bots" is strictly prohibited. The use of some forums and any other multiuser chat software which could create a high load on our servers, disrupt other users, and/or attract Denial of Service attacks is also prohibited. Nividium will deal with any of these issues on a case by case basis and will attempt to work with client to resolve the issue to both parties' satisfaction.

Please note that any violation(s) could lead to a simple warning, temporary suspension of service, and or termination of clients account(s) without warning and without refund. If an illegal act has been performed, local and/or federal authorities may be notified.

Payment Information

You agree to supply appropriate payment for the services received from Nividium, in advance of the time during which such services are provided. You agree that until and unless you notify Nividium of your desire to cancel any or all services received, those services will be billed on a recurring basis.

Fees are payable in advance on the first day of each billing cycle. Customer's billing cycle shall be monthly or annually as indicated on the Order, beginning on the Service Commencement Date. Nividium may

require payment for the first billing cycle before beginning service. If the Order provides for credit/debit card billing, Customer authorizes Nividium to bill subsequent fees to the credit/debit card on or after the first day of each successive billing cycle during the Term of this Agreement; otherwise Nividium will invoice Customer via electronic mail to the Primary Customer Contact listed on the Order.

As a client of Nividium, it is your responsibility to ensure that your payment information is up to date, and that all invoices are paid on time. Any invoice that is overdue will result in a 17.50% late fee and/or an account suspension until account balance has been paid in full.

Nividium, at its own discretion, may suspend and terminate the accounts (without backup) of individuals who fail to pay in a timely manner (usually 5 days after the invoice due date). Once an account has been terminated, recovery of information *may* be possible, however, an administrative fee of \$50.00 per site will be assessed.

Invoices that have been paid more than once with multiple Paypal Subscriptions can only be added as credit towards the account and cannot be refunded via Paypal. If you require assistance with this provision, please contact our billing team.

Nividium reserves the right to change the monthly payment amount and any other charges at any time.

Refunds & Cancellations

Customer is free to cancel their account at any time by contacting our billing team with their account information. However, unless customer cancels within the 'money-back guarantee' period, Nividium is under no obligation to return funds to client. Similarly, Nividium reserves the right to cancel any account at any time, for any reason, including, but not limited to, a breach of this Agreement without refund. Nividium does not offer refunds on fraudulent orders.

Nividium has a zero-tolerance policy for charge backs. Any customer who disputes a credit card payment is subject to a fine, suspension and account termination (without refund) at Nividium's discretion. A fee of \$60.00 per charge back will be assessed to all accounts that perform a chargeback. Please contact Nividium before reaching out to your payment processor.

Exchange rate fluctuations for international payments are constant and unavoidable. Like all payments, all refunds are processed in U.S. dollars, and will reflect the exchange rate in effect on the date of the refund. All refunds are subject to this fluctuation and Nividium is not

responsible for any change in exchange rates between time of payment and time of refund.

Money Back Guarantee

If an eligible account is purchased and canceled within thirty (30) days of sign up, the Customer will, upon request, receive a full refund of all hosting fees. Requests for these refunds should be made through our billing team (sales@nividium.com). Refunds made during the thirty (30) day money-back guarantee period will not include domain registration fees, setup fees, or any fees for additional services that are purchased, or granted for free, in the first thirty (30) days.

The money back guarantee is only applicable to those products and services that are specified with this offer. Any other products or services with no specification of money back guarantee is not entitled to a refund. Under the money back guarantee, only first-time accounts are eligible for a refund. For example, if you've had an account with us before, cancelled and signed up again, you will not be eligible for a refund. This is to protect our money back guarantee from being abused.

Nividium reserves the right to determine the definition of first-time account. Violations of the Terms of Service will waive the refund policy. Only shared, wordpress and reseller hosting packages are eligible for our money back guarantee; domains, VPS hosting, dedicated servers, freebies, web services (web design, SEO consultation, etc.) and anything else not mentioned herein are not eligible products/services. If a user takes out a plan that comes with any 'free services' or goods, uses them, and subsequently cancels during the money back guarantee period, client will have the full value of those services and goods deducted from their refund. Should the deduction exceed the owed amount, Customer is responsible for the difference.

