

These Terms of Service ('the agreement') are an agreement between us ("Photon IT") and you ("Customer," "you" or "your"). This Agreement sets forth the general terms and conditions of your purchase and use of the products and services provided by Photon IT and of the Photon IT website (collectively, the "Services"). By purchasing and/or using the Services, you agree to be bound by this Agreement.

We may change or modify this Agreement at any time. We will email you a notice of any significant changes to this Agreement when it is and will indicate at the bottom of this Agreement the date these terms were last revised. Any changes or modifications to this Agreement shall be effective and binding on you as of the date indicated in a notice posted on this page. If no date is specified, your use of the Services after such changes or modifications shall constitute your acceptance of the Agreement as modified. If you do not agree to abide by this Agreement, you are not authorized to use or access the Services.

1. Policies

The use of the Services is also governed by the following policies, which form part of this Agreement. By using the Services, you are also agreeing to the terms of the following policies:

[Privacy Policy](#)
[Acceptable Use Policy](#)
[Data Request Policy](#)

Additional terms may apply to certain Services you purchase or receive through Photon IT including services provided by a third party. Such additional or third party services may be subject to additional terms that may be separately provided to you.

2. Account Ownership and Services Purchased

We treat the individual or entity named in our records as the primary billing contact as the owner of the account.

The Services offered by Photon IT are hosted on servers in various countries around the world. When registering for the services you will be informed which country your data will be held in and we will inform you in advance if this ever changes in the future.

Any features and details of the Services may be described on the web pages setting out the particular Services you have purchased. Photon IT may modify, change or discontinue any aspect of the Services at any time.

3. Term of the Services

The initial term of the Services you purchase shall be for the period set forth in either the registration form presented to you when you order the Services (the "Initial Term"), or the period stated on your initial invoice. Unless you cancel prior to the end of the Initial Term, the Services will automatically renew for periods of equal length as the Initial Term (each a "Renewal Term") unless otherwise provided. The Initial Term and all Renewal Terms, if any, shall be collectively referred to as the "Term."

4. Payments and Billing

Unless otherwise provided, Photon IT will automatically bill your payment method on file as follows: (i) up to fifteen (15) days prior to the end of your then current Term for all Services on a one (1) year plan or longer; (ii) up to five (5) days prior to the end of your then current Term for plans of less than one (1) year. You expressly acknowledge, agree, and authorize us to automatically bill the applicable fee and/or charge your credit card or other payment method on file for each Renewal Term, unless you terminate or cancel the Services prior to such charge as provided in this section. All fees are billed in Australian Dollars ("AUD") and are subject to change with prior notice to you. We will provide you with at least thirty (30) days' notice of your renewal pricing before charging you on any annual or longer term plans.

Photon IT is only able to automatically collect payment from customers with credit cards stored on file. All other payment methods must be initiated manually by you. It is your responsibility to ensure that all fees are paid no later than their due date.

As a customer of Photon IT, it is your responsibility to ensure that all billing information on file with Photon IT is accurate, and that any credit card or other automated payment method on file has sufficient funds for processing. You are solely responsible for any and all fees charged to your payment method by the issuer, bank, or financial institution including, but not limited to, membership, overdraft, insufficient funds and over the credit limit fees. Photon IT screens all orders for fraud. In certain cases, if your account is flagged for fraud, your order will not be processed. Photon IT has no liability for not providing Services, including third party services, if your account fails the fraud screen.

5. Late Payments

Any account not paid in full by the end of the Term will be given a seven (7) day grace period. If payment is not made within the seven (7) day grace period, Photon IT reserves the right to suspend your Services and to charge a ten dollar (\$10 AUD) late fee for reinstating the Services. Photon IT reserves the right to terminate Services fourteen (14) days following suspension of Services for non-payment.

Photon IT is not responsible for any damages or losses (including of any data) as a result of suspension or termination for non-payment of your account. In addition, Photon IT reserves the right to refuse to re-activate your Services until any and all outstanding invoices have been paid in full.

6. Refund Policy and Billing Disputes

Photon IT provides a money-back guarantee on hosting and developer packages, subject to the following terms and conditions:

Photon IT offers a thirty (30) day money back guarantee on hosting and developer packages if you cancel within the first thirty (30) days of the Initial Term, provided that such Money-back Guarantee Refund shall be due to you only upon your compliance with, and subject in all respects to, the terms and conditions of this Section 6.

