



NightwayHosting.com

Nightway Hosting, LLC Terms of Service

Last Updated - 02/04/2024 by Dylan Gray

1. Acceptable Use

1.1 General Compliance

Nightway Hosting, LLC requires all customers to utilize our hosting services, including but not limited to dedicated servers, game servers, web hosting, reseller web hosting, VPS hosting, and reseller VPS hosting, in a manner that is lawful, ethical, and respectful of the legal rights and interests of all parties. Nightway Hosting, LLC strictly prohibits the use of its services for any illegal, harmful, or fraudulent activities.

1.2 Prohibited Content and Activities

Nightway Hosting, LLC expressly forbids the use of its services for the dissemination, communication, storage, or transmission of any content or engagement in any activities that:

- Violate any applicable local, state, national, or international law, regulation, or ordinance.
- Promote, incite, or engage in hate speech, violence, abuse, harassment, discrimination, or extremism of any kind, including but not limited to content based on race, ethnicity, religion, gender, sexual orientation, disability, or any other characteristic.
- Involve fraudulent schemes, deceit, or deception, including but not limited to phishing scams, identity theft, and financial fraud.
- Distribute or promote obscene, indecent, pornographic, or otherwise harmful content.
- Infringe upon the intellectual property rights, privacy rights, or other legal rights of individuals or entities.
- Contain malware, viruses, trojan horses, worms, or any other malicious software or code that is designed to interrupt, destroy, or limit the functionality of any computer software, hardware, or telecommunications equipment.
- Engage in or promote activities that disrupt or interfere with the normal operations of the Internet, other networks, or the services provided by Nightway Hosting, LLC, including but not limited to denial of service attacks, unsolicited mass emailings (spam), and unauthorized access to other computers or networks (hacking).

1.3 Enforcement and Compliance

Nightway Hosting, LLC reserves the right to take any necessary actions to ensure compliance with this Acceptable Use Policy, including, but not limited to, reviewing content hosted on its servers, suspending or terminating services without notice for any violations, and cooperating with law enforcement authorities in investigating suspected criminal violations.

Customers found to be in violation of this policy may be subject to immediate service suspension or termination, legal action, and financial liability for damages caused by the violation.

1.4 Reporting Violations

Nightway Hosting, LLC encourages the reporting of any suspected violations of this Acceptable Use Policy. Reports should be submitted to <https://nightwayhosting.com/abuse.php>. Nightway Hosting, LLC commits to investigating all reported violations promptly and taking appropriate action in accordance with this policy and applicable laws.

1.5 Modification of Policy

Nightway Hosting, LLC reserves the right to modify the terms of service at any time without prior notice. Customers are encouraged to review the policy periodically for any changes. Continued use of Nightway Hosting, LLC's services after any such changes shall constitute your consent to such changes.

2. Resource Usage

2.1 Resource Allocation

2.1.1 Allocation Policy

Nightway Hosting, LLC provides customers with specific resources, including but not limited to bandwidth, disk space, CPU usage, and memory, in accordance with their selected hosting plan. The allocation of these resources is designed to ensure optimal performance and service reliability for all customers.

2.1.2 Fair Use

Nightway Hosting, LLC operates on a principle of fair use to ensure equitable access to hosting resources for all customers. Customers are expected to use hosting resources responsibly and within the limits of their hosting plan.

2.1.3 Monitoring and Usage Review

Nightway Hosting, LLC continuously monitors resource usage across its hosting infrastructure to ensure the integrity and performance of its services. Nightway Hosting, LLC reserves the right to review customer accounts for excessive use of resources that may affect the overall network performance or the hosting experience of other customers.

2.2 Excessive Use

2.2.1 Definition

Excessive use is defined as consistently utilizing a significant portion of the allocated resources to the extent that it impacts Nightway Hosting, LLC's ability to provide services to other customers or compromises the performance of the hosting environment.