Web Space & Bandwidth Usage

You are allocated a monthly bandwidth allowance. This allowance varies depending on the hosting package you purchase. Should your account pass the allocated amount we reserve the right to suspend the account until the start of the next allocation, suspend the account until more web space and/or bandwidth is purchased at an additional fee (\$1 per month for 500MB of web space and \$1 per month for 2000MB of bandwidth), suspend the account until you upgrade to a higher level of package, terminate the account and/or charge you an additional fee for

the overages. Unused transfer in one month cannot be carried over to the next month.

Backups & Data Loss

Your use of this service is at your sole risk. Our backup service runs once a day and only 15 days of backups are kept. This service is provided to you as a courtesy. Nividium is not responsible for files and/or data residing on your account. Customer agrees to maintain a current copy of all content hosted by Nividium notwithstanding any agreement by Nividium to provide backup services.

Reseller Client Responsibility

Resellers are responsible for supporting their clients. Nividium does not provide support to our Reseller's Clients. If a reseller's client contacts us, we reserve the right to place the client account on hold until the reseller can assume their responsibility for their client. All support requests must be made by the reseller on their clients' behalf for security purposes. Resellers are also responsible for all content stored or transmitted under their reseller account and the actions of their clients'. Nividium will hold any reseller responsible for any of their clients' actions that violate the law or the terms of service.

Shared (Non-Reseller Accounts)

Shared accounts may not resell web hosting to other people. If you wish to resell hosting, you must use a reseller account.

Affiliate Program

By filling out the affiliate signup form you will automatically become an affiliate and are bound by the terms of this agreement. Your participation in the program is solely for this purpose: to legally advertise our website to receive a commission on products purchased by your referral individuals. To prevent fraud, there is a 30-day delay once a commission withdrawal request has come in.

Your affiliate application and status in the program may be suspended or terminated for any of the following reasons: inappropriate advertisements (false claims, misleading hyperlinks), spamming (mass email, mass newsgroup posting, etc.) and fraudulent account information.

Nividium reserves the right to modify the commission value of a sold product/service at its absolute discretion at any time. It also has the right to decide not to pay any commission to you if it believes that any referral has been made in violation of its technical guidelines, due to

referral/customer fraud, or due to referral/customer contract cancellation. It is the affiliate's sole and absolute duty to follow precisely this agreement and its guidelines always. Nividium is under no obligation whatsoever to pay any commission to any affiliate who does not strictly follow this Terms of Service. Nividium's determination of the commissions due shall be dispositive.

Uptime Guarantee

Nividium strives to maintain a 99.9% network and server uptime service level. This uptime percentage is a monthly figure and is calculated solely by Nividium's monitoring systems or Nividium authorized/contracted outside monitoring services. If Nividium fails to meet its 99.9% uptime guarantee, and it is not due to one of the exceptions below, credits will be made available to each client, upon request, on a case by case basis. Nividium does not credit a full month's service for minor downtime. This would not be financially healthy for Nividium, and in turn would only negatively affect the service level Nividium provides to you. "Partial refunds for partial downtime" is our standard policy. In extreme circumstances, Nividium may distribute full month credits, but this is dealt with on a case by case basis. Credits are issued for one month's service only, never more.

Exceptions: Customer shall not receive any credits under this SLA in connection with any failure or deficiency of the Nividium network caused by or associated with:

- Circumstances beyond reasonable control, including, without limitation, acts of any governmental body, war, insurrection, sabotage, embargo, "Acts of God" (i.e. fire, flood, earthquake, tornado, etc.), strike or other labor disturbance, interruption of or delay in transportation, unavailability of or interruption or delay in telecommunications or third party services, failure of third party software or inability to obtain raw materials, supplies, or power used in or equipment needed for provision of the Service Level Agreement
- Telco Failure (i.e., Verizon™ cutting a fiber line somewhere)
- Backbone peering point issues (i.e., UUNet™ having a router go down in Virginia that wipes out internet service for the entire East Coast)
 - Scheduled maintenance for hardware/software upgrades

- Hardware failure (faulty hardware is rare but cannot be predicted nor avoided). Nividium utilizes only name brand hardware of the highest quality and performance.
- Software bugs/flaws (Exploits and bugs may develop that cause security issues or downtime)
 - DNS issues not within the direct control of Nividium
- Network floods, hacks, attacks from outside parties or individuals
 - Failure or error of any Nividium monitoring or measurement system
 - Client's acts or omissions, including without limitation, any negligence, willful misconduct, or use of Nividium service(s) in breach of Nividium Policy and Service Guidelines (AUP), by Client or others authorized by Client.

