

netvirtue

Terms of Service

Document Change History

The following Change History log contains a record of changes made to this document:

Published / Revised	Version #	Author	Section / Nature of Change
5 Nov 2011	1.0	Management	Initial Creation
2 Jan 2012	2.0	Management	Updated with further requirements / added contents and document control
7 Feb 2014	3.0	Management	Updated Cover, Dom Reg/Renewal, Refunds
8 Dec 2016	3.1	Management	Updated State

TERMINOLOGY

This table defines any additional terminology and acronyms used in this document.

Table 1: Terminology and Acronyms

Term	Definition
FTP	File Transfer Protocol
SSL	Secure Socket Layer
VPS	Virtual Private Server
nvArea	Client Management portal https://nvarea.com.au (billing, ordering, services etc.)
URL	Uniform Resource Locator
ISP	Internet Service Provider

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1. Definitions

- 1.1. "Net Virtue" means Net Virtue Pty Ltd (ACN: 152 900 260) of Queensland, Australia.
- 1.2. "Service", "Service(s)" or "Services" means any product(s) or service(s) the Customer has ordered for use. This can include, but is not limited to, the provisioning of space on one of our servers and a connection to and from the internet for web, email and FTP services to function at the level specified in the chosen service level, domain name registration or transfer or renewal, SSL, VPS and SMS services. These product(s) and service(s) are identified in full within the "sign up" and "service provision" emails Net Virtue has sent after your request for service. The specific details of the Services can be found by logging in to the nvArea or on our website.
- 1.3. "nvArea" refers to Net Virtue's customer account, billing and management portal, available online at <https://nvarea.com.au>
- 1.4. "Customer" means the person, persons or entity who ordered our services.

2. Acceptance

- 2.1. The Customer signified acceptance of the Acceptable Use Policy, as well as our Terms of Service, Privacy Policy, Customer Service Policy and any applicable Registrant Agreement, when they submitted their order to Net Virtue for Services, and that order was accepted.

3. Term

- 3.1. The Customer agrees to a month to month contract term for Services unless otherwise stated in the product or service offering (e.g. domain names, SSL, special services with an agreed term) or otherwise agreed in writing. The month to month contract for services is automatically renewed each month in perpetuity subject to written cancellation by the Customer.
- 3.2. Monthly services are established as part, thereof, signifying the beginning of a new month demotes commitment till the end of that monthly period.

4. Service, Marketing and Promotional Emails

- 4.1. The Customer agrees to receive Service, Marketing and Promotional emails from Net Virtue to the email address registered to their account.
- 4.2. Email from Net Virtue to the Customer in regard to a Service, such as invoicing and other notices, will be sent from no-reply@netvirtue.com.au and should always be read by Customer as they will always contain important information.
- 4.3. The Customer may choose to opt-out to receive email notifications from our Service Status system in relation to their Service(s). This can be controlled by the Customer via nvArea.
- 4.4. From time to time, Net Virtue will send the Customer internal marketing and promotional emails, such as current promotions, a monthly newsletter, and other special offers. These emails will be sent from no-reply@netvirtue.com.au and can be opted out of via nvArea.
- 4.5. Net Virtue warrants that they will never sell or trade any email address to any third party, in accordance with the Privacy Policy.
- 4.6. If the Customer does not want to receive these emails, they are required to close their account and any Service associated with the account, in accordance with Section 12 of this policy.

5. Availability of Services

- 5.1. While Net Virtue will endeavour to provide continuous availability of all Services to the Customer, Net Virtue will not be liable for any service interruptions or down time.

5.2. Scheduled maintenance will be performed at times which is deemed suitable by Net Virtue's server provider/s which has the least noticeable impact on the Customer, and should it require the Services to be offline for greater than thirty (30) minutes, Net Virtue will post details of the scheduled maintenance at least 24 hours prior.

5.3. Unscheduled maintenance will be performed at times by Net Virtue's server provider/s, and should the Services be offline for greater than thirty (30) minutes, Net Virtue will post details of the maintenance and any updates until it has been completed. Details of these events can be found at <http://status.netvirtue.com.au/>

6. Domain Name Registration and Renewal

6.1. The Customer acknowledges that Net Virtue is an authorised reseller of domain names with Synergy Wholesale Pty. Ltd.

6.2. The Customer acknowledges that they have read and agree to any applicable Registrant Agreement (ie. <http://www.ada.org.au/policies/current-policies>) before purchasing any domain name service(s) from Net Virtue.