2.2.2 Consequences of Excessive Use

In cases of excessive use, Nightway Hosting, LLC may take the following actions:

- **Notification:** Nightway Hosting, LLC will attempt to notify the customer of excessive usage to provide an opportunity to reduce usage or to discuss upgrading to a higher-tier hosting plan that better suits their needs.
- **Suspension:** If excessive use continues after notification and negatively impacts other customers or the hosting environment, Nightway Hosting, LLC reserves the right to temporarily suspend services until the issue is resolved.
- **Termination:** In extreme cases, where excessive use persists and poses a significant risk to the integrity of Nightway Hosting, LLC's services, Nightway Hosting, LLC reserves the right to terminate the hosting services in accordance with the termination policies outlined in the Terms of Service.

2.3 Resource Upgrade

Customers who consistently exceed their resource allocation may be required to upgrade their hosting plan. Nightway Hosting, LLC's support team is available to assist with plan upgrades and to provide recommendations based on the customer's specific needs.

2.4 Compliance and Cooperation

Customers are encouraged to monitor their own resource usage and to cooperate with Nightway Hosting, LLC in cases where excessive use is identified. Nightway Hosting, LLC aims to work collaboratively with customers to find suitable solutions, including resource optimization, plan upgrades, or other technical interventions, to ensure compliance with this Resource Usage policy.

3. Payment

3.1 Payment Responsibility

3.1.1 Advance Payment

All customers of Nightway Hosting, LLC are required to pay for their chosen hosting services in advance. Payment must be made using one of the accepted payment methods specified by Nightway Hosting, LLC, which include, but are not limited to, credit cards, debit cards, PayPal, and other electronic payment systems.

3.1.2 Current Payment Information

It is the customer's responsibility to ensure that all payment information is accurate, current, and valid. This includes, but is not limited to, credit/debit card numbers, expiration dates, billing addresses, and any other information necessary for processing payments.

3.1.3 Service Interruption

Failure to maintain current and valid payment information may result in a delay or interruption of services. Nightway Hosting, LLC will attempt to notify the customer of any payment issues that may arise, but it is ultimately the customer's responsibility to resolve such issues promptly to avoid service disruption.

3.2 Promise to Pay

3.2.1 Non-payment Consequences

Customers agree to fulfill their payment obligations for the services provided by Nightway Hosting, LLC. Failure to make timely payments may result in service suspension or termination.

3.2.2 Debt Collection

In the event of non-payment, Nightway Hosting, LLC reserves the right to refer the outstanding debt to a collection agency. The customer will be responsible for all costs associated with the debt collection process, including but not limited to collection agency fees, reasonable attorney's fees, and court costs.

3.2.3 Financial Liability

Customers acknowledge their financial liability for the services contracted with Nightway Hosting, LLC and agree to bear all costs incurred by Nightway Hosting, LLC in collecting unpaid debts, including, but not limited to, interest charges, legal fees, and other related expenses.

3.3 Payment Disputes

Customers should address any disputes or questions regarding charges to their account promptly by contacting Nightway Hosting, LLC's billing department. Nightway Hosting, LLC is committed to resolving billing disputes fairly and in a timely manner.

4. Refunds

4.1 Money-Back Guarantee

4.1.1 General Refund Policy

Nightway Hosting, LLC offers a 48-hour money-back guarantee on most of our hosting services, allowing customers to cancel their service for a full refund within 48 hours of the initial purchase. This policy is designed to provide customers with peace of mind and confidence in our services.

4.1.2 Exclusions

The 48-hour refund policy does not apply to dedicated server and domain registration services. For these specific services, a 6-hour refund window from the time of purchase is provided due to the nature and costs associated with provisioning these services.

4.1.3 Refund Process

Customers wishing to cancel their services within the applicable refund window must submit a cancellation request through their account management portal or contact Nightway Hosting, LLC's support team directly. Refunds will be processed to the original payment method used at the time of purchase.

4.2 Charge-backs

4.2.1 Administrative Fee

In the event of a charge-back by a credit card company or other payment providers, initiated by the customer, Nightway Hosting, LLC will assess a \$200 Administrative Fee in addition to the amount of the charge-back.

4.2.2 Charge-back Disputes

Customers are encouraged to contact Nightway Hosting, LLC's billing department to address any billing disputes before initiating a charge-back with their payment provider. Nightway Hosting, LLC is committed to resolving disputes amicably and efficiently.

