

## Terms of Service Agreement (TOS)

1. **AGREEMENT.** In this Web Hosting Service Agreement ("Agreement") "you" and "your" refer to each customer, "we", "us" and "our" refer to Nite and Day Web Hosting. "Services" refers to the services provided by us, including our web hosting services. This Agreement explains our obligations to you, and explains your obligations to us for various Services. By selecting our Services you have agreed to establish an account with us for such Services. When you use your account or permit someone else to use it to purchase or otherwise acquire access to additional Services or to cancel your Services (even if we were not notified of such authorization), this Agreement covers such services or actions. By using the Services under this Agreement, you acknowledge that you have read and agree to be bound by all terms and conditions of this Agreement and any pertinent rules or policies that are or may be published by us.

2. **FEES, PAYMENTS AND BILLING POLICIES.** As consideration for the services you have selected, you agree to pay us the applicable service fees. All fees payable hereunder are non-refundable except those fees covered by the "30 Day Money Back Guarantee". As further consideration for the Services, you agree to: (1) provide certain current, complete and accurate information about you as required by the registration process and (2) maintain and update this information as needed to keep it current, complete and accurate. All such information shall be referred to as account information ("Account Information"). You hereby grant us the right to disclose to third parties as needed to maintain your services. By submitting to this Agreement, you represent that the statements you have made in are true and you will not use our Services for any unlawful purpose.

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2a. **FEES and PAYMENTS.** All fees are payable in US Dollars. All payments are due on your accounts Anniversary Date (See Section 2b, "Billing Cycle", for more information). The following credit cards are accepted: Visa, MasterCard & American Express. If you provide us with your credit or debit card information, you authorize Nite and Day Web Hosting to automatically charge the card listed in your account for any fees due on your account. Recurring fees will be charged to the credit or debit card number listed in your account until you cancel your account in accordance with our cancellation policy. You are responsible for keeping updated credit or debit card information in your account. This includes but is not limited to credit card numbers, expiration dates, CVV2 numbers or billing address.

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2b. **BILLING CYCLE.** All payments are due on your accounts Anniversary Date. Your accounts Anniversary Date is the date that your account was created. Your account will be billed according to the billing cycle chosen when you purchased your service(s). Nite and Day Web Hosting offers three billing cycles: Monthly (every month), Quarterly (every 3 months) or Yearly (every 12 months). If you have purchased a package that is billed monthly your credit card will be charged every month. If you have purchased a package that is billed quarterly your credit card will be charged every three months. If you have purchased a package that is billing yearly your credit card will be charged every year on the Anniversary Date. Any subsequent recurring charges will be billed to your credit card on that date. Amounts will be prorated to align your charges with your

Anniversary Date.

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2c. CANCELLATION POLICY. Services will automatically renew until a service is canceled. If you do not wish to renew your Monthly, Quarterly or Annual Service agreement you must cancel your account by entering a ticket to our Customer Service department. All cancellations must be requested via a ticket by selecting the option "Cancellation" when using our ticketing system. A cancellation refers to the removal of user materials from our systems and the deactivation of services. You will be required to pay any outstanding charges owed. Please be aware that there are no pro-rated refunds after the first 30 days of service regardless of billing cycle. Domain Name Registrations CANNOT be canceled. As the purchaser of the Domain Name you are the Domain Name's owner until the term of the Domain Name's registration has expired. Nite and Day Web Hosting will not automatically cancel services for problems related to registrar transfers, non-usage, your ISP, or any other issues not directly related to Nite and Day Web Hosting's services. Nite and Day Web Hosting reserves the right to cancel any account at any time without notice, for any reason Nite and Day Web Hosting deems appropriate.

