

Network Data Center Host, Inc.

Terms of Service Agreement

By establishing an account with Network Data Center Host, Inc. (NDC) via phone, e-mail, or web site form submission on ndchost.com, cplicensing.net, or any of Network Data Center Host, Inc.'s affiliated web pages, you are agreeing you have read and will abide by the following Terms of Service Agreement (TOS).

Network Data Center Host, Inc. Provides Internet/World Wide Web Site Hosting and E-mail Services. Please read and understand our policies as they are to protect the best interest of our customers as a whole. Network Data Center Host, Inc.'s general policy is to act as a neutral provider of access to the global Internet.

Network Data Center Host, Inc. At its sole discretion, reserves the right to suspend or cancel a customer's access to any or all services provided. Suspension and or cancellation actions will be performed on account in violation of the TOS or are deemed to otherwise be inappropriately used. If you are unsure whether any contemplated use or action is permitted, please send an e-mail to: Support@NDCHost.com and we will assist you.

Network's Specific Use Policies

1. Traffic and Storage Policies

Network Data Center Host, Inc. allocates a set amount of storage and bandwidth per customer. If customer exceeds or is about to exceed the allocated amount of storage or traffic, Network Data Center Host, Inc. will send a courtesy notice to customer with further options and pricing. Extra Bandwidth and Storage pricing may be found on our hosting page on our website. This e-mail notification is done as a curtsy and customer will be held accountable for exceeding storage or traffic allocation weather the e-mail was sent/received or not.

2. High Resource Policy

- MySQL databases which consume large amounts of resources will be immediately terminated or suspended upon NDC's discretion.
- CGI scripts found to consume large amounts of system resources will immediately be terminated or suspended upon NDC's discretion.
- Websites found to consume large amounts of system resources such as httpd, cgi, mysql can be suspended at anytime upon NDC's discretion. NDC considers at least 15% CPU Usage, 10% Memory Usage, and 10% mySQL usage as high resource.
- Accounts classified as High Resource Accounts and are either suspended or terminated are not entitled to a refund for any pre-paid services.

3. Zero Tolerance Rule

- Network Data Center Host, Inc. commits 100% stability to all our servers, and network that NDC has control over. To keep with this commitment, any website,

reseller or non-reseller that Network Data Center Host, Inc. feels is degrading the performance of our network may be suspended at NDC's discretion, without being required to notify the end user in advance.

- As a set standard, NDC will run spot testing anytime we feel our network may be becoming unstable due to a High Resource Customer. If a customer is found to be utilizing more than 7% of CPU / 7% Memory / 7% MySQL, they will be sent a courtesy notice. The 2nd notice, the customer will be suspended for 7 days. The 3rd notice, the customer will be terminated due to High Resource Usage. Courtesy notices are as stated a courtesy, customers will be held accountable for account whether e-mails are sent/received or not.

4. What does Network Data Center Host, Inc. consider "CGI Abuse"?

- Any site whose CGI programs are using excessive amounts of system resources. Excessive amounts is defined as any amount that results in substantial degradation of server performance. Network Data Center Host, Inc. is the sole determinant of what constitutes degraded server performance.
- Due to their use of flat files instead of databases, Network Data Center Host, Inc. does not allow the use of any cgi based forums. Use of these boards for large or very active forums results in system performance degradation, and cannot be allowed in our shared server environment.

5. Network Data Center Host, Inc.'s Services May Only be Used for Lawful Purposes

- Transmission, distribution, or storage of any information, data or material in violation of United States law(s), state regulatory law(s), or by the common law, is prohibited. This includes, but is not limited to, material protected by copyright, trademark, trade secret, or any other statute.
- Network Data Center Host, Inc. reserves the right to remove such illegal material from its server immediately. Network Data Center Host, Inc. expressly forbids anyone from using Network Data Center Host, Inc.'s servers for the propagation, distribution, housing, processing, storing, or otherwise handling in any way lewd, obscene, or pornographic material, satanic material, or any other material which we deem to be objectionable. The designation of any materials as such described above is left entirely to the discretion of the Network Data Center Host, Inc. management.