4.2.3 Consequences of Charge-backs

Initiating a charge-back without first attempting to resolve the issue directly with Nightway Hosting, LLC may result in the suspension or termination of services, and the account may be referred to a collection agency. The customer will be responsible for any costs incurred by Nightway Hosting, LLC in recovering the charge-back amount and associated fees.

5. Service Level Agreement

5.1 Uptime Commitment

5.1.1 Uptime Objective

Nightway Hosting, LLC strives to provide a high level of uptime for all hosting services. We aim to maintain our network and servers in a manner that minimizes disruptions and maximizes availability. While we commit to doing our utmost to ensure your service is available at all times, we recognize that in the complex environment of internet hosting, occasional disruptions can occur.

5.1.2 No Guarantee of Uninterrupted Service

Despite our efforts to ensure maximum uptime, Nightway Hosting, LLC does not guarantee 100% uninterrupted service. Various factors outside our control, including hardware failures, software issues, and network anomalies, can affect service availability.

5.1.3 Scheduled Maintenance

To maintain the highest level of service quality and ensure the integrity of our hosting environment, Nightway Hosting, LLC regularly performs scheduled maintenance. These maintenance activities are necessary for upgrades, security patches, and other essential system checks.

- **Advance Notice:** Whenever possible, Nightway Hosting, LLC will provide customers with advance notice of scheduled maintenance. This notice will be communicated through email, our website, or the customer control panel, detailing the maintenance window and expected impact, if any, on the services.
- **Maintenance Window:** We schedule maintenance activities during off-peak hours to minimize the impact on our customers. Despite this, some services may be temporarily unavailable during the maintenance period.

5.1.4 Unscheduled Maintenance

In the event of an emergency or unexpected issue that requires immediate attention, unscheduled maintenance may be necessary. Nightway Hosting, LLC will make every effort to minimize service disruptions and will communicate with affected customers as soon as practical.

5.2 SLA Exclusions

This SLA does not apply to any performance issues:

- Caused by factors outside of Nightway Hosting, LLC's reasonable control.
- That resulted from any actions or inactions of the customer or third parties.
- That were a result of the customer's equipment or any third-party equipment not within the primary control of Nightway Hosting, LLC.

5.3 SLA Force Majeure Clause

"Force Majeure" refers to any event beyond the reasonable control of Nightway Hosting, LLC, which prevents Nightway Hosting, LLC from fulfilling its obligations under this Agreement, including but not limited to:

- Natural Disasters: Including earthquakes, floods, hurricanes, typhoons, tsunamis, volcanic eruptions, and landslides.
- Extreme Weather Conditions: Including blizzards, tornadoes, and extreme heat or cold waves that result in operational disruptions.
- Public Health Emergencies: Including epidemics, pandemics, quarantine restrictions, and other significant public health crises.
- Governmental Actions: Including acts of war, terrorism, civil unrest, governmental restrictions, embargoes, and sanctions.
- Infrastructure Failures: Including unplanned outages of electricity, internet, water, and telecommunications not attributable to Nightway Hosting, LLC.
- Cyber Attacks: Including hacking, Distributed Denial of Service (DDoS) attacks, malware, and ransomware, beyond the control of Nightway Hosting, LLC.
- Supply Chain Disruptions: Including delays or inability to obtain essential equipment and materials required for service provision.
- Labor Strikes or Shortages: Including strikes, work stoppages, and critical shortages of personnel not attributable to Nightway Hosting, LLC.
- Fires and Explosions: Including accidental fires and explosions impacting operations.
- Acts of God: Including unforeseeable and extraordinary events such as meteor strikes or solar flares affecting communication lines.

5.4 SLA Remedy

In the event that Nightway Hosting, LLC fails to meet the uptime commitment outlined in this SLA, we are dedicated to communicating openly with our customers about the cause of the disruption and the steps being taken to address it. Specific remedies related to failure to meet uptime commitments will be detailed in individual service contracts or addenda to this Agreement.

6. Security

6.1 Security Measures

6.1.1 Commitment to Security

Nightway Hosting, LLC is committed to providing a secure hosting environment for all customers. We employ comprehensive security measures designed to protect against unauthorized access, alteration, disclosure, or destruction of customer data and hosting services. Our security infrastructure includes, but is not limited to, network firewalls, intrusion detection systems, malware scanning, and data encryption technologies.