Requests for a Money-back Guarantee Refund must be submitted in writing to our Support Team (support@Photon IT.com.au) within the initial thirty (30) days of your initial term. Money-back Guarantee Refunds will not accrue, and shall not be paid under any circumstances, if you do not provide the applicable Refund Request within the initial thirty (30) day period.

Money-back Guarantee Refunds only apply to hosting services. No refunds are provided for domain registration fees, setup fees, support fees or any fees for additional Services, including without limitation, secure socket layer (SSL) certificates, custom packages, domain transfers, domain renewals, add on products or services, dedicated IP addresses, advanced support fees, or software licenses. No refunds are provided on dedicated server packages, all such purchases are final.

Only first-time accounts are eligible for the Money Back Guarantee Refund. For example, if you previously had or still have an account with Photon IT and you cancelled and signed up again for a new account, you will not be eligible for a refund. In addition, refunds are not offered for accounts that are suspended or terminated for violating this Agreement.

Refunds will be issued only to the payment method used for the purchase, and may take up to one (1) week to process.

Photon IT will not process new orders or provide additional Services to customers who have an outstanding balance with Photon IT.

Exchange rate fluctuations for international payments are constant and unavoidable. Like all payments, all refunds are processed in Australian dollars, and will reflect the exchange rate in effect on the date of the refund. Photon IT is not responsible for any change in exchange rates between the time of payment and the time of refund.

If you believe there is an error in Photon IT's billing, you must contact Photon IT about it, in writing (support@Photon IT.com.au), within thirty (30) days of the date you are billed or charged. Photon IT's obligation to consider your claim is contingent on you providing Photon IT with sufficient facts to investigate your claim. If Photon IT determines that your claim is valid, Photon IT agrees to credit your account on your next billing date. You waive your right to dispute any charges or fees if you fail to notify Photon IT in writing within thirty (30) days.

7. Chargebacks, Reversals, and Retrievals

If you have a billing issue, please contact Photon IT to address and resolve the issue. If Photon IT receives a chargeback or payment dispute from a credit card company or bank, your Services may be suspended without notice. A fifty dollar (\$50) reinstatement fee plus any outstanding balances accrued as a result of the chargeback(s), must be paid in full before Services will be restored.

8. Termination of Services

You may terminate the Services by submitting a cancellation request in writing by email to support@Photon IT.com.au.

Cancellations must be requested via email at least forty-eight (48) hours or more prior to the Service's billing renewal date. If a cancellation notice is not received within the required time frame, you will be billed for the next billing term and are responsible for payment as set forth above. Refer to section 4 above which outlines the billing renewal period.

Photon IT may terminate this Agreement at any time without notice. Should Photon IT terminate this Agreement for any reason other than a breach of this Agreement or a violation of the Acceptable Use Policy, all prepaid fees will be refunded.

9. Refusal of Service

Photon IT reserves the right to refuse Services to anyone at any time. Any material that, in Photon IT's judgment, is obscene, pornographic, hateful, threatening, illegal, or violates this Agreement in any manner may be removed from Photon IT's servers (or otherwise disabled), with or without notice.

Any manner of communication with Photon IT's staff that is belligerent, vulgar (curse words), highly rude, threatening, or abusive, as determined in Photon IT's sole discretion, may result in suspension or termination of your account without any refund.

10. Resource Usage

You are required to utilize server resources in a responsible manner. Server CPU, Memory and Disk space are resources shared by all Photon IT customers.

Excessive use of server CPU and memory resources by a customer can interfere with or prevent normal service performance for other customers.

Photon IT reserves the right to suspend or terminate Services on any account that, in its sole discretion, is abusing server resources or is in violation of Photon IT's Acceptable Use Policy. Such suspension or termination can occur at any time without prior notice.

Private & developer/reseller hosting space may only be used for web files, active email and content of User Content (as defined below). Private & developer/reseller hosting space may not be used for storage (whether of media, emails, or other data), including, as offsite storage of electronic files, email or FTP hosts. Photon IT expressly reserves the right to review every account for excessive usage that may be caused by a violation of this Agreement.

11. Bandwidth Usage

If you are allocated a monthly bandwidth allowance and your account exceeds the allocated amount, Photon IT may: (i) suspend your account until the start of the next allocation; or (ii) suspend the account until more bandwidth is purchased for an additional fee.

Unused bandwidth in one month cannot be carried over to the next month and bandwidth is not pooled among multiple servers or accounts.