6.3. The Customer acknowledges that all domain name Service(s) are non-refundable once the order for the domain name Service(s) has been processed and accepted by Net Virtue.

6.4. Net Virtue does not warrant or guarantee that a domain name application will be approved. The Customer should take no action in respect of the requested domain name(s) until they have been notified by Net Virtue that the domain name(s) has been approved and is in the Customer's name.

6.5. The registration of the domain name and the ongoing use of the domain name are subject to the relevant naming authority's terms of service and the Customer is responsible for ensuring awareness of these terms and that they are adhered to. The Customer waives any right to make claim against Net Virtue in respect to a decision made by a naming authority to refuse registration or renewal of a domain name.

6.6. The Customer acknowledges that Net Virtue is not obligated to renew a domain name for the Customer, if the Customer has not confirmed to Net Virtue that the domain name is to be renewed, or the invoice for renewal has not been paid in full, or it is determined that the Customer does not satisfy the eligibility criteria to continue holding the domain name license. In these circumstances, Net Virtue will not be held liable by the Customer for any loss or damages. All renewal requests must be submitted via nvArea (<https://nvarea.com.au>).

6.7. Domain name registration or renewal may be declined by Net Virtue if the Customer is in breach of these Terms of Service, Acceptable Use Policy, Customer Service Policy or any applicable Registrant Agreement, or the customer has other unpaid or unresolved fees.

6.8. It is the Customer's responsibility to ensure that all contact details held by Net Virtue in relation to the billing of domain names are kept up to date, as Net Virtue will use these details to advise the Customer of any pending renewal or transfer requests.

6.9. Should the Customer choose to terminate all services with Net Virtue, but does not transfer a domain name to another registrar, the Customer agrees that Net Virtue may contact the Customer after the account closure to advise of any domain name renewal or transfer.

6.10 You accept that it is your responsibility to ensure that your Domain Name Licence(s) are renewed when placing a renewal request.

7. Limitation of Liability

7.1. Net Virtue shall not be liable to the Customer for harm caused by or related to Customer's Service or inability to utilise the Service unless caused by gross negligence or wilful misconduct.

7.2. Neither Party shall be liable to the other for lost profits, direct or indirect, special or incidental, consequential or punitive, or damages of any kind whether or not they were known or should have been known.

7.3. Notwithstanding anything else in this agreement, the maximum aggregate liability of Net Virtue, any of its employees, agents or affiliates, under any theory of law shall not exceed a payment in excess of the amount paid by the Customer for the Service in question for the six months prior to the occurrence of the event(s) giving rise to the claim.

8. Customer General Warranties and Undertakings

8.1. The Customer warrants that any information supplied for the purpose of creating an account with Net Virtue, including but not limited to, first name, last name, address, telephone number and email address is true and correct, and will be kept up to date in Net Virtue.

8.2. The Customer warrants that they will keep any passwords or sensitive information used with the Service in a secure location.

8.3. The Customer warrants that they hold and will continue to hold the copyright for data stored on Net Virtue's servers, or that they are licensed and will continue to be licensed to use that data.

8.4. The Customer warrants that at the time of entering into this agreement they are not relying on any representation made by Net Virtue which has not been expressly stated in this agreement, or on any descriptions or specifications contained in any other document produced by Net Virtue.

8.5. The Customer warrants that all due care has been taken to ensure data integrity on Net Virtue's servers. This includes an undertaking that the Customer will conduct computer virus scanning and other tests as necessary to ensure that the data uploaded by the Customer on to or downloaded by the Customer from the server does not contain any computer virus and will not in any way corrupt the data or systems of any person.

8.6. The Customer agrees that they are solely responsible for dealing with anyone who accesses their data, and that you will not refer complaints or inquiries in relation to such access to Net Virtue.

9. General Assurances and Undertakings

9.1. Net Virtue accepts liability for the supply of the Service to the Customer to the extent provided in this agreement.

9.2. Net Virtue does not warrant that:

- a. The Services provided within this agreement will be uninterrupted or error free;
- b. The Services will meet your requirements, other than as expressly set out in this agreement;
- c. The Services will not be subjected to external hacking attempts, viruses, worms, denial of service attacks, or other persons gaining unauthorised access to the Service or internal Net Virtue systems.

9.3. Net Virtue does not make or give any express or implied warranties including, without limitation, the warranties of merchantability or fitness for a particular purpose, or arising from a course of dealing, usage or trade practice, with respect to any goods or services provided under or incidental to this agreement.

9.4. No oral or written information or advice given by Net Virtue or its resellers, agents, representatives or employees, to the Customer, shall create a warranty or in any way increase the scope of the express warranties hereby given, and the Customer should not rely on any such information or advice.