6. Unlawful and/or Unethical Use

- Network Data Center Host, Inc. does NOT allow sites that provide points of distribution, or links to the following types of sites:
 - **Pirated Software (Warez)** - Any software that is copyrighted and not freely available for distribution without cost. Including: ROMs, ROM Emulators, Mpeg Layer 3 files (MP3) and DVD Videos.
 - **Hacking / Phreaking** - Includes sites with material, links, or resources for Hacking, Phreaking, Viruses, Anarchy, or any type of site that promotes the destruction or compromises the integrity of Network Data Center Host, Inc..
 - **IRC / Bots** - This includes "egg drops" "bots" or any IRC related programs.
 - **Archives** - This includes music, video and program archives.

- Network Data Center Host, Inc. does allow adult oriented websites to be hosted. There will be an additional setup fee of \$40.00 on top of any existing setup fees for adult oriented websites.

7. E-Mail Policy

- Network Data Center Host, Inc. strictly prohibits harassment, whether through language, frequency, or size of messages. Forging of header information is not permitted.
 - Network Data Center Host, Inc. does not allow unsolicited mail (UCE). This includes "Spamming" and "Bulk Mail" sent to persons who have otherwise not requested to receive such mail. The reason for this is that not only is it generally frowned upon by the internet community, but it also demands extra bandwidth to handle the effects of such mail. Websites found to be sending UCE will be terminated without notice.
 - **If its found any client has setup an account with Network Data Center Host, Inc., for the express terms of sending unsolicited email, Network Data Center Host, Inc. reserves the right to charge a one time administration fine of \$250.00 If Network Data Center Host, Inc. can show proof the client has sent the email from Network Data Center Host, Inc.'s servers or network.**

8. Network Data Center Host, Inc.'s Services are Intended for the End User Only

- Customers cannot sublease, sub host, or give away control of any portion of Network Data Center Host, Inc.'s resources.

9. 99.5% Uptime Guarantee Policy

- We will make every reasonable attempt to avoid unexpected server downtime and to ensure that all accounts are well taken care of. We cannot guarantee or predict server downtime. Any network problem, or outage, is not covered under any guarantee or warranty and will not be grounds for reimbursement for any subsequent financial damages or losses. **Account Backups** are ultimately the account holder's responsibility.
- Network Data Center Host, Inc. offer's a 99.5% uptime guarantee. The NDC network of computers, will have a guaranteed aggregate average uptime of 99.5% over the course of three months (90 days). This does not include scheduled downtime for maintenance on servers, which will be minimal, and necessary. This also doesn't include mass-network problems such as major backbone problems.
- Network Data Center Host, Inc. will not be liable for any lost revenues during your down time.

10. Payment Policies

- **Credit Card Authorization Form must be returned to Network Data Center Host, Inc. via email (scanned signature) or fax within 72 hours.**

Failure will result in automatic suspension of account until form is received by Network Data Center Host, Inc.

- **Any customer who threatens a chargeback for services already paid for or rendered will be terminated immediately.**
- All new and existing accounts are setup and billed on a anniversary basis
- All payment is in U.S. currency.
- Accounts that are past due will be suspended within 72 hours of credit card failure notice.
- Accounts may be charged at anytime during the month of which the invoice is due.
- If the transaction is run at least 3 times, and the client fails to update the credit card, the account will be suspended and or terminated without further notice.
- All new accounts are billed on the anniversary date of the account being setup.
- NDC reserves the right to change prices at any time without notification to customer.
- Service fees do accrue during any period of suspension.
- No receipts or invoices will be sent by regular mail.
- The customer is responsible for all money owed on the account from the time it was established to the time that the customer notifies NDC in writing for a request for termination of services.
- All credit cards declined for any reason may be charged a \$20 service charge.
- Checks returned unpaid (NSF) will be accessed \$50.00 service charge.
- The In the event the credit card does not clear with the bank, the customer will be notified by e-mail. Past due accounts that are not brought current within 3 days of the e-mail notice are subject to suspension and possible account termination.
- At no time will Network Data Center Host, Inc. allow a website to be operational past the last day of the pre-paid date of services. If user fails to update the account information, Network Data Center Host, Inc. will suspend the account without further notice and consider the account closed.
- Check or money order orders may be approved by Network Data Center Host, Inc. on a per case basis
- There is a \$50 administrative fee for each chargeback placed against us. Any chargeback's or threatened chargeback's or non-payment of services rendered are grounds for immediate account cancellation or termination for any accounts client is hosting with NDC.