12. User Content

Photon IT allows you to upload, publish, display and distribute information, text, photos, videos and other content on or through the Services (referred to as "User Content"). User Content includes any content posted by you and users of any of your websites created or hosted through the Services. You are solely responsible for any and all User Content and any transactions or other activities conducted on or through your websites. By posting or distributing User Content on or through the Services, you represent and warrant to Photon IT that (a) you have all necessary rights to post or distribute such User Content, and (b) your posting or distribution of such User Content does not infringe or violate the rights of any third party.

You acknowledge and agree that Photon IT may, but is not obligated to, monitor User Content for any violations of this Agreement and may immediately take any corrective action in Photon IT's sole discretion, including without limitation, removal of all or a portion of the User Content, and terminating any and all Services without a refund of any pre-paid fees. You hereby agree that Photon IT

shall have no liability due to any corrective action that Photon IT may take, including without limitation, suspension or termination of the Services.

13. Licenses

Photon IT grants you a non-exclusive, non-transferable, worldwide, license to use technology provided by Photon IT solely to access and use the Services during the Term. Except for the rights explicitly granted herein, this license does not grant any additional rights to you. All right, title and interest in Photon IT's technology shall remain with Photon IT, or its licensors. You are not permitted to circumvent any devices designed to protect Photon IT, or its licensor's ownership interests in the technology provided to you. In addition, you may not reverse engineer this technology.

Solely for the purpose of providing the Services, you grant Photon IT, or any third parties used by Photon IT to provide the Services, a non-exclusive, non-transferable, worldwide, royalty free, license to use, disseminate, transmit and cache content, technology and information provided by you and, if applicable, your end users, including without limitation User Content. This license terminates on the expiration or termination of the Term, unless earlier terminated as provided herein. All right, title and interest in your technology shall remain with you, or your licensors.

14. Service Modifications

Photon IT reserves the right to modify, change or discontinue any aspect of the Services at any time. However, Photon IT will provide you with advance notice of any material changes to the Services so that you have an opportunity to cancel if you do not agree with any such changes. Photon IT is not responsible for any damages or loss of data resulting from such action.

15. Uptime Guarantee

Photon IT guarantees that your services will be accessible 99.7% of the time in any 30 day rolling period. This guarantee does not apply to unmanaged virtual private servers ("VPS") or unmanaged dedicated server plans. Availability of web services is defined as it being accessible within 10 seconds of being requested. If Photon IT fails to meet its uptime guarantee, you may request a credit equivalent to one (1) day of service per thirty (30) minutes of downtime.

Credits are only available for future Services and cannot be issued as refunds. All credit requests must be sent via email to Photon IT's billing department no later than thirty (30) days following the event giving rise to such request.

The following circumstances are not eligible for credit and are specifically excluded from our Uptime Guarantee: scheduled maintenance, DDoS or similar attacks, hardware failure, third-party software failure, Customer maxing its

resource container, issues resulting from errors or omissions by the Customer, issues relating to the Customer's ISP, firewall blocks/bans, or any other circumstance beyond our reasonable control. All credits are issued at the discretion of Photon IT, based on its investigation of any issue that is covered by this section.

16. Support Policy

Photon IT provides support via email, phone and tickets for the purpose of assisting with basic questions regarding the Services.

17. Resellers and Developers

Resellers and/or Developers are responsible for supporting their own customers unless a prior support agreement has been implemented and signed. Photon IT does not provide support to its resellers' customers. If a reseller's customer contacts Photon IT, Photon IT will direct the customer to the reseller. All support requests must be made by the reseller on its customer's behalf. Resellers are also responsible for all content stored or transmitted under their reseller account and the actions of their customers. Photon IT will hold a reseller responsible for any of its customers' actions that violate the law, the terms of this Agreement, or the Acceptable Use Policy.

18. IP Address Allocation

Any dedicated IP order, in addition to what is provided with a hosting package, may be subject to IP justification. Justification practices are subject to change to remain in conformity with the policies of American Registry for Internet Numbers ("ARIN") or other applicable registry. Photon IT reserves the right to deny any dedicated IP request based on insufficient justification or current IP utilization.

19. Customer Obligations

You represent and warrant to Photon IT that you: (i) will use the Services in compliance with all applicable laws, rules, and regulations, including without limitation, with respect to your websites and any User Content; and (ii) you are solely responsible for all activities conducted on or through any website on your account, including any transactions or interactions with end users of your website.