6.1.2 Continuous Monitoring and Improvement

Our security team continuously monitors security threats and implements best practices to mitigate risks. We regularly review and update our security measures in response to evolving threats and advancements in technology.

6.1.3 Customer Responsibilities

While Nightway Hosting, LLC takes significant steps to ensure the security of our hosting services, customers also play a critical role in maintaining the security of their accounts and data. Customers are responsible for:

- **Secure Authentication Credentials:** Ensuring that all usernames, passwords, and other access credentials are kept confidential and secure. This includes using strong passwords and changing them regularly.
- **Access Control:** Managing the access rights of individuals within their organization who have access to the hosting account and ensuring that only authorized individuals have access to sensitive information.
- **Data Backup:** Regularly backing up their data to prevent loss in case of accidental deletion, corruption, or in the event of a security breach.
- **Security Patches and Updates:** Keeping all software, applications, and scripts up to date with the latest security patches and updates.

6.1.4 Reporting Security Incidents

Customers are encouraged to report any suspected security incidents related to their hosting services to Nightway Hosting, LLC immediately. Prompt reporting can help mitigate potential damage and will allow our security team to take necessary actions to secure the accounts and data.

6.1.5 Disclaimer of Liability

While Nightway Hosting, LLC strives to provide the highest level of security, no system or network can be guaranteed to be 100% secure. Nightway Hosting, LLC cannot be held liable for any unauthorized access, data loss, or other security breaches that may occur, except to the extent that such incidents result from Nightway Hosting, LLC's gross negligence or willful misconduct.

7. DDoS Policy

7.1 Zero-Tolerance for DDoS

Nightway Hosting, LLC enforces a zero-tolerance policy regarding Distributed Denial of Service (DDoS) attacks. Customers found to be involved in, facilitating, or under the attack of a DDoS, whether directly or indirectly, will face immediate actions, which may include, but are not limited to, suspension or termination of services without prior notice. This measure is crucial to protect the integrity of our hosting environment and ensure the continued service quality for all our customers.

7.2 DDoS Protection

7.2.1 Protection Measures

Nightway Hosting, LLC provides DDoS protection services free of charge to all customers. This protection is designed to safeguard against a wide range of DDoS attacks, enhancing the security and availability of our hosted services.

7.2.2 Limitations of Protection

While we strive to provide comprehensive DDoS protection, it is important to acknowledge that this protection has its limitations. Certain sophisticated or large-scale DDoS attacks may exceed the capacity of our protective measures.

7.2.3 Customer Responsibilities

In the event of a DDoS attack that falls outside the scope of Nightway Hosting, LLC's DDoS protection capabilities, customers may be advised to implement additional security measures. This may include, but is not limited to:

- Implementing custom firewall rules to mitigate the impact of the attack.
- Utilizing IP proxying services to protect the targeted services.
- Engaging with third-party DDoS protection providers for enhanced security support.

7.2.4 Nullrouting Policy

For attacks that significantly disrupt network integrity or service availability, Nightway Hosting, LLC reserves the right to nullroute the affected IP address(es) as a last resort measure. This action temporarily blocks all traffic to and from the targeted IP, mitigating the impact of the attack on the broader network and customer base.

7.2.5 Communication and Support

Nightway Hosting, LLC is committed to supporting our customers during DDoS incidents. Customers experiencing a DDoS attack should contact our support team immediately for assistance. Our team will provide guidance on mitigating the attack and may recommend additional protective measures or adjustments to hosting configurations.

8. Backups

8.1 Data Backups

8.1.1 Company Practices

Nightway Hosting, LLC conducts regular backups of its hosting environment as part of our commitment to service reliability and data integrity. These backups are intended for internal use, primarily for disaster recovery purposes in the event of system failure, data corruption, or other catastrophic events.

8.1.2 Customer Responsibility

While Nightway Hosting, LLC takes measures to protect data at a system level, it is crucial for customers to understand that they bear the primary responsibility for their data backups. Customers are strongly encouraged to maintain their own regular and comprehensive backups of all data stored on Nightway Hosting, LLC servers, including websites, databases, emails, and any other important data.