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2d. BILLING DISPUTES AND BANK CHARGE BACKS. All Bank Disputes and Bank Issued Charge Backs result in the complete cancellation of your account. All Bank Disputes and Charge Backs are reported to the issuers Credit Agency. If a Charge Back is made on domain name registration or renewal fees, you forfeit all ownership and administrator rights to the domain name(s). In the event that a Charge Back was made in error, you will be charged a \$40.00 reinstatement fee for each credit card charge back received by Nite and Day Web Hosting before your services and/or domain name will be reactivated.

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2e. SERVICE CHANGES. You are allowed to change your Web Site Hosting package once for free. An example of changing your service means moving from an FTP account to a FrontPage account or from Monthly billing to Yearly billing. After moving once you will be charged \$14.99 per alteration.

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2f. 30 DAY MONEY BACK GUARANTEE. Most services offered by Nite and Day Web Hosting carry a 30 Day Money Back Guarantee. If you are not completely satisfied with our services, you will receive a full refund during the first 30 days after the service was added. The following fees do not qualify for the 30 Day Money Back Guarantee: domain name registrations, domain name renewals, file transfer (bandwidth) overage fees, and setup fees.

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2g. BILLING/PRICE CHANGES. Nite and Day Web Hosting reserves the right to change billing prices and policies at any time without notice.

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2h. BILLING FOR ADDITIONAL FILE TRANSFERS. Nite and Day Web Hosting automatically bills customers for excess file transfer ("bandwidth") usage. Customers are allocated a set amount of file transfer with their hosting service depending on the package level purchased. If you exceed the amount of file transfer you receive as part of your package you will be billed \$0.01 per MB over quota. This charge is incurred without notification. If you are billed monthly for our services the overage charge will be

attached to your monthly credit card charge. If you are billed yearly for our services the overage will be billed to your credit card the month following your overage. The overage is calculated by monitoring the amount and size of the files transferred from your account. These charges are made at the sole discretion of Nite and Day Web Hosting and are non disputable.

3. **ILLEGAL USE.** Nite and Day Web Hosting servers may be used for lawful purposes only. Transmission, storage, or distribution of any information, data, or material in violation of any state or national law or regulation is prohibited. This includes, but is not limited to: copyrighted material; trademarks; trade secrets or other intellectual property rights used without proper authorization; material that is obscene, defamatory, constitutes an illegal threat, or violates export control laws. Any violation of any state or national law or regulation will result in immediate cancellation of your services. By participating in any illegal activity, you give up your right to privacy. Any illegal activity that is brought to the attention of any employee of Nite and Day Web Hosting will be forwarded to state and/or national authorities as required by law.

4. **SECURITY.** Violations of system or network security are prohibited and may result in criminal and civil liability. Examples include but are not limited to the following: unauthorized access, use, probing, or scanning of systems security or authentication measures, data, or traffic; interference with service to any user, host, or network including, without limitation, mail bombing, flooding, deliberate attempts to overload a system, broadcast attacks; forging of any TCP-IP packet header or any part of the header information in an email or a newsgroup posting.

5. **SERVER ABUSE.** Any attempts to undermine or cause harm to Nite and Day Web Hosting servers or customers is strictly prohibited. This includes the abusive sending of unsolicited email, also known as "Spam". (See Section 7, "Spam Policy", for more information.)

6. **CUSTOMER CONDUCT.** You are solely responsible for the contents of your transmissions through Nite and Day Web Hosting. Your use of the Nite and Day Web Hosting service(s) is subject to all applicable local, state and national laws and regulations. You agree: (1) to comply with US law regarding the transmission of technical data exported from the United States through Nite and Day Web Hosting; (2) not to use Nite and Day Web Hosting for illegal purposes; (3) not to interfere or disrupt networks connected to the Nite and Day Web Hosting; and (4) to comply with all regulations, policies and procedures of networks connected to Nite and Day Web Hosting. You agree not to transmit through Nite and Day Web Hosting service(s) any unlawful, harassing, libelous, abusive, threatening, harmful, or otherwise legally objectionable material of any kind or nature. You further agree not to transmit any material that encourages conduct that could constitute a criminal offense, give rise to civil liability or otherwise violate any applicable local, state or national law or regulation. Attempts to gain unauthorized access to other computer systems are prohibited. You shall not interfere with another customer's use and enjoyment of the Nite and Day Web Hosting service(s) or another entity's use and enjoyment of similar services. Nite and Day Web Hosting may, at its sole discretion, immediately terminate your service or any agreement with us should your conduct fail to conform to these terms and conditions.