20. Disclaimer

You acknowledge and agree that any use of the Services, including any information or content obtained through the Services, is at your own risk. Photon IT disclaims any warranty of merchantability or fitness for a particular purpose, including loss of data resulting from delays, delivery failures, wrong deliveries, and any and all interruptions to the Services caused by Photon IT or our employees. You further acknowledge and agree that Photon IT exercises no control over, and accepts no responsibility for, the content of the information passing through Photon IT's host computers, network hubs and points of presence or the Internet.

21. Limitation of Liability

IN NO EVENT WILL PHOTON IT OR ITS DIRECTORS, EMPLOYEES OR AGENTS BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, SPECIAL OR PUNITIVE DAMAGES, INCLUDING FOR ANY LOST PROFITS OR LOST DATA ARISING FROM YOUR USE OF THE SERVICES, OR ANY USER CONTENT, CUSTOMER WEBSITES OR OTHER MATERIALS ACCESSED OR DOWNLOADED THROUGH THE SERVICES, EVEN IF PHOTON IT IS AWARE OF OR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, PHOTON IT'S LIABILITY TO YOU OR ANY PARTY CLAIMING THROUGH YOU FOR ANY CAUSE WHATSOEVER, AND REGARDLESS OF THE FORM OF THE ACTION, IS LIMITED TO THE AMOUNT PAID, IF ANY, BY YOU TO PHOTON IT FOR THE SERVICES IN THE ONE (1) MONTH PRIOR TO THE INITIAL ACTION GIVING RISE TO LIABILITY. THIS IS AN AGGREGATE LIMIT. THE EXISTENCE OF MORE THAN ONE CLAIM HEREUNDER WILL NOT INCREASE THIS LIMIT.

22. Indemnification

You agree to indemnify, defend and hold harmless Photon IT, its affiliates, and their respective officers, directors, employees and agents (collectively, the "Indemnified Parties") from and against any and all claims, damages, losses, liabilities, suits, actions, demands, proceedings (whether legal or administrative), and expenses (including, but not limited to, reasonable attorneys' fees) threatened, asserted, or filed by a third party against any of the indemnified parties arising out of or relating to (i) your use of the Services, (ii) any breach or violation by you of this Agreement; or (iii) any of your acts or omissions. The terms of this section shall survive any termination of this Agreement.

23. Governing Law and Disputes

This agreement shall be governed by the laws of the State of New South Wales, and the laws of Australia, as applicable. Exclusive venue for all disputes arising out of or relating to this Agreement shall be the state and federal courts in New

South Wales, and each party agrees not to dispute such personal jurisdiction and waives all objections thereto.

24. Partial Invalidity

If any provision of this Agreement is held to be invalid by a court of competent jurisdiction, the remaining provisions shall nevertheless remain in full force and effect.

25. Assignment

Photon IT may assign its rights and obligations under this Agreement, and may engage subcontractors or agents in performing its duties and exercising its rights hereunder, without your consent. You may not assign or transfer this Agreement or any of your rights or obligations hereunder, without the prior written consent of Photon IT. Any attempted assignment in violation of this section shall be null and void and of no force or effect whatsoever. This Agreement shall bind and inure to the benefit of the parties respective successors and permitted assigns.

26. Force Majeure

Neither party is liable for any default or delay in the performance of any of its obligations under this Agreement (other than failure to make payments when due) if such default or delay is caused, directly or indirectly, by forces beyond such party's reasonable control, including, without limitation, fire, flood, acts of God, labor disputes, accidents, acts of war or terrorism, interruptions of transportation or communications, supply shortages or the failure of any third party to perform any commitment relative to the production or delivery of any equipment or material required for such party to perform its obligations hereunder.

27. Waiver

Photon IT reserves its right to take all legal steps available to enforce this Agreement. Photon IT's failure to exercise any right or remedy hereunder shall not operate as a present or future waiver of such provision or of Photon IT's rights to enforce such right or remedy in the future. No waiver of any provisions of this Agreement or any other agreement with Photon IT shall be effective unless expressly stated in writing and signed by both parties.

28. No Agency

This Agreement does not create any agency, partnership, joint venture, or franchise relationship. Neither party has the right or authority to, and shall not,

assume or create any obligation of any nature whatsoever on behalf of the other party or bind the other party in any respect whatsoever.

29. Survival

All provisions that by their very nature are intended to survive the termination of this Agreement shall survive termination of this Agreement.

Last Modified on March 19, 2019