11. Cancellation Policies

- **Phone or email requests will not constitute acceptance of any cancellation.**
- Account cancellations must be submitted by the billing account / credit card holder. Account cancellation require a [service cancellation request form](#) (SCRF) be submitted to NDC Host, account cancellation will not be valid until confirmed by NDC Host and a confirmed cancellation number (CCN) is assigned.
- Network Data Center Host, Inc. reserves the right to cancel this service agreement at any time.
- Account cancellations **must** be submitted before next date of recurring charges or user will receive a partial refund of unused months that were pre-paid.
- Account setup fees and domain registration fees are not refundable and will be withheld from any cancellation request.
- In the event you cancel your service, you will be charged in full for the entire month in which you canceled your service.

- Account cancellations for accounts with a negative balance will be passed on to collections, and all services rendered to the party with the negative balance will be terminated, including domain registrations.
- Once cancellation form is completed, account is considered terminated pending all account information matches all information on file.

12. Refund Policy

- A full refund excluding domain registration fees, add-on/upgrade fees, overages and startup fees is provided within the first 5 days of your initial account activation.
- Refunds may take up to 30 days to be processed. Once credit is issued, normal circumstances allow 2 billing cycles for refund to show on your credit card statement
- All Refunds are applied with the same terms they were processed. For Check/Money Order, a company check will be sent to the mailing address we have in our billing system.
- If cancellation is caused by customer's violation of this agreement, then no refund will be disbursed.
- If you cancel prior to the end of your contract term and you received special pre-pay rates, your hosting fees will be adjusted so that you pay the regular, non-discounted monthly fees.
- Customers who have a clear intention of terminating their services and/or using up all or a higher than normal amount of resources before the 5 day refund, there will be no refund given and account will be terminated. Any prepaid full months will be refunded accordingly.
- In the event you have elected to prepay subsequent, additional months' Service Fees, we retain the right to charge you an administrative fee of 75% and deduct the administrative fee from the subsequent, future months' Service Fees before refunding them to you.

13. Disclaimer

- **Network Data Center Host, Inc. reserves the right to refuse service to anyone.**
- Network Data Center Host, Inc. reserves the right to terminate any web hosting customer based on statements made by customer which may threaten any legal action against Network Data Center Host, Inc.. Termination will be immediate. Employees of Network Data Center Host, Inc. will be instructed to state to client any further communications must be made through our legal department. Customer is reminded that Network Data Center Host, Inc. has on file a copy of NDC's required Credit Card / Policies Acceptance form which states Network Data Center Host, Inc. will not be responsible for any damages your business may suffer.
- **Network Data Center Host, Inc. will not be responsible for any damages your business may suffer.**
- Network Data Center Host, Inc. makes no warranties of any kind, expressed or implied for services we provide.

- Network Data Center Host, Inc. disclaims any warranty or merchantability or fitness for a particular purpose. This includes loss of data resulting from delays, non-deliveries, wrong delivery, and any and all service interruptions caused by Network Data Center Host, Inc. and its employees. If user decides to bring any legal proceedings against Network Data Center Host, Inc., user will incur all legal fees and court costs.
- Network Data Center Host, Inc. furthermore expects that its subscribers who provide Internet services to others will comply fully with all applicable laws concerning the privacy of on-line communications.
- A subscriber's failure to comply with those laws will violate Network Data Center Host, Inc. policy.
- Finally, Network Data Center Host, Inc. wishes to emphasize that in accepting services, subscribers indemnify Network Data Center Host, Inc. for any violation of the subscriber of the Services Agreement, or of law or Network Data Center Host, Inc. policy that results in loss to Network Data Center Host, Inc. or the bringing of any claim against Network Data Center Host, Inc.. This means that if Network Data Center Host, Inc. is sued because of activities of the subscriber that violate any law, the Services Agreement or this policy (which is part of the Services Agreement), the subscriber will pay any damages awarded against Network Data Center Host, Inc., plus costs and reasonable attorneys' fees.
- Network Data Center Host, Inc. reserves the right to revise its policies at any time without prior notification.

Revised: January, 10th, 2003, January 1st 2004