7. **SPAM POLICY.** Sending unsolicited bulk and/or commercial messages over the Internet (known as "spamming") is prohibited, regardless of whether or not it disrupts services to Nite and Day Web Hosting customers. The term "spamming" also includes,

but is not limited to engaging in spamming using the service of another ISP and referencing in the spam a web site hosted on a Nite and Day Web Hosting server. Nite and Day Web Hosting investigates all reports of Spam submitted via our email form to report abuse. Should evidence of spam activity be found, all services relating to the spam activity will result in termination without notice. Nite and Day Web Hosting reserves the right to determine, in its sole and absolute discretion, what constitutes a violation of this provision.

**8. COPYRIGHT VIOLATIONS & INTELLECTUAL PROPERTY VIOLATIONS.** You agree not to engage in any activity that infringes or misappropriates the intellectual property rights of others, including copyrights, trademarks, service marks, trade secrets, software piracy, and patents held by individuals, corporations, or other entities. Also, you agree to not engage in activity that violates privacy, publicity, or other personal rights of others. Nite and Day Web Hosting is required by law to remove or block access to customer content upon receipt of a proper notice of copyright infringement in accordance with the Digital Millennium Copyright Act (DMCA). It is also Nite and Day Web Hosting policy to terminate the privileges of customers who commit repeat violations of copyright laws.

**9. ACTIONS TAKEN BY Nite and Day Web Hosting.** Your failure to meet or follow any of the Terms and Conditions set forth by Nite and Day Web Hosting is grounds for account deactivation. Nite and Day Web Hosting will be the sole arbiter as to what constitutes a violation of its Terms and Conditions. Nite and Day Web Hosting reserves the right to remove any account without prior notice. When Nite and Day Web Hosting becomes aware of an alleged violation of its Terms and Conditions, Nite and Day Web Hosting will initiate an investigation. During the investigation, Nite and Day Web Hosting may restrict a customer's access in order to prevent further potentially unauthorized activity. Depending on the severity of the violation, Nite and Day Web Hosting may, at its sole discretion, restrict, suspend, or terminate a customer's web hosting account and/or pursue other civil remedies. If such violation is a criminal offense, Nite and Day Web Hosting will notify the appropriate law enforcement authorities of such violation.

**10. MODIFICATIONS TO AGREEMENT.** You agree, during the period of this Agreement, that we may: (1) revise the terms and conditions of this Agreement; and (2) change the services provided under this Agreement. Any such revision or change will be binding and effective immediately on posting of the revised Agreement or change to the service(s) on our web site, or on notification to you by e-mail or regular mail as per the Notices section of this agreement, Section 23. You agree to review our web site, including the Agreement, periodically to be aware of any such revisions. If you do not agree with any revision to the Agreement, you may terminate this Agreement at any time by submitting a cancellation ticket in accordance with our Cancellation Policy (See Section 2c, "Cancellation Policy", for more information). Notice of your termination will be effective on receipt and processing by us. You agree that, by continuing to use the Services following notice of any revision to this Agreement or change in service(s), you abide by any such revisions or changes.

**11. MODIFICATIONS TO YOUR ACCOUNT.** In order to change any of your account information with us, you must use your Account Identifier and Password that you selected when you opened your account with us. Please safeguard your Account Identifier and Password from any unauthorized use. In no event will we be liable for the unauthorized use or misuse of your Account Identifier or Password.