9.5. In no event will Net Virtue be liable to the Customer for any loss of business, contracts, profits or anticipated savings or for any other indirect or consequential or economic loss whatsoever.

10. Fees and Credit

10.1. In relation to fees for Services:

- a. Fees for Services ordered by the Customer shall begin on the date of the initial order and shall be pro-rated to include all days until the first day of the next month, and the chosen billing cycle in advance. This may be monthly, quarterly, semi-annually, annually, biennially or triennially.
- b. The first day of the month will serve as the anniversary date for all future billings including one time fees, upgrades, additional services, cancellations and service credits, unless the Service only allows annual or biennially billing cycles (e.g. domain name registrations, SSL, etc.).
- c. Fees are due in advance of the billing cycle and will be invoiced to the Customer seven (7) days prior to the due date. If a credit card is stored on file, it will be charged three (3) days prior to the due date, to allow sufficient time for any potential issues (such as insufficient funds, expired cards, etc.) to be rectified before the due date.
- d. Net Virtue stores credit cards for the purpose of recurring billing of services. Should the customer not wish to renew their service(s), a cancellation request must be submitted prior to the end of the paid term.
- e. The Customer agrees that all services are reoccurring and accepts that Net Virtue will take payment on the anniversary date if no cancellation request has been submitted.

10.2. In relation to fees for upgrades to Services:

- a. Upgrades ordered by the Customer on the billing anniversary date will be billed for a full cycle and will continue each cycle on the anniversary date, unless the Services only allows annual or biennially billing cycles (e.g. domain name registrations, etc.).
- b. Upgrades ordered by the Customer after the billing anniversary date will be pro-rated to the next anniversary date at the full monthly costs. Future fees will appear as the new plan from your existing anniversary billing date.
- c. Fees for upgrades will be payable within seven (7) days of the upgrade taking place. If a credit card is stored on file, it will be charged three (3) days prior to the due date, to allow sufficient time for any potential issues (such as insufficient funds, expired cards, etc.) to be rectified before the due date.
- d. Additional fees may be payable for upgrades where manual work is required by Net Virtue to process the upgrade request (e.g. shared hosting to reseller hosting, intercontinental transfers, inter-server transfers, etc.).

10.3. In relation to fees for downgrades to Services:

- a. Downgrades will be processed when the request is received by Net Virtue from the Customer, unless otherwise specified in the request.
- b. A credit will be issued to the Customer's account for the difference of any pro-rated pre-paid amount minus the cost of the new plan pro-rated on the chosen cycle.
- c. A \$9.95 administration fee may be charged for a downgrade request at Net Virtue's sole discretion. Additional fees may be payable for downgrades where manual work is required by Net Virtue to process the downgrade request (e.g. reseller hosting to shared hosting, intercontinental transfers, inter-server transfers, etc.).

10.4. Any fees paid for the setup or establishment of any Services will be automatically deemed as non-refundable.

10.5. Fees for one-off Services including, but not limited to, dedicated IP address, SSL certificates, instant data blocks and instant disk blocks, are due within seven (7) of the invoice being issued and are non-refundable.

10.6. All published prices are inclusive of any government taxes and charges, unless otherwise noted.

10.7. The speed of provisioning new Services is reliant upon the Customer having paid any and all outstanding fees in full.

10.8. Failure to pay any fees may result in the account being referred to an external collection agency, which may include interest (calculated daily) and collection costs.

10.9. Accounts that are more than three (3) days past the due date will automatically attract an overdue fee of \$5.95 which will be payable on top of the invoice amount.

10.10. Accounts that are more than seven (7) days past the due date will be automatically suspended, and a reconnection fee of \$5.95 in addition to any outstanding fees may apply to have the service restored.

10.11. Accounts which are not paid in full within thirty (30) days of the due date will be automatically deleted from our servers.

10.12. Where a chargeback has been issued after services including hosting, domains, licenses have been provided and are deemed incorrect, a \$55.00 fee will apply to reinstate the service. These are due to merchant fees for challenging a chargeback.

11. Suspension and Termination of Services

11.1. Net Virtue may suspend or terminate Services if:

a. The Customer is found to be in breach of any formal policy including but not limited to these Terms of Services, Acceptable Use Policy, Customer Service Policy or any applicable Registrant Agreement;

b. The Customer has become insolvent or bankrupt;

c. The Customer has outstanding fees that are more than seven (7) or fourteen (14) days respectively, past the due date;

11.2. Net Virtue may decide at its sole discretion to advise a Customer that their service will be terminated by giving thirty (30) days written notice. In this circumstance, Net Virtue will refund any pre-paid fees for Services on the account.