8.1.3 Backup Recommendations

Customers should implement a robust backup strategy that includes:

- Regular backups according to the critical nature of the data.
- Storing backups in multiple locations, including off-site or cloud storage, to ensure redundancy.
- Testing backup restores periodically to ensure data integrity and the effectiveness of the backup strategy.

8.1.4 Limitation of Liability

In the event of data loss, Nightway Hosting, LLC will make reasonable efforts to recover lost data from the most recent backup; however, we do not guarantee the availability, integrity, or restorability of data. Nightway Hosting, LLC is not liable for any loss, alteration, or corruption of any data, or for any costs associated with recreating lost or altered data.

8.1.5 Third-Party Backup Solutions

Customers may opt to use third-party backup solutions to complement Nightway Hosting, LLC's internal backups. It is the customer's responsibility to ensure that any third-party backup services are compatible with their hosting environment and to manage the configuration and operation of such services.

9. Termination

9.1 Termination Rights

9.1.1 Termination for Breach

Nightway Hosting, LLC reserves the right to terminate services immediately and without notice in the event of a breach by the customer of any terms set forth in this Terms of Service (TOS) or the Acceptable Use Policy (AUP). Breaches include, but are not limited to, violations of lawful use, resource usage policies, payment obligations, security policies, and involvement in prohibited activities such as DDoS attacks,

9.1.2 Customer Data Removal

Upon termination of services, for any reason, it is the customer's responsibility to ensure the removal and backup of all data stored on Nightway Hosting, LLC's servers. Nightway Hosting, LLC will not be responsible for maintaining or providing any data post-termination, and such data may be irretrievably deleted after the termination becomes effective.

9.1.3 Termination at Discretion

Nightway Hosting, LLC further reserves the right to terminate services for any reason, at its sole discretion, subject to a notice period determined by Nightway Hosting, LLC. This includes, but is not limited to, cases where continuing to provide services to the customer may be deemed by Nightway Hosting, LLC to be impractical, unfeasible, legally problematic, or contrary to the interests of Nightway Hosting, LLC or its other customers.

9.1.4 Customer Initiated Termination

Customers may elect to terminate their services with Nightway Hosting, LLC at any time. To do so, customers must follow the termination procedure outlined in their service agreement or provided within their account management portal. It is mandatory for customers to settle all outstanding invoices and bills in full before an account can be officially closed. For the cancellation of Virtual Private Servers (VPS), dedicated servers, and object storage, a notice period of at least 14 days prior to the desired cancellation date is required. For all other products and services, a minimum notice period of 7 days is mandated. Customers are strongly encouraged to ensure that all necessary data is backed up before initiating the termination process to avoid any loss of information.

9.1.5 Effect of Termination

Upon termination, all rights and obligations of both parties under the TOS cease, except for any obligations that by their nature are intended to survive termination, including payment obligations, indemnity obligations, and limitations of liability.

10. Client Area Account

10.1 One Account Per Customer

Nightway Hosting, LLC requires that each customer maintain only one Client Area account, accessible at <https://clients.nightwayhosting.com>. This account is to be used by the customer to manage services, billing, support tickets, and any other interactions with Nightway Hosting, LLC. The limitation to one account per customer is in place to ensure clarity, security, and efficiency in managing customer relations and services.

- **Account Verification:** Customers may be required to complete an account verification process to confirm their identity and protect against unauthorized account creation.
- **Account Misuse:** Any misuse of the Client Area account, including but not limited to sharing login credentials, unauthorized account access, or any activity that compromises the security of the account, may result in immediate suspension or termination of the account and associated services.

11. Non-Payment/Service Interruption

11.1 Late Payments and Reconnections

11.1.1 Late Payment Fee

In the event of a service interruption due to non-payment, Nightway Hosting, LLC will apply a late fee of 15% of the outstanding balance. This fee is imposed to cover the administrative costs associated with account suspension and subsequent reactivation.

11.1.2 Service Suspension

Services may be suspended if payment is not received by the due date specified on the invoice. Nightway Hosting, LLC will provide notice of impending suspension as a courtesy; however, it is the customer's responsibility to ensure timely payment to avoid service disruption.