Support Scope

You are fully responsible for the installation and operation of any and all scripts or applications. We will not troubleshoot or provide any support relating to malfunctioning scripts or applications. You are responsible for maintaining the latest version of any and all scripts and applications.

Right to Refusal Without Cause

Nividium may refuse to accept any Customer or any website for participation in the Nividium network as determined by Nividium at its sole discretion.

Indemnification

Customer agrees that it shall defend, indemnify, save and hold Nividium harmless from any and all demands, liabilities, losses, costs and claims, including reasonable attorney's fees asserted against Nividium, 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 harmless Nividium against liabilities arising out of; (1) any injury to person or property caused by any products sold or otherwise distributed in connection with Nividium; (2) any material supplied by customer infringing or allegedly infringing on the proprietary rights of a third party; (3) copyright infringement and (4) any defective products sold to customers from Nividium's server.

Arbitration

By using any Nividium services, you agree to binding arbitration. If any disputes or claims arise against Nividium or its subsidiaries, such disputes will be handled by an arbitrator of Nividium's choice. All decisions rendered by that arbitrator will be binding and final. You are also responsible for all costs related to such arbitration.

Disclosure To Law Enforcement

Customer agrees that Nividium may, without notice to Customer, (i) report to the appropriate authorities any conduct by Customer or any of Customer's customers or end users that Nividium believes violates applicable law, and (ii) provide any information that it has about Customer or any of its customers or end users in response to a formal or informal request from a law enforcement or regulatory agency or in response to a formal request in a civil action that on its face meets the requirements for such a request.

Miscellaneous

Each party acknowledges and agrees that the other party retains exclusive ownership and rights in its trademarks, service marks, trade secrets, inventions, copyrights, and other intellectual property. Neither party may use the other party's name or trade mark without the other party's prior written consent. The parties intend for their relationship to be that of independent contractors and not a partnership, joint venture, or employer/employee. Neither party will represent itself to be agent of the other. Each party acknowledges that it has no power or authority to bind the other on any agreement and that it will not represent to any person that it has such power or authority. This Agreement may be amended only by a formal written agreement signed by both parties. The terms on Customer's purchase order or other business forms are not binding on Nividium unless they are expressly incorporated into a formal written agreement signed by both parties. A party's failure or delay in enforcing any provision of the Agreement will not be deemed a waiver of that party's rights with respect to that provision or any other provision of the Agreement. A party's waiver of any of its right under the Agreement is not a waiver of any of its other rights with respect to a prior, contemporaneous or future occurrence, whether similar in nature or not. The captions in the Agreement are not part of the Agreement but

are for the convenience of the parties. The following provisions will survive expiration or termination of the Agreement: Fees, indemnity obligations, provisions limiting liability and disclaiming warranties, provisions regarding ownership of intellectual property, these miscellaneous provisions, and other provisions that by their nature are intended to survive termination of the Agreement. There are no third-party beneficiaries to the Agreement. Neither insurers nor the Customers of resellers are third party beneficiaries to the Agreement. Customer may not transfer the Agreement without Nividium's prior written consent. Nividium's approval for assignment is contingent on the assignee meeting Nividium's credit approval criteria. Nividium may assign the Agreement in whole or in part.

Disclaimer

Nividium will not be responsible for any damages your business may suffer. Nividium makes no warranties of any kind, expressed or implied for services we provide. Nividium disclaims any warranty or merchantability or fitness for a purpose. This includes loss of data resulting from delays, no deliveries, wrong delivery, and all service interruptions caused by Nividium and its employees.

Copyright Policy

All content on this website is Copyright © Nividium and may not be reproduced without express written consent. All logos, trademarks and/or service marks are the property of Nividium.

Changes to the TOS

Nividium reserves the right to revise its policies at any time without notice.