12. **ANNOUNCEMENTS.** We reserve the right to distribute information to you that is pertinent to the quality or operation of our services and those of our service partners. These announcements will be predominately informative in nature and may include notices describing changes, upgrades, new products and services offered by Nite and Day Web Hosting or Third Parties or other information to add security or to enhance your identity on the Internet.

By accepting these Terms and Conditions and by using Nite and Day Web Hosting's Services you agree to our stated Privacy Policy.

13. **LIMITATION OF LIABILITY.** You agree that our entire liability, and your exclusive remedy, with respect to any Services(s) provided under this Agreement and any breach of this Agreement is solely limited to the amount you paid for such Service(s). We and our contractors shall not be liable for any direct, indirect, incidental, special or consequential damages resulting from the use or inability to use any of the Services or for the cost of procurement of substitute services. Because some states do not allow the exclusion or limitation of liability for consequential or incidental damages, in such states, our liability is limited to the extent permitted by law. We disclaim any and all loss or liability resulting from, but not limited to: (1) loss or liability resulting from access delays or access interruptions; (2) loss or liability resulting from data non-delivery or data mis-delivery; (3) loss or liability resulting from acts of God; (4) loss or liability resulting from the unauthorized use or misuse of your Account Identifier or Password; (5) loss or liability resulting from errors, omissions, or misstatements in any and all information or services(s) provided under this Agreement; (6) loss or liability resulting from the development or interruption of your Web site or email service. You agree that we will not be liable for interruption of business, or any indirect, special, incidental, or consequential damages of any kind (including lost profits) regardless of the form of action whether in contract, tort (including negligence), or otherwise, even if we have been advised of the possibility of such damages. In no event shall our maximum liability exceed one hundred (\$100.00) dollars.

14. **INDEMNITY.** You agree to release, indemnify, and hold us, our contractors, agents, employees, officers, directors and affiliates harmless from all liabilities, claims and expenses, including attorney's fees, of third parties relating to or arising under this Agreement, the Services provided hereunder or your use of the Services, including without limitation infringement by you, or someone else using the E-mail Service with your computer, of any intellectual property or other proprietary right of any person or entity, or from the violation of any of our operating rules or policy relating to the service (s) provided. When we are threatened with suit by a third party, we may seek written assurances from you concerning your promise to indemnify us; your failure to provide those assurances may be considered by us to be a breach of your Agreement and may result in termination of our Services to you.

15. **BREACH.** You agree that failure to abide by any provision of this Agreement, any operating rule or policy provided by us, may be considered by us to be a material breach and that we may provide a written notice, describing the breach, to you. If within thirty (30) calendar days of the date of such notice, you fail to provide evidence, which is reasonably satisfactory to us, that you have not breached your obligations under the Agreement, then we may terminate our Services, including but not limited to our web hosting services, without further notice. Any such breach by you shall not be deemed to be excused simply because we did not act earlier in response to that, or any other breach by you.

16. NO GUARANTY. You agree that, by registration or reservation of your chosen domain name, such registration or reservation does not confer immunity from objection to the registration, reservation, or use of the domain name.

17. DISCLAIMER OF WARRANTIES. You agree and warrant that the information that you provide to us to register for our Services is, to the best of your knowledge and belief, accurate and complete, and that any future changes to this information will be provided to us in a timely manner according to the modification procedures in place at that time. You agree that your use of our Services is solely at your own risk. You agree that such Service(s) is provided on an "as is," "as available" basis. We expressly disclaim all warranties of any kind, whether express or implied, including but not limited to the implied warranties of merchantability, fitness for a particular purpose and non-infringement. We make no warranty that the Services will meet your requirements, or that the Service(s) will be uninterrupted, timely, secure, or error free; nor do we make any warranty as to the results that may be obtained from the use of the Service(s) or as to the accuracy or reliability of any information obtained through the our e-mail service or that defects in the Services software will be corrected. You understand and agree that any material and/or data downloaded or otherwise obtained through the use of the our e-mail service is done at your own discretion and risk and that you will be solely responsible for any damage to your computer system or loss of data that results from the download of such material and/or data. We make no warranty regarding any goods or services purchased or obtained through the e-mail service or any transactions entered into through the e-mail service. No advice or information, whether oral or written, obtained by you from us or through the e-mail service shall create any warranty not expressly made herein. Some jurisdictions do not allow the exclusion of certain warranties, so some of the above exclusions may not apply to you.