11.1.3 Reconnection of Services

To reinstate suspended services, customers must pay all outstanding balances, including any late fees. Following payment, services will be reconnected, and normal operation resumed. Customers should be aware that there may be a delay between payment and service reactivation as accounts are manually reviewed for reconnection.

11.1.4 Risk of Data Destruction

Accounts that remain suspended for non-payment or due to charge-backs are at risk of data destruction five days post-suspension. Nightway Hosting, LLC emphasizes the critical importance of maintaining current and accurate payment information and settling any outstanding invoices promptly to avoid data loss.

12. IP Address Policy

12.1 Ownership and Use

Nightway Hosting maintains full ownership and control over all Internet Protocol (IP) addresses that may be allocated to customers as part of our hosting services. Customers are granted a non-exclusive, non-transferable right to use these IP addresses in association with their hosted services under the following conditions:

- **IP Allocation:** The allocation of IP addresses is subject to availability and adherence to Nightway Hosting's IP usage policies, which comply with Internet governance standards and best practices.
- **Change of IP Addresses:** Nightway Hosting reserves the right to change, remove, or reallocate IP addresses as deemed necessary for operational, technical, or compliance reasons. Customers will be notified of such changes with reasonable advance notice whenever possible.
- **Blacklisted IPs:** In the event an IP address allocated to a customer is blacklisted due to activities contravening our Acceptable Use Policy or resulting from malicious actions, a \$100 administration fee will be charged to cover the costs associated with delisting and managing the implications of the blacklist.
- **IP Use Compliance:** Customers are responsible for ensuring that their use of allocated IP addresses complies with all applicable laws, regulations, and Nightway Hosting policies. Misuse of IP addresses can result in service suspension or termination.

13. Promotional Codes

13.1 Code Usage

Nightway Hosting occasionally offers promotional codes to customers, providing discounts or other benefits on our hosting services. The following terms apply to the use of promotional codes:

- **Code Validity:** Promotional codes are subject to specific terms and conditions, including validity periods and usage restrictions. Not all codes will be applicable to all services or customers.
- **No Liability for Non-Working Codes:** While we strive to ensure the reliability of our promotional codes, Nightway Hosting cannot guarantee that a code will work every time. Issues related to the redemption of promotional codes can be addressed through submission of a support ticket to our customer service team.
- **Code Abuse:** Abuse or fraudulent use of promotional codes may result in the revocation of the promotion and possible suspension or termination of services.

14. Modifications to Terms

14.1 Right to Modify

Nightway Hosting reserves the right to modify, amend, or update these Terms of Service (TOS) at any time and for any reason. Changes to the TOS include, but are not limited to, adjustments to our service offerings, changes in regulatory requirements, and updates to our operational policies.

- **Notice of Modifications:** Whenever possible, Nightway Hosting will provide customers with advance notice of significant changes to the TOS via email, announcement on our website, or through the Client Area account.
- **Acceptance of Modified Terms:** Continued use of Nightway Hosting services following the notification of changes to the TOS will constitute acceptance of the modified terms. Customers who do not agree to the changes have the option to terminate their services in accordance with the termination provisions of these terms.

15. Dispute Resolution

15.1 Governing Law

All disputes, claims, or controversies arising out of or relating to the services provided by Nightway Hosting, LLC or the Terms of Service (TOS), including the validity, interpretation, or enforceability thereof, shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia, United States, without giving effect to any choice or conflict of law provisions or rules.

- **Venue:** Any legal suit, action, or proceeding arising out of, or related to, these Terms of Service or the services provided by Nightway Hosting, LLC shall be instituted exclusively in the federal courts of the United States or the courts of the Commonwealth of Virginia in each case located in Norfolk County, although we retain the right to bring any suit, action, or proceeding against you for breach of these Terms of Service in your country of residence or any other relevant country.
- **Jurisdiction:** You waive any and all objections to the exercise of jurisdiction over you by such courts and to venue in such courts.
- **Alternative Dispute Resolution:** Prior to initiating any formal legal proceedings, the parties agree to attempt in good faith to resolve any dispute arising out of or relating to the TOS or the services provided through informal negotiation. If the dispute cannot be resolved through negotiation within a reasonable time period, the parties may consider other forms of alternative dispute resolution, such as mediation or arbitration, as an alternative to litigation.