11.3. If a Customer's account is closed for any reason, the Customer must pay all outstanding charges by the due dates.

11.4. Net Virtue is under no obligation to provide the Customer with a copy of the data stored on our servers if Net Virtue has suspended or terminated access to the service for any breach of terms 11.1 "a" through "c" of this agreement. In this circumstance, a copy of the data may be provided to the Customer for an additional fee.

12. Cancellation

12.1. The Customer can request cancellation of any Service with us for any reason by logging in to nvArea and submitting a secure cancellation request. For account security reasons, we will not accept cancellation requests by any other manner.

12.2. Any pre-paid fees for Services past the current billing month will be refunded, except the Services that are not eligible for a refund (eg. domain name registration, SSL certificates, web hosting services that specify "no refund" on the plan page, etc).

12.3. The Customer agrees to pay any and all outstanding fees upon cancellation of their Services.

12.4. Cancellation requests must be received by Net Virtue four (4) days before the package renewal date. If cancellation is not received before this time, package renewal costs generated for the next period of time will remain outstanding or an administration fee of \$9.95 may apply (whichever is the lesser value).

13. Refunds

13.1. Types of products for the following items are not eligible for refunds

→ Domain Names

→ SSL Certificates

→ Software Licences

→ Economy Hosting plan “nvSaver”

→ Development Licences

13.2. Refunds for any items not listed above will be eligible for a full refund within thirty (30) days post order. This applies to:

→ All Shared cPanel hosting plans (excluding nvSaver)

→ Virtual Private Servers

13.3. Refunds will not be provided should any breaches of the Terms of Service or Acceptable Use Policy Agreements be evident. This will be advised to the customer in writing stating the reasons for this action.

13.4. All refunds are processed at the discretion of Net Virtue management and in accordance with the Australian Competition & Consumer Commission published policies and guidelines located at <http://www.accc.gov.au/consumers/consumer-rights-guarantees/repair-replace-refund>.

13.5. Should a part refund be requested, it may be that a \$9.95 administration fee be applied and deducted from the refund amount. Net Virtue management will decide this at their sole discretion.

14. Data Management

14.1. Net Virtue will backup and archive the Customer's data on a regular basis for the purpose of disaster recovery.

14.2. In the event of hard disk failure or data corruption, Net Virtue will restore data from the last known verified archive.

14.3. If all backup and archived data appear to be corrupt, the Customer should be prepared to upload the data to their account from a local copy, and setup all mailboxes and FTP accounts.

14.4. The Customer should always maintain a recent copy of all data at all times, as Net Virtue will not be liable for incomplete, out of date, corrupt or otherwise incomplete data recovered from our backups and archives.

14.5. Should the Customer require Net Virtue to restore or supply a backup of the account data where no fault was caused by Net Virtue, a restoration fee of \$49.95 per account will be payable, prior to restoration.

14.6. Net Virtue takes automatic system incremental backups of all web hosting packages 7 times a week and also stores a fortnightly backup of customer's data on separate private infrastructure.

14.7 Net Virtue does not automatically backup or archive Virtual Private Server (VPS) services or its data unless otherwise stated or additional backup services are purchased.

15. Changes

15.1. Net Virtue may amend the Terms of Service at any time with or without warning. Should any change occur, we will advise the Customer by email and note the specific changes which have occurred, and provide fourteen (14) days' notice before any changes are enforced.

15.2. In exceptional circumstances, Net Virtue may be required to amend the Terms of Service and enforce the amendments immediately. If this is the case, the Customer will be advised by email and the circumstances will be explained.

15.3. Our Terms of Service are made available online for viewing at <https://netvirtue.com.au/legal>

16. Use of Identity

16.1. The Customer agrees to use the Net Virtue logo, company information and related services in accordance with approved marketing guidelines.

16.2. Net Virtue agrees not to use a Customer name, logos, URLs or information without prior written consent of the Customer.

17. Entire Agreement

17.1. These terms and conditions constitute the entire agreement between Net Virtue and the Customer, and it supersedes all prior oral or written agreements, understandings and representations.

18. Governing Law

18.1. The Customer agrees to abide by all local, state and federal laws pursuant to the Services delivered by Net Virtue.

18.2. The Customer agrees that these terms and conditions are governed by the laws of Queensland, Australia, and agrees to the exclusive jurisdiction of the Courts of that state.