18. REVOCATION. You agree that we may terminate your right to use our Services if the information that you provided to register for our Services, or subsequently to modify it, contains false or misleading information, or conceals or omits any information we would likely consider material.

19. RIGHT OF REFUSAL. We, in our sole discretion, reserve the right to refuse to host your website or register you for other Services, or to terminate the Services we provide you within thirty (30) calendar days from receipt of your payment for such services. In the event we do not host your website or register you for other Services within such thirty (30) calendar day period, we agree to refund your applicable fee(s). You agree that we shall not be liable to you for loss or damages that may result from our refusal to host your website or register you for other Services.

20. SEVERABILITY. You agree that the terms of this Agreement are severable. If any term or provision is declared invalid or unenforceable, that term or provision will be construed consistent with applicable law as nearly as possible to reflect the original intentions of the parties, and the remaining terms and provisions will remain in full force and effect.

21. NON-AGENCY. Nothing contained in this Agreement shall be construed as creating any agency, partnership, or other form of joint enterprise between the parties.

22. NON-WAIVER. Our failure to require performance by you of any provision hereof shall not affect the full right to require such performance at any time thereafter; nor shall the waiver by us of a breach of any provision hereof be taken or held to be a waiver of the provision itself.

23. NOTICES. Any notice, direction or other communication given under this Agreement

shall be in writing and given by sending it via e-mail or via regular mail. In the case of e-mail, valid notice shall only have been deemed to be given when the sender has obtained an electronic confirmation of delivery. E-mail notice shall be sent to you at the e-mail address you have provided in your registration application or as updated from time to time. Mail shall be sent to us at Nite and Day Web Hosting Web Hosting Services, c/o Nite and Day Web Hosting Host Master; 322 Eighth Avenue, 11th Floor; New York, NY 10001, and mail shall be sent to you at the mailing address you have provided in your registration application or as updated from time to time.

24. ENTIRETY. You agree that this Agreement and the rules and policies published by us are the complete and exclusive agreement between you and us regarding our Services. This Agreement supersedes all prior agreements and understandings, whether established by custom, practice, policy or precedent.

25. GOVERNING LAW. THIS AGREEMENT SHALL BE GOVERNED BY AND INTERPRETED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK APPLICABLE THEREIN WITHOUT REFERENCE TO RULES GOVERNING CHOICE OF LAWS. ANY ACTION RELATING TO THIS AGREEMENT MUST BE BROUGHT IN NEW YORK, NEW YORK AND YOU IRREVOCABLY CONSENT TO THE JURISDICTION OF SUCH COURTS.

26. INFANCY. You attest that you are of legal age (18 years or older) to enter into this Agreement.

27. DOMAIN NAMES. Individual Top Level Domains carry their own Terms and Conditions from the Domain Servicing Company. If you are buying a .biz, .info, or .uk domain please read the following:

28. DESIGN SERVICES. Nite and Day Web Hosting Designed Web Sites are the sole property of Nite and Day Web Hosting. By purchasing such service you are purchasing a limited license to use the Web Site Designs for the purchase of displaying a single web site on the Nite and Day Web Hosting infrastructure. You may not sub-license, assign, sell or transfer this license to anyone else without prior written consent from [niteanddayhosting.com](http://niteanddayhosting.com).

29. ACCEPTANCE OF AGREEMENT. YOU ACKNOWLEDGE THAT YOU HAVE READ THIS AGREEMENT AND AGREE TO ALL ITS TERMS AND CONDITIONS.